

SETTLEMENT AGREEMENT

This Settlement Agreement (the "Agreement") is made and entered into on this 7th day of March 2012 by and between Francis A. LeHoty and Dorothy A. LeHoty, a married couple with the mailing address of 8358 Parkdale Drive, North Royalton, Ohio 44133; The City of North Royalton, a municipal corporation with a mailing address of 13834 Ridge Road, North Royalton, Ohio 44133; and A.K.J., Inc. dba Martin Enterprises, a corporation with a mailing address of 3926 Valley Road, Cleveland, Ohio 44109; each of whom is a "Party," and collectively they are "Parties."

RECITALS:

WHEREAS, each of the Parties is a party to the lawsuit entitled *Francis A. LeHoty, et al. v. The City of North Royalton, et al.*, Cuyahoga County Court of Common Pleas, Case No. CV-11-752853 (the "Lawsuit"); and

WHEREAS, the lawsuit concerns the LeHotys' real property situated at 8358 Parkdale Drive, North Royalton, Ohio 44133, and which is otherwise known as PPN 482-05-017; and

WHEREAS, the City of North Royalton contracted with A.K.J., Inc. dba Martin Enterprises to construct a storm sewer in 2008 in a creek bed adjacent to and below the LeHotys' northern property line, and which necessitated the City of North Royalton and/or A.K.J., Inc. dba Martin Enterprises to enter onto the LeHotys' property in 2008 in order in order to complete the storm sewer project; and

WHEREAS, the LeHotys have alleged that the City of North Royalton and/or A.K.J., Inc. dba Martin Enterprises, while on the LeHotys' property in 2008 and engaged in the storm sewer project, damaged or removed certain items from the LeHotys' property, including but not limited to grass, flowerbeds, trees, shrubs, soil, a 25 foot flagpole, an electrical lighting system, and an underground watering system; and

WHEREAS, the LeHotys have alleged that the City of North Royalton and/or A.K.J., Inc. dba Martin Enterprises, while on the LeHotys' property in 2008 and engaged in the storm sewer project, removed a portion of land abutting the LeHotys' northern property line, which land had constituted and secured a slope that ran from the LeHotys' property to the creek bed below; and

WHEREAS, the LeHotys maintain that the removal of this land has caused certain erosion to occur on their property, and the LeHotys further maintain that erosion to their property may continue in the future if no corrections are made to the slope; and

WHEREAS, the City of North Royalton has agreed to correct and improve the slope in order to prevent damage from occurring to the LeHotys' property, and the LeHotys' have agreed to allow the City of North Royalton to enter onto their property to make these corrections, as described in greater detail below; and

WHEREAS, the City of North Royalton has title to a vacant parcel of land at the end of the cul-de-sac on Royalhaven Drive in North Royalton, Ohio, which parcel abuts

the LeHotys' land and which parcel is otherwise known as PPN 482-05-043; and

WHEREAS, the Parties have agreed to a full, complete and final settlement of their claims in the Lawsuit for all conduct to date; and

WHEREAS, the Parties have agreed to enter into a Final Agreed Judgment Entry that will be filed with the Cuyahoga County Court of Common Pleas, a true copy of which is attached hereto as Exhibit A.

WITNESSETH:

NOW THEREFORE, in consideration of the above and the covenants and agreements contained herein, the Parties agree as follows:

1. **\$14,000 Cash Payment**

Within 30 days from the date of this Agreement, the City of North Royalton and A.K.J., Inc. dba Martin Enterprises agree to collectively pay the sum of \$14,000 to Francis and Dorothy LeHoty. The City of North Royalton's payment to the LeHotys will be in the amount of \$8,500, as provided in the City of North Royalton's Release, a copy of which is attached hereto as Exhibit B. A.K.J., Inc. dba Martin Enterprises' payment to the LeHotys will be in the amount of \$5,500, as provided in A.K.J., Inc. dba Martin Enterprises' Release, a copy of which is attached hereto as Exhibit C.

2. **Releases**

Upon receipt of the collective payment of \$14,000 from the City of North Royalton and A.K.J., Inc. dba Martin Enterprises, Francis and Dorothy LeHoty agree to

execute the respective Releases attached hereto as Exhibits B and C. Once executed, the terms of each respective Release shall be made part of this Agreement as though written herein subject only to the terms of this Settlement Agreement.

3. **Improvements to the LeHotys' Property and Adjoining Slope**

The City of North Royalton agrees to enter onto the LeHotys' property to stabilize the slope that extends downward from the LeHotys' northern property line to where the storm sewer was constructed.

The City agrees to place a concrete cap on the storm sewer's existing headwall, to improve the grading of the LeHotys' property and the adjoining embankment, and to add additional soil, seed, straw, grass, and any other forms of plant life or vegetation, where appropriate, to the LeHotys' property and adjoining embankment in order to permanently stabilize the LeHotys' property and prevent erosion from occurring.

The City of North Royalton agrees to complete these improvements by August 31, 2012.

The LeHotys consent to the City of North Royalton coming onto their property for purposes of stabilizing their property and the adjoining embankment, as described in the preceding paragraph.

Furthermore, the City of North Royalton and the LeHotys agree to execute the "Limited Authorization to Enter onto and Do Work on Real Property" that is attached hereto as Exhibit D, and which shall govern the City's actions to stabilize the LeHotys'

property and adjoining slope as described therein.

All costs and work outlined in this section of the Agreement and in the attached Exhibit D will be assumed and completed by the City of North Royalton.

4. **Conveyance of the City of North Royalton's Property to the LeHotys**

The City of North Royalton agrees to convey to Francis and Dorothy LeHoty by quit claim deed the vacant land located at the end of the cul-de-sac on Royalhaven Drive in North Royalton, Ohio, which property abuts the LeHoty's property and is otherwise known as PPN 482-05-043. The Parties likewise agree to the following:

a. The City of North Royalton represents that it has title to the property known as PPN 482-05-043; the City has no knowledge of any liens, mortgages, taxes or encumbrances on said property; title shall be conveyed to the LeHotys by quit claim deed with restrictions as noted in Subsection d below.

b. Francis and Dorothy LeHoty agree to pay for any title search and any title guarantee that they deem necessary related to the property known as PPN 482-05-043.

c. Francis and Dorothy LeHoty agree to pay the filing fee for the quit claim deed. The City of North Royalton and the LeHotys acknowledge that since the City is a municipal corporation there is no transfer or conveyance fee in this matter.

d. Within 30 days of the City of North Royalton's conveyance of the property known as PPN 482-05-043 to Francis and Dorothy LeHoty, the City of North

Royalton and Francis and Dorothy LeHoty agree to have consolidated the City of North Royalton's parcel, PPN 482-05-043, with the LeHoty's parcel, PPN 482-05-017; the LeHotys agree that once consolidated, it shall never again be divided nor shall any structure be built thereon except an accessory building or structure with prior municipal approval and appropriate permit.

e. The City of North Royalton agrees to consolidate the parcels and to pay all expenses related to the consolidation of PPN 482-05-043 and PPN 482-05-17, except that the LeHotys will pay the filing fee of any consolidation plat with the Cuyahoga County Recorder's Office.

5. **Final Agreed Judgment Entry**

Upon the execution of this Agreement, the Parties agree to execute the Final Agreed Judgment Entry attached hereto as Exhibit A and file the same with the Cuyahoga County Court of Common Pleas therein finalizing the litigation between the Parties other than the Court maintaining jurisdiction to enforce the provisions of the Settlement Agreement.

6. **No Admission of Liability**

The execution of this Agreement and the payment of consideration provided for herein are not intended to be, and shall not be deemed to be, an admission of liability by any of the Parties, but are designed solely to resolve disputed claims that the Parties desire to compromise, settle, and satisfy under the terms and conditions set forth

herein.

7. **Attorney's Fees**

Each Party shall be solely responsible for the payment of the attorney's fees and expenses he, she, or it has incurred, including attorney's fees and expenses incurred in connection with the Lawsuit.

8. **Entire Agreement**

This Agreement and the attached Exhibits constitute the complete and exclusive expression of the Parties' agreement on the matters contained in this Agreement. All prior and contemporaneous negotiations and agreements between the Parties on matters contained in this Agreement are expressly merged into and superseded by this Agreement. In entering into this Agreement, the Parties have not relied upon any statement, representation, warranty, or agreement of the other Party except for those expressly contained in this Agreement and the attached Exhibits.

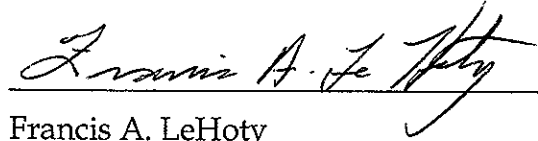
9. **Counterparts**

The Parties may execute this Agreement in multiple counterparts, each of which shall be deemed an original, and all of which taken together will constitute only one agreement. The signature of all of the Parties need not appear on the same counterpart, and delivery of an executed counterpart signature page by facsimile is as effective as executing and delivering the Agreement in the presence of the other Parties to this agreement. This Agreement is effective upon delivery of one executed counterpart from

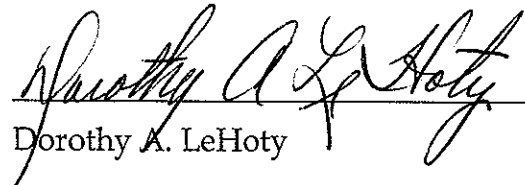
each Party to the other Parties.

IN WITNESS WHEREOF, the undersigned have executed this Settlement Agreement of their own free accord and have agreed to the terms thereof.

PARTIES:



Francis A. LeHoty



Dorothy A. LeHoty

The City of North Royalton

By: _____

A.K.J., Inc. dba Martin Enterprises

By: _____

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

FRANCIS A. LEHOTY, <i>et al.</i> ,)	CASE NO. CV-11-752853
)	
Plaintiffs,)	JUDGE KATHLEEN ANN SUTULA
)	
vs.)	
)	
THE CITY OF NORTH ROYALTON,)	<u>FINAL AGREED JUDGMENT ENTRY</u>
<i>et al.</i> ,)	
)	
Defendants.)	

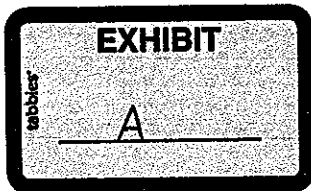
This matter came on for hearing before the Court on the ___ day of _____, 2012.

THE COURT FINDS that the parties have agreed to a settlement of all issues involved in this litigation which Settlement Agreement dated March 7, 2012 is embodied in this Final Agreed Judgment Entry.

THE COURT FURTHER FINDS that the settlement agreement is fair and reasonable and hereby approves the same.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that this case is now settled and dismissed with the Defendants to bear all court costs.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Court shall



retain jurisdiction over this case only to enforce the terms of the Settlement Agreement entered into by and between the parties.

JUDGE KATHLEEN ANN SUTULA

Approved By:

Daniel J. Kolick (0002631)
Michael T. Schroth (0081073)
Kolick & Kondzer
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Attorney for Defendant, the City of North Royalton

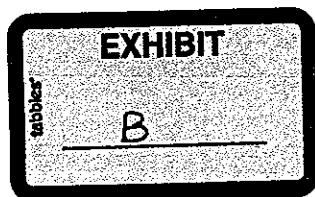
Patrick F. Roche (0025959)
Davis & Young
1200 Fifth Third Center
600 Superior Ave, East
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Phone: (216) 348-1700
Fax: (216) 621-0602
*Attorney for Defendant, A.K.J., Inc.
dba Martin Enterprises*

RELEASE

For and in consideration of the payment at this time of the sum of Eight Thousand Five Hundred Dollars (\$8,500.00), the receipt of which is hereby acknowledged, we, Francis Lehoty and Dorothy Lehoty (Releasors”) husband and wife, do hereby release, acquit, and forever discharge The City of North Royalton, insurers, and attorneys (“Releasees”) from any and all actions, causes of action, claims, demands, damages, costs, loss of services, expenses and compensation, including but not limited to, any and all known and unknown claims of any kind up to the date of signing this Release resulting from sewer construction and related activity which is the subject of a lawsuit captioned *Lehoty, et al. v AKJ, et al* Cuyahoga County Common Pleas Court Case No.: CV 11 752853 (“Lawsuit”).

It is further understood and agreed that this settlement is the compromise of a disputed claim, and that the payment is not to be construed as an admission of liability on the part of Releasees, their insurers, or attorneys, by whom liability is expressly denied. This is a good faith settlement of a disputed claim. It is further understood and agreed that Releasors waive any right to interest on the settlement funds, including prejudgment and post judgment interest.

It is further agreed that Releasors will indemnify and save harmless the Releasees, their insurers, and attorneys from any and every claim or demand of every kind which was made or could have been made by Releasors in the Lawsuit with the exception of AKJ, Inc., dba Martin Enterprises and Angelo Martin. The parties acknowledge that subrogated parties may have claimed interest in the settlement proceeds described herein. Releasors state that, as further consideration of the settlement payment described herein,



if there are any such claims, they have settled and resolved all such claims. Releasors will indemnify, defend, and hold harmless the Releasees from any and all such claims in the future, provided, however, that Releasors' indemnity obligation does not include claims by AKJ, Inc. dba Martin Enterprises and Angelo Martin, not otherwise resolved by operation of the joint tortfeasor statute and the laws of Ohio.

This Release contains the entire agreement between the parties hereto, and the terms of this Release are contractual and not a mere recital. Releasors state that they have carefully read the foregoing Release, know the contents thereof, have consulted with the attorney of their choice regarding the terms contained herein, and that they sign the same as their own free act, and that it is their intention to be legally bound hereby.

Witness:

FRANCIS LEHOTY
Date:

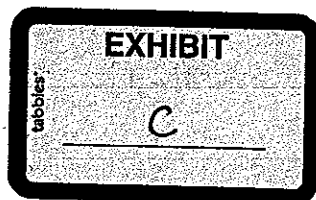
DOROTHY LEHOTY
Date:

RELEASE

For and in consideration of the payment at this time of the sum of Five Thousand Five Hundred Dollars (\$5,500.00), the receipt of which is hereby acknowledged, we, Francis Lehoty and Dorothy Lehoty (Releasers”) husband and wife, do hereby release, acquit, and forever discharge AKJ Inc dba Martin Enterprises, Angelo Martin, their heirs-at-law, next-of-kin, personal representatives, insurers, and attorneys (“Releasees”) from any and all actions, causes of action, claims, demands, damages, costs, loss of services, expenses and compensation, including but not limited to, any and all known and unknown claims of any kind up to the date of signing this Release resulting from sewer construction and related activity which is the subject of a lawsuit captioned *Lehoty, et al. v AKJ, et al* Cuyahoga County Common Pleas Court Case No.: CV 11 752853 (“Lawsuit”).

It is further understood and agreed that this settlement is the compromise of a disputed claim, and that the payment is not to be construed as an admission of liability on the part of Releasees, their heirs-at-law, next-of-kin, personal representatives, insurers, or attorneys, by whom liability is expressly denied. This is a good faith settlement of a disputed claim. It is further understood and agreed that Releasers waive any right to interest on the settlement funds, including prejudgment and post judgment interest.

It is further agreed that Releasers will indemnify and save harmless the Releasees, their heirs-at-law, next-of-kin, personal representatives, insurers, and attorneys from any and every claim or demand of every kind which was made or could have been made by Releasers in the Lawsuit with the exception of claims by the City of North Royalton as noted herein. The parties acknowledge that subrogated parties may have claimed interest in the settlement proceeds described herein. Releasers state that, as further consideration of the settlement payment



described herein, if there are any such claims, they have settled and resolved all such claims. Releasors will indemnify, defend, and hold harmless the Releasees from any and all such claims in the future, provided, however, that Releasors' indemnity obligation does not include claims by the City of North Royalton against Releasees, not otherwise resolved by operation of the joint tortfeasor statute and the laws of Ohio.

This Release contains the entire agreement between the parties hereto, and the terms of this Release are contractual and not a mere recital. Releasors state that they have carefully read the foregoing Release, know the contents thereof, have consulted with the attorney of their choice regarding the terms contained herein, and that they sign the same as their own free act, and that it is their intention to be legally bound hereby.

Witness:

FRANCIS LEHOTY

Date: _____

DOROTHY LEHOTY

Date: _____

**LIMITED AUTHORIZATION TO ENTER ONTO AND
DO WORK ON REAL PROPERTY**

Francis A. LeHoty and Dorothy A. LeHoty (the "LeHotys") hereby authorize the City of North Royalton (the "City"), its agents, and employees to enter onto the LeHotys' property at 8358 Parkdale Drive, North Royalton, Ohio (the "Property") for the limited purpose of stabilizing the northern portion of the Property and the adjoining embankment that extends downward to the storm sewer below the Property, and to prevent further erosion from occurring on the Property and adjoining embankment, which Limited Authorization is subject to the limitations contained herein.

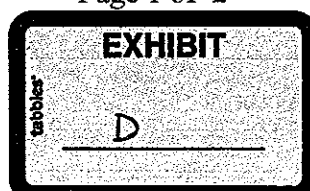
This Authorization permits the City to immediately enter onto the Property and utilize erosion matting materials, compacted fill, soil, seed, straw, grass, and any other forms of plant life or vegetation in order to temporarily stabilize the embankment that extends from the LeHotys' northern property line to the storm sewer headwall below. The City must provide the LeHotys with 24 hours notice before entering onto the Property to perform the actions described in this paragraph.

The LeHotys further authorize the City or its designated agent to enter onto the Property at a future date, but not later than August 31, 2012, to place a concrete cap on the existing headwall, to improve the grading of the Property and the adjoining embankment, and to add additional soil, seed, straw, grass, and any other forms of plant life or vegetation to the Property and adjoining embankment in order to permanently stabilize the Property and prevent further erosion. The City must provide the LeHotys with 48 hours notice before entering into the Property to perform the actions described in this paragraph.

At this time, the LeHotys do not give their consent or authorization to the City to construct any type of fence on the Property. The City reserves the right to construct a fence on the adjoining property.

The LeHotys do not give their consent or authorization to the City to further remove or destroy any other trees, shrubs, bushes, flowers, plants, or flowerbeds on the Property. The City understands that it will be liable for the destruction or removal of any trees, shrubs, flowers, plants, or flowerbeds on the Property at this time.

The LeHotys do not give their consent or authorization to the City to remove any sections of land from the Property except for the limited removal of any soil necessary to improve the grading and stabilization of the Property. The City understands that it will be liable for the unnecessary removal of any sections of land from the Property, as described in this paragraph, beyond that necessary to improve the grading and



stabilizing of the Property. The City Engineer will have reasonable discretion to determine what earth is to be removed and replaced after conferring with the LeHotys.

The LeHotys authorize the City to place men, materials, and equipment on the Property for purposes of completing the actions described herein, so long as the placement is necessary for the completion of the actions described herein and does not result in any further destruction to the Property.

The LeHotys and the City of North Royalton understand that this Property is the subject of a lawsuit pending in the Cuyahoga County Court of Common Pleas, which lawsuit is otherwise known as *Francis A. LeHoty, et al. v. The City of North Royalton, et al.*, Case Number CV-11-752853. The LeHotys and the City of North Royalton mutually agree that this Authorization is to permit the City to make the necessary improvements to the Property and adjoining property as part of the overall settlement between the parties.

Francis A. LeHoty

DATE

Dorothy A. LeHoty

DATE

City of North Royalton

by: _____

DATE