

RESOLUTION NO. 63-16
CITY OF CENTERVILLE, OHIO

SPONSORED BY COUNCILMEMBER Belinda Kenley ON THE 19th
DAY OF September, 2016.

A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A SETTLEMENT AGREEMENT AND RELEASE OF ALL CLAIMS AGREEMENT WITH SUGARCREEK TOWNSHIP TO SETTLE PENDING LITIGATION.

WHEREAS, Cornerstone Developers, Ltd, an Ohio Limited Liability Company, (together with its successors and assigns, the "Developer"), and other individuals or entities, own and/or owned, and developed and or will develop approximately 157 acres north of Feedwire Road and approximately 72 acres south of Interstate 675 and east of Wilmington Pike (hereinafter, "the Cornerstone Development"), which is included in the portions of the Township that are also located within the City (collectively hereinafter "the Annexed Property"); and

WHEREAS, a dispute has arisen between The City of Centerville and Sugarcreek Township relating to the Tax Increment Financing plan implemented by Sugarcreek Township in Sugarcreek Resolution No. 2006-05-02-01 and as to entitlement to service payments paid by the owners of the Annexed Property (hereinafter the "Dispute"); and

WHEREAS, despite efforts to resolve the Dispute the Parties were unable to reach a resolution previously, which led to litigation; namely, the Lawsuit and;

WHEREAS, to ensure clarity and finality as to entitlement to service payments for The City of Centerville and Sugarcreek Township, the Parties desire to fully and finally compromise, resolve, and settle all claims arising from and/or relating to the Dispute; and

WHEREAS, the Parties agree that it is important to work jointly to provide for fire-fighting and emergency medical services ("*Fire/EMS Services*") to the TIF Parcels; and

WHEREAS, to work jointly and facilitate the provision of Fire/EMS Services to the TIF Parcels, the City and the Township have determined to enter into an Agreement to provide for the remittance of a portion of the Service Payments to the Township which will be used by the Township to pay the cost of acquiring certain fire-fighting and EMS related public infrastructure improvements and other capital improvements that will be used to directly but not exclusively benefit the TIF Parcels; and

WHEREAS, the Township and the City have reached a resolution of all issues involved in the Lawsuit; and

WHEREAS, a settlement is beneficial to the citizens of the City of Centerville;
and

WHEREAS, a Settlement Agreement and Release of all Claims ("Agreement")
that sets forth the terms for a settlement has been created for review by the City and the
Township.

NOW THEREFORE, THE MUNICIPALITY OF CENTERVILLE HEREBY
RESOLVES:

Section 1. The City Manager is hereby authorized and directed to execute a
Settlement Agreement and Release of all Claims with Sugarcreek Township in substantial
conformity to the document attached hereto, marked Exhibit "A" and incorporated herein.


Section 2. This Resolution is to take effect at the earliest time allowed by law.

PASSED THIS 19th day of September, 2016.



Mayor of the City of
Centerville, Ohio

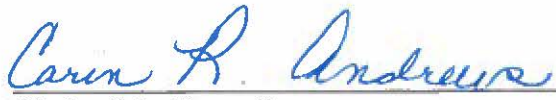
ATTEST:



Clerk of Council
City of Centerville, Ohio

CERTIFICATE

The undersigned, Clerk of Council of the City of Centerville, Ohio, hereby
certifies the foregoing to be a true and correct copy of Resolution No.
63-16, passed by the Council of the City of Centerville, Ohio on the 19th
day of September, 2016.



Clerk of the Council

Approved as to form, consistency
with existing ordinances, the
charter & constitutional provisions
Department of Law
Scott A. Liberman
Municipal Attorney

SETTLEMENT AGREEMENT AND RELEASE OF ALL CLAIMS

The "Parties" to this Settlement Agreement and Release of All Claims (hereinafter, unless otherwise specified, "Agreement"), being identified as:

PARTIES

- A. The City of Centerville, "Plaintiff" in the case of *The City of Centerville v. Sugarcreek Township, et. al.*, Greene County Common Pleas Court Case No. 2016 CV 0364 (hereinafter the "Lawsuit"), together with its current and former elected and/or appointed officials, and its current and former employees, volunteers, employers, principals, agents, insurers, attorneys, officers, directors, predecessors, subsidiaries, affiliates, successors, and assigns, all in their individual and official capacities, shall, for purposes of the ensuing Agreement, be identified in this Agreement as "Centerville" or "City"; and,
- B. Sugarcreek Township, together with its current and former elected and/or appointed officials, current and former employees, volunteers, agents, insurers, attorneys, successors and assigns, all in their individual and official capacities, shall, for purposes of the ensuing Agreement be identified in this Agreement as "Sugarcreek" or "Township";

do and hereby state as follows:

RECITALS

WHEREAS, Cornerstone Developers, Ltd, an Ohio Limited Liability Company, (together with its successors and assigns, the "Developer"), and other individuals or entities, own and/or owned, and developed and or will develop approximately 157 acres north of Feedwire Road and approximately 72 acres south of Interstate 675 and east of Wilmington Pike (hereinafter, "the Cornerstone Development"), which is included in the portions of the Township that are also located within the City (collectively hereinafter "the Annexed Property"); and

WHEREAS, a dispute has arisen between The City of Centerville and Sugarcreek Township relating to the Tax Increment Financing plan implemented by Sugarcreek Township in Sugarcreek Resolution No. 2006-05-02-01 and as to entitlement to service payments paid by the owners of the Annexed Property (hereinafter the "Dispute"); and

WHEREAS, despite efforts to resolve the Dispute the Parties were unable to reach a resolution previously, which led to litigation; namely, the Lawsuit; and

WHEREAS, to ensure clarity and finality as to entitlement to service payments for The City of Centerville and Sugarcreek Township, the Parties desire to fully and finally compromise, resolve, and settle all claims arising from and/or relating to the Dispute.

NOW THEREFORE, in consideration of the promises, covenants, and releases set forth herein and for other good and valuable consideration, the adequacy of which is hereby acknowledged, the Parties hereby agree as follows:

1. In exchange for Sugarcreek Township's covenants and promises herein, The City of Centerville hereby covenants and agrees to the following:
 - a. The City of Centerville releases and discharges the Township from any and all liability, claims, demands, controversies, damages, actions and causes of action on account of property damage, administrative action, impairment of contracts, tortious interference with contract, loss of income, loss of contractual benefits, loss of use, and all other loss and damage of every kind and nature whatsoever sustained by or hereafter resulting to The City of Centerville from and/or arising out of the Dispute, and the subsequent defense of the Lawsuit by the Township, and from all liability, claims, demands, controversies, damages, actions and causes of action whatsoever, either in law or equity, which The City of Centerville can, shall or may have against the Township by reason of or in any way incident to or resulting from the Dispute , including as set forth in the pleadings in the Lawsuit..
 - b. As further inducement for the promises and covenants of Sugarcreek Township, the City of Centerville agrees to dismiss, with prejudice, all claims in the Lawsuit asserted against the Township within ten (10) days of execution of this Agreement; and the full execution by the Parties of the Fire/EMS Cooperative Agreement (a copy of which is attached hereto as Exhibit "A" and the terms of which are incorporated herein by reference), and to forego the pursuit of any claims for attorney fees which it may have against Sugarcreek Township, arising from the Dispute. Sugarcreek acknowledges that its promise to pay Centerville \$542,130.06 within 30 days of the Effective Date of to the Fire/EMS Cooperative Agreement is a material term of the present Agreement and that Centerville's receipt of this payment induced its acceptance of this Agreement.
 - c. The City of Centerville further agrees that Sugarcreek Township may use this Agreement,, in court or elsewhere, to show that the City of Centerville is not entitled to any additional consideration beyond that identified in this Agreement or the Fire/-EMS Cooperative Agreement should it ever attempt to assert any other claim for any reason whatsoever against Sugarcreek Township as a result of the Dispute.
2. In exchange for The City of Centerville's covenants and promises herein, Sugarcreek Township hereby covenants and agrees to the following:

- a. Sugarcreek Township will modify Resolution No. 2006-05-02-01, removing the Annexed Property from Sugarcreek Township's TIF District formed under said Resolution; and
 - b. Sugarcreek Township will enter into and execute the attached Fire/EMS Cooperative Agreement with The City of Centerville; and
 - c. Sugarcreek Township releases and discharges Centerville from any and all liability, claims, demands, controversies, damages, actions and causes of action on account of property damage, administrative action, impairment of contracts, tortious interference with contract, loss of income, loss of contractual benefits, loss of use, and all other loss and damage of every kind and nature whatsoever sustained by or hereafter resulting to Sugarcreek Township from and/or arising out of the Dispute, and the prosecution of the Lawsuit by The City of Centerville, and from all liability, claims, demands, controversies, damages, actions and causes of action whatsoever, either in law or equity, which the Sugarcreek Township can, shall or may have against the City by reason of or in any way incident to or resulting from the Dispute , including as set forth in the pleadings in the Lawsuit.
3. All parties agree to make a good faith effort to draft and issue a joint press release and/or press conference to ensure positive press for all involved.
4. The Parties acknowledge that they fully understand the terms of this Agreement. The Parties further acknowledge that this Agreement shall in all respects be interpreted, enforced, and governed by the laws of Ohio, without regard to its conflict of laws provisions. The language of all parts of this Agreement shall in all cases be construed as a whole, according to its fair meaning. If, after the date hereof, any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws effective during the term of this Agreement, such provision shall be fully severable. In lieu thereof, there shall be added a provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible, and be legal, valid and enforceable.
5. The Parties further acknowledge that they each voluntarily promise and covenant as set forth herein for the purpose of making full and final compromise, adjustment and settlement of all loss, damage and injuries hereinbefore mentioned or referred to and that the promises and covenants contained in this Release are not an admission of liability by any party and that all parties expressly deny any liability.
6. No promise, inducement or agreement not herein expressed has been made to the Parties. The Parties agree and acknowledge that the date of settlement shall be the date on which this Agreement is executed by the final Party to do so.
7. This Agreement may be executed in counterparts, each of which shall be deemed an

original. Additionally, an electronic, facsimile or portable document format copy (.pdf) of an original agreement signed by a Party to this Agreement shall be deemed an original document and the Parties are entitled to rely on the validity, authenticity, and authority of a copy of an executed original document transmitted by email, facsimile or portable document format (.pdf).

8. This Agreement, along with the Fire/EMS Cooperative Agreement, constitutes the entire agreement and understanding of the Parties relating to the matters stated in this Agreement. The Parties agree that there are no other oral or written understandings or agreements.
9. This Agreement shall not be suspended, amended or modified in any manner except by an instrument in writing signed by all Parties to be bound.
10. The section and other headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. Words used in this Agreement in the singular number shall include the plural, and vice versa, unless the context requires otherwise. Words of gender used in this Agreement may be read as masculine, feminine or neuter as the context may require. Whenever the words "include," "includes," or "including" are used herein, they shall be deemed to be followed by the words "without limitation."
11. Upon stipulated dismissal of this matter, the parties agree that the Greene County Court of Common Pleas will retain jurisdiction to enforce the herein Agreement and the Fire/EMS Cooperative Agreement.

[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

THE PARTIES ACKNOWLEDGE THAT THEY HAVE READ THE FOREGOING SETTLEMENT AGREEMENT AND RELEASE OF ALL CLAIMS AND FULLY UNDERSTAND IT.

Signed this _____ day of _____, 2016.

On behalf of the City of Centerville:

Gregory B. Horn
City Manager

Approved as to Form:

Scott A. Liberman, Municipal Attorney

Signed this _____ day of _____, 2016.

On behalf of Sugarcreek Township

(1) _____, Trustee of Sugarcreek Township

By: _____, As Trustee of Sugarcreek Township

(2) _____, Trustee of Sugarcreek Township

By: _____, As Trustee of Sugarcreek Township

(3) _____, Trustee of Sugarcreek Township

By: _____, As Trustee of Sugarcreek Township