

RESOLUTION NO. 52-07  
CITY OF CENTERVILLE, OHIO

SPONSORED BY COUNCILMEMBER Douglas Cline, ON THE 5<sup>th</sup>  
DAY OF November, 2007.

A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A MEMORANDUM OF UNDERSTANDING WITH SUGARCREEK TOWNSHIP REGARDING THE PROPERTY COMMONLY KNOWN AS THE DILLE PROPERTY THAT HAS BEEN ANNEXED INTO THE CITY OF CENTERVILLE.

WHEREAS, there is pending a lawsuit filed by Sugarcreek Township against the City of Centerville; and

WHEREAS, it is desirable to settle the issues related to the lawsuit without going to trial;

WHEREAS, mediation between the Township and the City has occurred and progressed to a point of mutual agreement on the terms of settlement; and

WHEREAS, the Township and the City have reached a tentative resolution of all issues involved in the lawsuit and involved with the annexation of the Dille property; and

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

WHEREAS, a Memorandum of Understanding that sets forth the terms for a settlement has been created for review by the City and the Township; and

WHEREAS, the Memorandum of Understanding, once agreed upon, will become the basis for the creation of a Settlement Agreement between the City and the Township to settle the lawsuit;

NOW THEREFORE, THE MUNICIPALITY OF CENTERVILLE HEREBY RESOLVES:

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

PASSED THIS 5<sup>th</sup> day of November, 2007.

C. Mark Kuyper  
Mayor of the City of  
Centerville, Ohio

ATTEST:

Debra A. James  
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. 52-07, passed by the Council of the City of Centerville, Ohio on the 5<sup>th</sup> day of November, 2007.

Debra A. James  
Clerk of the Council

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

MEMORANDUM OF UNDERSTANDING RELATING TO  
THE DILLE PROPERTY

The City Council and City Manager of the City of Centerville, Bear Creek Capital, LLC, and the Sugarcreek Township Administrator and Sugarcreek Township Trustees enter into this memorandum of understanding ("MOU"). All parties adopt the terms set out in this document as a means to fully and finally resolve all disputes relating to the pending legal actions concerning annexation of the Dille property into the City of Centerville. The parties hereby direct their respective counsel to draft a written settlement agreement incorporating these terms.

1. The annexations remain in place in accordance with R.C. §709.023 and the Township's pending legal challenge to the annexations will be dismissed with prejudice. The annexed territory will be in the City of Centerville but will also remain in the Township pursuant to the Ohio Revised Code.
2. It is important to the parties that the Sugarcreek Local School District Board of Education ("School Board") be satisfied with the taxes the school district will receive from the area annexed as the area develops. Therefore, the City, the Developer and the School Board may enter into an agreement ("school agreement") relating to the use of property tax proceeds and the school district's share of such proceeds from the annexed area. The school agreement must be completed within sixty (60) days after execution of the written settlement agreement. It is important to the City, the Developer, the School Board and the Township that the Township EMS and fire protection services to the annexed area be maintained at a level necessary to properly serve the proposed development on the property. It is anticipated that TIF funds will

be used, in part, to support the Township fire department. The school agreement will include a provision that the proceeds from the TIF will first be used to service debt and associated costs, then, as long as Sugarcreek Township provides EMS and fire protection services, to provide the Township fire department with the tax revenue funding it would have received in the applicable year as if the TIF was not in place, and next the TIF funds will be paid to the school district to provide it with the remaining funds up to the level it would have received if the TIF were not in place, with any excess funds allocated as described in paragraph 8 herein. Should it be determined that the TIF cannot be used to pay the Township fire department, then those payments will go to the school district and the school district will pay those funds to the Township fire department. Any funds payable to the Sugarcreek Township Fire Department will be placed in the township's fire or EMS fund to be used only for fire or EMS services. If the City, the Developer and the School Board fail to reach an agreement satisfactory to the School Board, the City may enact a thirty (30) year TIF under the terms of R.C. §5709.40(D)(1) which provides for reimbursement to the School Board for any taxes from the annexation that the School Board would lose from tax increment financing. If a school agreement cannot be reached, and the City or the Developer determine that a TIF under R.C. §5709.40(D)(1) is not feasible, this agreement is null and void.

3. Commencing in the first year in which the City receives payments in lieu of taxes from the TIF and continuing during the term of the City TIF, each year the Sugarcreek Township Fire Department shall receive, and the City shall pay, an amount equal to the greater of the following two amounts for as long as the Sugarcreek Township Fire Department provides fire services to the annexed

properties: (i) a minimum payment of \$100,000.00 for the first year the TIF is effective, increasing each year thereafter in increments of \$10,000.00 per year; or (ii) an amount equal to the revenues that would (in the absence of the City TIF) have been generated for that year on the annexed land from the fire levies. Should a TIF not be placed on the property and other mechanisms used to divert funding from the Sugarcreek Township Fire Department, the City agrees that it will pay the Township the amount of money the Township would otherwise have received had taxes for the Sugarcreek Township Fire Department not been diverted. This provision will remain as long as a financing mechanism is enacted by the City which diverts monies from the Sugarcreek Township Fire Department and the Township is providing fire and EMS service. Nothing in this agreement prevents the City from working out a separate agreement for a contribution from the owner or subsequent owners or Developers of the annexed property. The parties understand that if no taxes are diverted from the Sugarcreek Township Fire Department by use of a TIF or other public improvement financing, the Township will get funding for the Sugarcreek Township Fire Department as provided by law.

4. No hotel/hospitality taxes shall be paid to the Township.
5. Service payments for the full amount of the TIF shall be guaranteed by the Developer until the TIF generates sufficient revenues to pay the related debt service payments due (i.e. until TIF revenues are stabilized).
6. Sugarcreek Township shall be informed of the zoning processes of all development in the annexed area and will have an opportunity to provide its opinion to the City Planning Commission during its regular process. The City agrees that, in any matter

that comes before the City Planning Commission in the annexed area, when the City distributes information to the City Planning Commission, it shall also distribute the information to the Township. City Council and the Township Trustees shall meet in joint session two (2) times per year to discuss zoning and development in the annexed areas, unless the joint session is cancelled by mutual agreement. At all times, the City would have exclusive decision making authority in regard to all zoning and development matters in the annexed territories.

7. The Township shall promptly remove its existing TIF on the annexed properties and shall not otherwise divert any real property tax revenues from the annexed parcels, and shall immediately pay any and all outstanding TIF debt on the annexed parcels. If no school district agreement as set out in paragraph 2 herein is reached, the parties understand, and the Township will permit, the City to implement a 100% TIF exemption for up to 30-years, on the annexed properties in accordance with R.C. §5709.40.(D)(1). The City shall be permitted to issue bonds (including notes issued in anticipation of these bonds) up to a maximum aggregate principal amount of \$17 million, the proceeds of which may be used to pay for the costs of public improvements benefiting the annexed property, together with related issuance and capitalized interest expenses.
8. Public improvements permitted to be funded by the TIF are to be determined by the City's TIF bond counsel and the applicable law. All service payments made pursuant to the TIF in excess of school and township fire department compensation, annual debt service, and to fund any required debt service reserve fund required for the TIF not otherwise initially funded out of the bond proceeds, will be used to defease,

redeem or retire the bond and related debt service with the purpose of ending the TIF at the earliest possible time.

9. The City shall design and manage the Feedwire Road and Wilmington Pike Road (north and south of I-675) and the proposed Miami Valley Drive (east extension) improvement projects in and adjacent to the annexed area. The City will in good faith seek input from the Township on these projects and on their design. The Township will identify to the City its preferred alignment for Miami Valley Drive and the City will work with the Developer to, as much as practical, conform to the design preferred by the Township. However, should disagreement be reached, the City will have the final say on the alignment of the roadway. As to the part of Miami Valley Drive west of the City limits, the Township, City, and the Developer will cooperate in a landscaping plan for a portion of the right-of-way where landscaping will be installed and maintained by the Developer or a successor owner association. The location of the landscaping and other items that may be placed in the right-of-way will comply with applicable governmental rules and regulations, including site distances. The City and Township will mutually agree on a design of the Clio Road extension. The Clio Road extension will proceed at a total project cost not to exceed \$2.4 million, including right-of-way acquisition. That \$2.4 million includes funding of approximately \$300,000 from the Greene County Engineer bridge funds and approximately \$500,000 of Township contribution through Issue 2 funds. The Township commits its Issue 2 monies to the project. Should the Township fail in its obligation, the City, the Developer or owner will have the right to proceed at law or in equity to recover the Township portion of the funding. To the extent legally

permissible, the parties will mutually agree on a project manager for the Clyo Road project and will involve the Greene County Engineer to the extent legally required. The Township agrees that once its current TIF is removed, as set out in paragraph 7 above, and following the placement of any City TIF or other financing methods for public improvements on the annexed property by the City, the Township will enact a separate TIF district outside the annexed area and will, to the extent legally permissible, contribute funding from the properties benefited by the improvements within and outside the annexed area in order to ensure that \$500,000 from the Township is available for the project should the Issue 2 monies not be available. Said funding shall not exceed the amount of the Issue 2 grant award for the project. The Township shall obtain all needed rights-of-way outside of the annexed territory as necessary for the road projects identified herein. Centerville's TIF may fund up to \$250,000 for purchasing or acquiring the necessary road rights-of-way to be secured by Sugarcreek Township on properties located outside of the annexed territory. All the above described roadway projects shall be funded by Centerville's TIF that will be placed on the annexed land in accordance with this agreement, along with other available public funding, including the awarded Issue 2 funds and established county bridge funds (for Clyo Road) identified herein.

10. The only services the Township is entitled and required to provide to the areas annexed are EMS and fire protection services.
11. Any consent decree or agreed judgment entry entered into settling this case shall include binding language for all parties involved alleviating any legal recourse for actions to date.



12. The City shall not place any additional real property tax incentives exempting or diverting township tax revenues on the annexation territories during the life of the TIF. This shall not prohibit special assessments to guarantee TIF service payments.
  
13. The annexed properties have been zoned in the City. The southern annexation territory includes approximately 45± acres zoned RPD that would permit multi-family housing at a density of 6 dwelling units per acre. Bear Creek shall file an application with the City to eliminate multi-family housing from the southern annexation territory and the City agrees that it will support the modification of the current zoning to eliminate multi-family housing from the southern annexation territory and the City agrees that it will support the modification of the current zoning to eliminate multi-family housing from the southern annexation territory. The northern annexation territory includes approximately 36± acres currently zoned RPD that would also permit multi-family housing at a density of 6 units per acre. The City agrees it will work with the property owner and/or Developer to minimize residential apartment development on the north parcel, if any, and encourage any such units be built as condominiums and/or senior housing or assisted living facilities.
  
14. The name of the project as shown on the project's identification signage will be "Cornerstone" or other jurisdictionally neutral name chosen by the Developer.

The undersigned acknowledge they have read the foregoing and have the full authority of the parties they represent to sign this agreement.

SUGARCREEK TOWNSHIP TRUSTEES

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CITY OF CENTERVILLE

By: \_\_\_\_\_  
Its City Manager

BEAR CREEK CAPITAL, LLC

By: \_\_\_\_\_  
Its: \_\_\_\_\_