

**ORDINANCE NO. 31-2018**

**AN ORDINANCE AUTHORIZING THE MAYOR AND FISCAL OFFICER TO ENTER INTO AN AGREEMENT IN SETTLEMENT OF A CIVIL LAWSUIT**

**WHEREAS**, the Village of Loudonville is a party to Ashland County Common Pleas Court Case 15-DLD-004 against Heinz and Cathleen Thiemens; and

**WHEREAS**, the parties to that lawsuit have negotiated terms of a potential settlement; and

**WHEREAS**, the Council of the Village of Loudonville believes it is in the best interests of the Village to settle that case by accepting ownership of certain real property in full satisfaction of the amounts owed to the Village by the Defendants.

**NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE VILLAGE OF LOUDONVILLE, STATE OF OHIO:**

**SECTION 1.** That the Mayor and Fiscal Officer are hereby authorized and directed to enter into an Agreement consistent with the terms of that attached hereto in full and final settlement of the claims described in that Agreement and to accept transfer of real property as set forth in that Agreement.

**SECTION 2.** That it is found and determined that all formal actions of the Council concerning and related to the passage of this Resolution were adopted in an open meeting of the Council and of any of its committees that resulted in such formal actions were in meetings open to the public in compliance with all legal requirements including Section 121.22 of the Ohio Revised Code.

**SECTION 3.** That this Ordinance shall take effect and be in force at the earliest date allowed by law.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Stephen Stricklen, Mayor

Attest:

Approved as to form:

\_\_\_\_\_  
Elaine Van Horn, Fiscal Officer

\_\_\_\_\_  
Thomas R. Gilman, Village Solicitor

AGREEMENT REGARDING DEED IN LIEU/SETTLEMENT OF FORECLOSURE

THIS AGREEMENT REGARDING DEED IN LIEU/SETTLEMENT OF FORECLOSURE ("Agreement") is made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 2018 between Heinz O. Thiemens and Cathleen D. Thiemens (collectively "Property Owner") and Village of Loudonville, Ohio ("Village").

RECITALS

A. Property Owner owns real property located in the Village of Loudonville, Ohio, and more specifically described on Exhibit A (the "Property").

B. The Property suffered a partial collapse that required emergency nuisance abatement by the Village, resulting in Property Owner owing the Village \$52,204.43, and applicable penalties and interest.

C. Property Owner has requested that Village accept a deed to the Real Property described above in full and final consideration of all amounts owed to the Village for emergency nuisance abatement, interest, and penalties, and in lieu of pursuing Village's rights to obtain a judgment for the amount owed for the Property and in complete settlement of Ashland County Case 15-DLD-004.

D. The parties deem it is in their respective best interests to enter into the agreements set forth herein.

AGREEMENT

In consideration of the foregoing, the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Property Owner and Village agree as follows:

1. Conveyance of Property to Village. By execution within thirty (30) days of the date hereof of a Warranty Deed in the form of Exhibit B hereto (the "Deed"), Property Owner agrees to convey to Village, free and clear of any right of redemption or other right, title or interest of Property Owner or anyone claiming by, through or under Property Owner, the Property.

2. Covenant Regarding Potential Collection. Village hereby agrees, subject to the terms and provisions set forth herein, that upon the full and final performance by Property Owner of all of Property Owner's obligations to be performed hereunder, Village shall waive any and all rights to collection for the emergency nuisance abatement, any other monies owed to Village by Property Owner, all rights to deficiency judgment, and any other claims against the Property Owner related to the property emergency nuisance abatement for the Property referenced above. The Village shall also dismiss any pending claims in Ashland County Common Pleas Court Case 15-DLD-004 with prejudice. Property Owner does hereby waive any and all claims against the Village and shall dismiss any pending claims and/or counterclaims in Ashland County Common Pleas Court Case 15-DLD-004 with prejudice.

3. Surrender of Premises. On or before the delivery of the Deed, Property Owner agrees to quit, surrender and release any and all claims in or to the Property unto Village or its designee, and Village or such designee agrees to accept such surrender. Without limiting the foregoing, Property Owner hereby acknowledges and agrees that, as a result of the execution and delivery of the Deed, they shall have no continuing right, title or interest in or to the Property, and that all such rights shall vest in Village, free from any right of redemption or right of reinstatement in Property Owner. Additionally, prior to transfer of the Property, Property Owner shall pay all outstanding real property taxes, assessments, interest, and penalties, except those arising from the emergency nuisance abatement referenced herein.

4. Representations, Warranties and Covenants. Property Owner and Guarantors hereby represent and warrant to Village, and covenant and agree with Village as follows:

a. Existing Default: Property Owner is in default of their duty to compensate the Village for monies expended in abatement of the emergency nuisance referenced above.

b. Valuation: The aggregate value of the Real Property is less than the outstanding principal balance of the Loans, and interest accrued on the Loans.

c. Truth and Accuracy of Information: All information and documents

furnished or to be furnished by or on behalf of Property Owner and Guarantors to Village pursuant to this Agreement are, to the best of Property Owner's knowledge and belief, true, correct, accurate and complete.

d. Title to the Real Property: The Property Owner owns the Real Property and all improvements thereon in fee simple absolute, and has all necessary right and authority to convey the same and, there are no existing liens (except those created by real property taxes), encumbrances, agreements, encroachments, special assessments, claims, or other adverse interest or defects upon or conditions upon or affecting the Real Property, and there are no environmental, toxic or other hazardous waste conditions upon or affecting the Property.

e. Further Actions Affecting Property: Property Owner hereby agrees that between the date of this Agreement and the date of the recording of the Deed, Property Owner will not convey any interest in the Property or allow any liens to attach to the Property without the consent of Village, and shall operate and maintain the Property in an ordinary and reasonable business manner.

f. Authorization: The execution and delivery of this Agreement and all other instruments and agreements executed in connection herewith or relating hereto have been duly authorized by all necessary parties related to the Property Owner.

g. Voluntary Act: The execution of this Agreement and the Deed in Lieu Documents is the free and voluntary act of Property Owner.

h. Property Owner acknowledges that they do not have any claim or counterclaim of any kind against Village as of the effective date of this Agreement. In connection therewith, and in consideration of the mutual covenants contained herein and for good and other valuable consideration, Property Owner hereby holds harmless, releases, acquits, and forever discharges Village and Village's participants, subsidiaries, officers, officials, agents, attorneys,

and representatives, as well as their respective heirs, successors, and assigns, from any and all claims, demands, debts, actions, causes of action, contracts, agreements, accounts, defenses, offsets, and liabilities of any kind or nature whatsoever known or unknown, suspected or unsuspected, in contract or in tort, at law or in equity, which Property Owner ever had, now have, or might hereafter have against the Village and other parties described hereinabove for any reason or by reason of any matter, cause, or thing whatsoever occurring before the effective date of this Agreement as it relates, in whole or in part, directly or indirectly, to: (i) the indebtedness; (ii) the emergency nuisance determination and abatement; or (iii) the Village's collection efforts. In addition, the Property Owner agrees not to commence, join in or prosecute any suit or other proceeding that is adverse to any of the Parties described hereinabove including, but not limited to Village arising directly or indirectly from any of the foregoing matters.

5. Contingencies. This Agreement shall be contingent upon the following occurring:

- a. Approval of this transaction by the Ashland County Treasurer.
- b. Approval of this transaction by the Loudonville Village Council.
- c. Property Owner paying all real property taxes and assessments encumbering the property as of the date of the execution of the deed as set forth above.
- d. Property Owner executing any other documents reasonably deemed necessary by the Village for completion of this transaction.
- e. The Village obtaining title research and/or title insurance deemed satisfactory by the Village in its sole discretion.
- f. The Property being free and clear of all encumbrances before transfer to the Village.
- g. The Village being satisfied with the results of any inspections it chooses.

6. Miscellaneous. This Agreement shall be construed in accordance with the laws of the State of Ohio. The representations, warranties and agreements of the Property Owner and Village set forth herein shall survive the execution and delivery of this Agreement and the transfer

contemplated hereby. The headings that have been used to designate the various paragraphs of this Agreement are solely for ease of reference and shall not be construed in any event or manner as interpretative or limiting of this Agreement. This Agreement shall be binding upon, and shall inure to the benefit of the parties hereto and their respective heirs, executors, legal representatives, successors and assigns. This Agreement may be executed in separate copies by any party or parties. Parties referred to as "Property Owner" above may execute separate copies and/or may execute and be bound by the terms of agreements with different terms. There are no verbal agreements between the parties pertaining to the issues set forth herein.

6. Invalid Provision, if any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws, such provisions shall be fully severable and this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of this Agreement; the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision, or by its severance from this Agreement.

IN WITNESS WHEREOF, this Agreement has been executed by the Property Owner and Village.

VILLAGE:

---

Village of Loudonville, Ohio

Stephen Stricklen, Mayor

PROPERTY OWNER:

---

Heinz O. Thiemens

---

Cathleen D. Thiemens

---

Village of Loudonville, Ohio

Elaine Van Horn, Fiscal Officer

STATE OF OHIO

COUNTY OF ASHLAND, SS:

BEFORE ME, a Notary Public in and for said County and State, personally appeared Village of Loudonville, Ohio, by and through Stephen Stricklen and Elaine Van Horn, its Mayor and Fiscal Officer, who acknowledged that they did sign the foregoing instrument and that the same is their individual free act and deed and the free act and deed of Village of Loudonville, Ohio

IN TESTIMONY WHEREOF, I have hereto set my hand and official seal, this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

\_\_\_\_\_  
NOTARY PUBLIC

STATE OF OHIO

COUNTY OF ASHLAND, ss:

BEFORE ME, a Notary Public in and for said County and State, personally appeared Heinz O. Thiemens who acknowledged that he did sign the foregoing instrument and that the same is his individual free act and deed and the free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal, this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

\_\_\_\_\_  
NOTARY PUBLIC

STATE OF OHIO

COUNTY OF ASHLAND, ss:

BEFORE ME, a Notary Public in and for said County and State, personally appeared Cathleen D. Thiemens who acknowledged that she did sign the foregoing instrument and that the same is her individual free act and deed and the free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal, this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

---

NOTARY PUBLIC



Exhibit A

Situated in the Village of Loudonville, County of Ashland and State of Ohio:

PARCEL NO. 1: And being Lot Number Four Hundred Thirty-two (432), except 40 feet off the east end thereof. (Also known on the Auditor's tax map drawings as Lot 432-A)

PARCEL NO. 2: And being Lot Number Four Hundred Thirty-three (#433).

PARCEL NO. 3: Being 40 feet of the East end of Lot Number Four Hundred Thirty-two (#432) according to the new numberings of Lots in and for said Village of Loudonville, OH.

PARCEL NO. 4: Being Lot Number Four Hundred Thirty-four (#434).

PP#C09-025-0-0049-00

PP#C09-025-0-0050-00

PP#C09-025-0-0051-00

PP#C09-025-0-0048-00

