

ORDINANCE NO. 19-3629

AN ORDINANCE APPROVING A MUTUAL RELEASE AND SETTLEMENT AGREEMENT AND  
DECLARING AN EMERGENCY

WHEREAS, the Village of Silverton, the Board of Education of the Cincinnati School District, and JRA MVG Silverton Land, LLC (collectively, the "Parties") have certain disputes against each other as set forth more fully in a Mutual Release and Settlement Agreement ("Agreement"); and

WHEREAS, the Parties wish to resolve their disputes as set forth in the Agreement, and

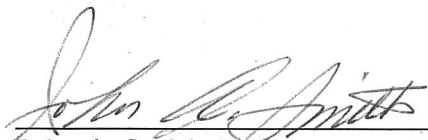
WHEREAS, Village Council wants to authorize the Village Manager to take all action necessary to resolve the disputes consistent with the Agreement, including executing it on behalf of the Village and making any changes necessary to benefit the Village.

NOW THEREFORE, BE IT ORDAINED by the Council of the Village of Silverton, Ohio, that:

**SECTION I.** The Village Manager is hereby authorized to execute the Agreement and to take any action necessary to effect its terms, including revising the Agreement if necessary to benefit the Village.

**SECTION II.** This Ordinance is declared to be an emergency measure necessary to preserve the public peace, health, safety and welfare of the citizens of the Village of Silverton; the reason for the emergency being the immediate need to authorize and to approve the Agreement and to resolve the current disputes among the Parties, so that the Village can obtain the favorable outcomes set forth in such Agreement at the earliest possible time. Accordingly, this Ordinance shall take effect and be in force immediately from and after its passage and approval.


*PASSED this 17<sup>th</sup> day of October, 2019.*

  
\_\_\_\_\_  
John A. Smith, Mayor

ATTEST:

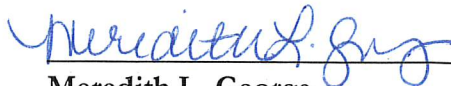
  
\_\_\_\_\_  
Thomas M. Carroll, Village Manager

*Approved as to form:*

  
\_\_\_\_\_  
Bryan E. Pacheco, Village Solicitor

**CERTIFICATION:**

I, Meredith L. George, Clerk of Council of the Village of Silverton, County of Hamilton, State of Ohio; do hereby certify that there is no newspaper published in said municipality and that publication of the foregoing Ordinance No. 19-3629 has been duly made by posting true copies in two (2) places that are accessible by the public in said municipality, as determined by Council as follows: 1) Silverton Town Hall lobby area and Council Chambers foyer; and 2) Silverton's official website. Said posting was for a period of fifteen days commencing Oct 18, 2019.

  
\_\_\_\_\_  
Meredith L. George  
Clerk of Council of Silverton, Ohio

## MUTUAL RELEASE AND SETTLEMENT AGREEMENT

This Mutual Release and Settlement Agreement ("Agreement") is entered into by and between the **Village of Silverton, Ohio**, an Ohio municipal corporation, whose address is 6943 Montgomery Road, Silverton, Ohio 45236 ("Silverton"), **The Board of Education of the Cincinnati School District**, an Ohio City School District, whose address is 2651 Burnet Avenue, Cincinnati, Ohio 45219 ("CPS"), and **JRA MVG Silverton Land, LLC**, an Ohio limited liability corporation, whose principal address is \_\_\_\_\_ ("Developer"). Silverton, CPS, and Developer are collectively the "Parties," and each is individually a "Party."

### RECITALS

WHEREAS, Silverton and CPS did enter into a Real Estate Conveyance Agreement ("RECA") effective as of September 29, 2009, the relevant text of which through signatures is attached hereto as **Exhibit A**; and

WHEREAS, under the terms of such RECA, Silverton and CPS did complete a land swap trading property owned by Silverton to CPS for the purposes of constructing a new school and trading property owned by CPS to Silverton ("New City Property") to facilitate the planning and construction of a new mixed-use development; and

WHEREAS, subsequent to the land swap completed under the RECA, Silverton and the Developer did enter into a Master Development Agreement ("MDA") effective as of September 29, 2010, the relevant text of which through signatures is attached hereto **Exhibit B**, which MDA did facilitate the development of a mixed-use development site on the New City Property in conjunction with other properties acquired by Silverton at the intersections of Montgomery and Stewart Roads in the Village of Silverton, Ohio ("Mixed-Use Development"); and

WHEREAS, to facilitate the Mixed-Use Development, Silverton did enact Ordinance Number 16-3508, a copy of which is attached hereto as **Exhibit C**, entitled *An Ordinance Implementing Sections 3735.65 through 3735.70 Of The Ohio Revised Code, Establishing And Describing The Boundaries Of The Mixed-Use Community Reinvestment Area In The Village Of Silverton, And Declaring An Emergency* ("Ordinance"), which Ordinance did establish a Community Reinvestment Area and the parameters for tax abatements within such Community Reinvestment Area; and

WHEREAS, upon enacting such Ordinance, Silverton and the Developer entered into a Community Reinvestment Area Agreement dated September 29, 2016, a copy of which is attached hereto as **Exhibit D**, to facilitate the Mixed-Use Development and to establish the foundation for a Community Reinvestment Area tax abatement for a proposed residential development now known as Ag Silverton, and to facilitate the development of a Commercial District within which is proposed to be developed office retail and commercial uses; and



WHEREAS, during the course of developing the New City Property a dispute arose between Silverton, Developer, and CPS concerning debris encountered by Developer on the New City Property, which Developer incurred the costs to remove; and

WHEREAS, Silverton and the Developer have alleged that CPS has breached the terms of the RECA by not removing such debris from the New City Property, which allegations CPS has disputed; and

WHEREAS, as a result of such dispute between Silverton, Developer and CPS, Silverton and the Developer initiated litigation in the Hamilton County Court of Common Pleas, in a case captioned *Village of Silverton, et al. v. The Board of Education of the City School District of the City of Cincinnati*, Case Number A1803110, which case is now on appeal in the First District Court of Appeals under Appeal Number C-190468 ("Litigation"); and

WHEREAS, now that the residential portion of the Mixed-Use Development has been developed, Silverton has taken the steps as required by statute to send notice to CPS dated August 5, 2019 acknowledging a Residential Exemption Application from the Developer to implement the terms of the Community Reinvestment Area Agreement, and to initiate a real estate tax exemption for a Mixed-Use Development as contemplated within the MDA and as approved consistent with Silverton's Ordinance; and

WHEREAS, as a result of such notice, CPS contends that Silverton breached the terms of the RECA which prohibit Silverton from providing tax incentives to the Developer without separately entering into an agreement with CPS to fully compensate CPS for all tax revenues lost in such abatement, which allegations Silverton and Developer have disputed; and

WHEREAS, the Parties do desire to resolve any and all claims by and among each other arising from: (1) the RECA; (2) the MDA; and (3) the Litigation.

NOW, THEREFORE, with these Recitals in mind, and in consideration of the mutual exchange outlined herein, the Parties do agree as follows:

1. Payment Terms. Within Ten (10) business days of the execution of this Agreement, including enactment of the appropriate enabling legislation by both Silverton and CPS, copies of which shall be attached hereto, Silverton shall pay to CPS Ninety Thousand Dollars (\$90,000) ("Release Payment"), which represents the costs incurred by CPS in defending the Litigation.

2. Abatement of Property Taxes. For and in consideration of the Release Payment, and other good and valuable consideration as outlined herein, CPS does waive further notice and the right to contest the Community Reinvestment Area exemptions authorized by Silverton in accordance with Ordinance Number 16-3508 as such exemptions apply to the Mixed-Use Development. Specifically, such exemptions authorized within the Ordinance and confirmed in the MDA and Community Reinvestment Area Agreement

shall provide that the Phase 1 residential component of the Mixed-Use Development comprising the Ag47-Silverton residential development shall be exempt from real property taxes for a period of Fifteen (15) years effective January 1, 2020. Further, Phase 2 of the Mixed-Use Development consisting of a proposed commercial development shall be exempt as provided within the Silverton Ordinance, as allowable by state law, and as supported by the MDA and the separate Community Reinvestment Area Agreement abating Fifty percent (50%) of the improved value for the commercial site for a period of Fifteen (15) years, and further obligating Silverton to pay to CPS Fifty percent (50%) of the marginal increase in income tax earnings collected by Silverton and generated from the commercial development on the Mixed-Use Development. This school compensation and the Fifteen (15) year partial exemption for real estate taxes shall commence the first year after the commercial site has been developed and for which a Certificate of Occupancy is issued for such development. Silverton, the Developer and CPS agree that the terms and conditions for this abatement shall not be modified, nor otherwise extended except by further agreement of the Parties. Conditioned upon there being no further changes in the school compensation and the Community Reinvestment Area Agreement, CPS waives any formal notice of the implementation of the commercial development exemption, waives any further notice of the implementation of the Community Reinvestment Area Agreement for the commercial development, and the right to demand a meeting or to otherwise object to such abatement for the commercial development.

CPS's waiver of notice and the right to contest the real estate tax exemption described above applies only to this specific development. CPS's approval of the exemption is specific to the facts, circumstances, and background of this case. It shall not be deemed to be evidence of CPS's willingness to enter into any other agreement or to waive its rights with respect to any other proposed abatement.

3. Developer Release. Except for the obligations created and reserved herein, Developer, for valuable consideration and the release herein, on behalf of itself, its heirs, successors, assigns, subsidiaries, affiliates, divisions, and the predecessors of each, does hereby release, dismiss, remise, quitclaim, and forever discharge CPS and Silverton, their successors, officers, representatives, employees and agents, as the case may be, and attorneys, of and from any and all claims, implied warranty claims, demands, causes of action, damages, liquidated damages, judgments, liabilities and executions, of every name and nature, whether arising at law or in equity, under common, state or federal law, which Developer, or its successors, subsidiaries, affiliates, divisions and assigns, had, now have or may have, whether suspected or unsuspected, known or may hereinafter become known against CPS and Silverton, by reason of the actions, claims and disputes arising out of or in any way related to the (1) RECA, (2) MDA, and (3) Litigation, reserving only the obligations under this Agreement. This Release is not intended to set aside nor impact any continuing contractual relationship between Developer and Silverton related to the MDA and the continuing development of the Mixed-Use Development. This Release is only intended to resolve any claims by and among the Development and Silverton related to the claims asserted in the Litigation.



4. Silverton Release. Except for the obligations created and reserved herein, Silverton, for valuable consideration and the release herein, on behalf of itself, its successors and assigns, does hereby release, dismiss, remise, quitclaim, and forever discharge CPS and Developer, its successors, partners, stockholders, managers, assigns, subsidiaries, affiliates, divisions, officers, representatives, employees and agents, as the case may be, and attorneys, of and from any and all claims, implied warranty claims, demands, causes of action, damages, liquidated damages, judgments, liabilities and executions, of every name and nature, whether arising at law or in equity, under common, state or federal law, which Silverton, or its successors and assigns, had, now have or may have, whether suspected or unsuspected, known or may hereinafter become known against CPS and Developer, by reason of the actions, claims and disputes arising out of or in any way related to the (1) RECA, (2) MDA, and (3) Litigation, reserving only the obligations under this Agreement. This Release is not intended to set aside nor impact any continuing contractual relationship between Silverton and Developer related to the MDA and the continuing development of the Mixed-Use Development. This Release is only intended to resolve any claims by and among the Developer and Silverton related to the claims asserted in the Litigation.

5. CPS Release. Except for the obligations created and reserved herein, CPS, for valuable consideration and the release herein, on behalf of itself, its successors and assigns, does hereby release, dismiss, remise, quitclaim, and forever discharge Silverton and Developer, their successors, partners, stockholders, managers, assigns, subsidiaries, affiliates, divisions, officers, heirs, representatives, employees and agents, as the case may be, and attorneys, of and from any and all claims, implied warranty claims, demands, causes of action, damages, liquidated damages, judgments, liabilities and executions, of every name and nature, whether arising at law or in equity, under common, state or federal law, which CPS, or its successors, subsidiaries, affiliates, divisions and assigns, had, now have or may have, whether suspected or unsuspected, known or may hereinafter become known against Developer or Silverton, by reason of the actions, claims and disputes arising out of or in any way related to the (1) RECA, (2) MDA, and (3) Litigation, reserving only the obligations under this Agreement.

6. Public Records Requests. The Parties agree that any public records requests previously made by Silverton and/or Developer to CPS made pursuant to Ohio Revised Code 149.43 arising from or relating in any way to the (1) RECA, (2) MDA, and (3) Litigation are hereby withdrawn and any claims arising from such requests are hereby released.

7. Denial of Liability. The Parties acknowledge that this is a settlement of disputed claims that the Parties always have denied any liability to each other, and the execution of this Agreement and performance of the acts required herein by each Party does not constitute an admission by either Party of liability to each other. It is further acknowledged that the Parties hereto have entered into this Agreement merely to avoid subsequent litigation.

8. Dismissal of Appeal. Upon execution of this Agreement and the exchange of consideration as outlined herein, the Parties shall join together in withdrawing the appeal now pending in the First District Court of Appeals, Case Number C-190468, and thereafter dismissing with prejudice the underlying litigation entitled, *Village of Silverton, et al. v. The Board of Education of the City School District of the City of Cincinnati*, Case Number A-1803110, Hamilton County Court of Common Pleas. Such Dismissal shall be at Silverton and Developer's cost.

9. Additional Documentation. The Parties agree to execute any and all additional documentation as reasonably required to implement this Mutual Release and Settlement Agreement.

10. Authorization. The Parties hereby declare that this Agreement has been duly authorized by each of the entities entering into this Agreement. The Parties and the individuals signing this Agreement represent and warrant that the individuals signing this Agreement are duly authorized and empowered to act on behalf of and to sign for the Party for whom they have signed.

11. Joint Drafting. There shall be no presumption favoring any Party based on the drafting of this Agreement.

12. Counterparts. This Agreement may be executed in component Parties, which together shall comprise the entire Agreement and Release among the Parties.

13. Entire Agreement. This Settlement Agreement and Mutual Release reflects the entire agreement between the Parties and will become effective when signed by all Parties.

14. Choice of Law. Any questions concerning the implementation or enforcement of this Agreement shall be resolved under Ohio law.

IN WITNESS WHEREOF, the Parties have executed one or more counterparts of this Mutual Release and Settlement Agreement, each of which shall be deemed an original, but which when taken together shall constitute one and the same instrument.

**VILLAGE OF SILVERTON, OHIO**  
An Ohio Municipal Corporation

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

Thomas Carroll

Title: Village Manager

Date: \_\_\_\_\_

**THE BOARD OF EDUCATION OF THE  
CINCINNATI SCHOOL DISTRICT**  
An Ohio City School District

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**JRA MVG SILVERTON LAND, LLC**  
An Ohio Corporation

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

J.R. Anderson

Title: Managing Member

Date: \_\_\_\_\_

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