

## SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT is entered into as of June 1, 2018 by and between Erik A. Ahlgren as trustee of the estate of John Keeley and Dawn Keeley in bankruptcy #17-30526 (the "Trustee") and Judy Keeley both personally and Judy Keeley as the Personal Representative of the Estate of Eugene Keeley (jointly, the "Defendants").

### RECITALS

- A. On August 25, 2017, John Keeley and Dawn Keeley, husband and wife, (jointly, the "Debtors") filed a petition under chapter 7 of the Bankruptcy Code and the Trustee was appointed.
- B. On November 22, 2017, the Trustee commenced adversary proceeding 17-07025 entitled *Erik A. Ahlgren, Trustee v. Eugene Keeley and Judy Keeley* (the "Adversary Proceeding") in which the Trustee alleged that the Debtor John Keeley made several transfers to the Defendants that are voidable under 11 U.S.C. §544 and that he may recover from Defendants the full value of the transfer pursuant to 11 U.S.C. §550.
- C. On January 5, 2018, the Trustee filed a Motion for Default Judgment.
- D. On January 12, 2018, the Defendants filed an answer denying that the transfers are voidable, and the parties agreed to mediate their dispute.
- E. On February 28, 2018, the parties met and, with the assistance of Magistrate Judge Alice Senechal, agreed to a settlement to resolve their dispute.
- F. On March 30, 2018, Eugene Keeley passed away and Judy Keeley has been appointed as the Personal Representative of the Estate of Eugene Keeley.

NOW, THEREFORE, in consideration of the foregoing, of the mutual covenants, promises and undertakings set forth herein, and for good and other valuable consideration, the mutual receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

### AGREEMENT

1. RECITALS INCORPORATED. The parties acknowledge and agree that the Recitals set forth above are true and accurate and such Recitals are hereby incorporated into and made a part of this Agreement.

2. **PAYMENT TO TRUSTEE.** The Defendants will pay \$400,000 to the Trustee or his assigns. The obligation to pay the Trustee will be evidenced and secured through the following documents:

- i. the promissory note attached as Exhibit A,
- ii. the mortgage on the Real Estate attached as Exhibit B, and
- iii. the security agreement attached as Exhibit C.

Pursuant to the above referenced documents, the Defendants will pay to the Trustee \$400,000 with interest accruing at the rate of 9% per annum, Interest payable on December 1 of each year. Interest will accrue from June 1, 2018. Regardless of any payments made at any time, all outstanding principal and unpaid interest will be payable in full no later than June 1, 2028. Defendants acknowledge that the Trustee intends to sell and assign the bankruptcy estate's rights under the promissory note, mortgage and security agreement, and that Defendant will make payments to the assignee upon receiving notice of the assignment from the Trustee.

3. **DISMISSAL OF ADVERSARY PROCEEDING.** Promptly following the Effective Date, the Trustee will file a dismissal of the Adversary Proceeding, with prejudice, and on the merits, without cost to any of the parties.

4. **EFFECTIVE DATE.** This Agreement shall be effective upon receipt of a final order of the bankruptcy court approving this agreement (the "Effective Date"). The Trustee shall make application to the bankruptcy court requesting approval. A final order is an order approving this Agreement that has been entered and not appealed within fourteen (14) days of entry of the order, or, if appealed, an order that is affirmed on appeal. The Trustee agrees to fully support approval of this Agreement by the bankruptcy court. All other parties waive the right to object to the approval of this Agreement.

5. **ADVICE OF COUNSEL.** Each of the parties to this Agreement has obtained such counsel as each deems appropriate before entering into this Agreement, and each has independently determined to enter into this Agreement.

6. **CONSTRUCTION.** The Parties acknowledge that they jointly participated in the drafting of this Agreement. This Agreement shall be construed without regard to any presumption or other rule requiring construction against the Party who caused the document to be drafted. The words "include," "includes," and "including" shall be deemed to be followed by the phrase "without limitation." The use of the singular form of any word includes the plural and vice versa.

7. **ENTIRE AGREEMENT.** This Agreement between and among the Parties constitutes the entire agreement and understanding between and among the Parties

and supersedes all prior agreements, representations and understandings concerning the subject matter hereof. The Parties represent that they did not rely on any statement, oral or written, not contained in this Agreement in making their respective decisions to enter into this Agreement.

8. AMENDMENTS, WAIVER. This Agreement may not be terminated, amended or modified in any way except in a writing signed by all of the Parties. No waiver of any provision of this Agreement shall be deemed to constitute a waiver of any other provision hereof, whether or not similar, nor shall such waiver constitute a continuing waiver.

9. JURISDICTION; GOVERNING LAW; VENUE. This Agreement shall be governed, construed, interpreted and enforced according to the internal laws of the State of Minnesota without regard to the conflicts of law principles of any jurisdiction except to the extent that the laws of such State are superseded by the Bankruptcy Code, the Bankruptcy Rules or other applicable federal law. The Parties agree that the Bankruptcy Court shall have exclusive jurisdiction and authority over the subject matter of this Agreement, and any and all disputes relating to this Agreement and the subject matter thereof (including without limitation any action to interpret or enforce this Agreement, or any provision thereof), and the Parties hereby consent to and submit to the jurisdiction and authority of the Bankruptcy Court for any such action and waive any argument that venue in such forum is or shall be inconvenient.

IN WITNESS WHEREOF, the parties have executed this Agreement.

BANKRUPTCY ESTATE OF JOHN KEELEY  
AND DAWN KEELEY IN BANKRUPTCY #17-30526

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By Erik A. Ahlgren, Trustee

X Judy Keeley 6-29-18  
Judy Keeley

X Judy Keeley P.R. 6-29-18  
Judy Keeley as Personal Representative of the Estate of Eugene Keeley