

North Canton City Council
Community & Economic Development Committee

Ordinance No. 67 - 2017

An ordinance authorizing the Mayor of the City of North Canton, Ohio, to enter into a settlement agreement between the City and the North Ridge Place, LLC, regarding a disputed complaint involving a Community Reinvestment Area tax abatement for certain real property located at 1303-1305 North Main Street, North Ridge, and declaring the same to be an emergency.

WHEREAS, the City of North Canton, Ohio ("City") wishes to avoid the expense, animus, and uncertainty of protracted litigation with the North Canton City District Board of Education ("School District") and North Ridge Place, LLC ("North Ridge") regarding the School District's complaint challenging a Community Reinvestment Area (CRA) tax abatement for certain real property owned by North Ridge and located at 1303-1305 North Main Street; and

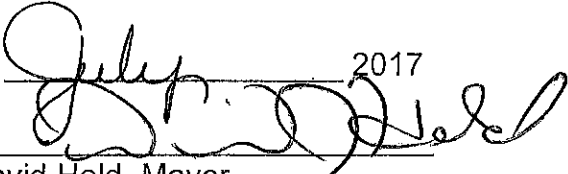
WHEREAS, the City has examined the facts and law relating to the complaint, and although the complaint remains disputed, the City believes the settlement agreement ("Agreement") is fair, reasonable, and in the best interest of all parties so that they may continue to work together on behalf of our residents and guests (a true and accurate copy of the Agreement is attached hereto and incorporated hereto); and

WHEREAS, the City desires to maintain the positive, unified, and collegial relationship between the parties, and therefore chooses to approve and accept the Agreement between itself and North Ridge.

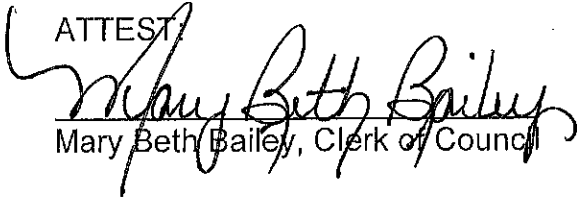
NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF NORTH CANTON, COUNTY OF STARK, AND STATE OF OHIO:

- Section 1. That City Council hereby approves, accepts, and adopts all terms and provisions of the Agreement as a binding and enforceable agreement between the City and North Ridge.
- Section 2. That the Mayor hereby is authorized and directed to execute the Agreement on behalf of the City, and the Finance Director is hereby authorized and directed to take all actions necessary, desirable, and convenient or proper to carry out the intent of this ordinance, the matters herein authorized, and the City's duties under the Agreement.
- Section 3. That if a provision of this ordinance is or becomes illegal, invalid or unenforceable, that shall not affect the validity or enforceability of any other provision of this ordinance.

Section 4. That this ordinance is hereby declared to be an emergency measure necessary for the preservation of the health, safety and peace of the City of North Canton and further necessary to quickly provide the School Board funding for essential services; wherefore, provided it receives the affirmative vote of six or more members of Council elected thereto, this ordinance shall take effect and be in force from and after the earliest period allowed by law.

Passed in Council this 10th day of July, 2017

David Held, Mayor

Signed: 7/10, 2017

ATTEST

Mary Beth Bailey, Clerk of Council

AGREEMENT

This Agreement (hereinafter referred to as "Agreement") is made and entered into this ____ day of _____, 2017, by and between North Ridge Place, LLC, an Ohio limited liability company ("North Ridge") and the City of North Canton, an Ohio municipal corporation (the "City"), collectively, (the "Parties").

WHEREAS, North Ridge owns a fee simple interest in certain real property located at 1303-1305 North Main Street in the City of North Canton, Stark County, Ohio, which is further identified by the Stark County Auditor ("Auditor") as permanent parcel number 10001392 (the "Subject Property").

WHEREAS, North Ridge properly applied to North Canton for and received a Community Reinvestment Area ("CRA") tax exemption of 100% on the then newly constructed dwellings, pursuant to Ohio Revised Code Section 3735.67 and the state certified and duly enacted CRA City ordinance for the Subject Property (the "Exemption"). The Auditor certified the CRA exemption for a period of 12 years, commencing in tax year 2014 and terminating in tax year 2025 (the "Exemption Period").

WHEREAS, the Board of Education for the North Canton City School District (the "School Board") filed a complaint with the City's Housing Officer, challenging therein the Subject Property's continued exemption (the "School Board Complaint").

WHEREAS, in a letter dated October 14, 2016, the City Law Director provided notice to North Ridge that multiple appeals had been filed with the City' Housing Officer pursuant to Ohio Revised Code Section 3735.70. Specifically, Gary K. Fry, the City Housing Officer, filed an appeal dated October 7, 2016 (the "Fry Appeal"), Daryl Revoldt filed an appeal dated October 11, 2016 (the "Revoldt Appeal"), Melanie Roll filed an appeal dated October 12, 2016 (the "Roll Appeal"), Miriam Baughman filed an appeal dated October 12, 2016 (the "Baughman Appeal") and Chuck Osborne filed an appeal dated October 12, 2016 (the "Osborne Appeal"). For purposes herein, the Revoldt Appeal, the Roll Appeal, the Baughman Appeal and the Osborne Appeal shall collectively be referred to as the "Pending Appeals".

WHEREAS, North Ridge timely responded to the School Board Complaint, the Fry Appeal and the Pending Appeals.

WHEREAS, the Fry Appeal has been withdrawn.

WHEREAS, North Ridge and the City, and, by a separate and distinct agreement, the City and the School Board, desire to resolve the School Board Complaint and the Pending Appeals, and create binding agreements between North Ridge and the City, and between the City and the School Board, for the remainder of the Exemption Period.

NOW THEREFORE, for the valuable consideration set forth herein, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. In consideration of North Ridge continuing to receive the full Exemption for the remainder of the Exemption Period, and in further consideration of the full and complete performance and occurrence of the terms and conditions set forth herein, North Ridge agrees to pay to the City, on or before the date established for the payment of the first half real estate taxes due and owing for the prior year, the annual sum of FIFTY PERCENT (50%) of the School Board's effective commercial tax rate for fixed-rate levies multiplied by the Assessed Building Value, as established by the Auditor, for the remainder of the Exemption Period (the "Payments"), which is the remainder of the 2017 prorated period described in paragraph two below, and tax years 2018 through 2025. The Parties acknowledge this amount may be adjusted based upon the Auditor's Assessed Building Value for the Subject Property during the Exemption Period. North Ridge shall continue to pay real estate taxes on the land value, which is not, and has never been, part of the Exemption.

Example for clarification purposes:

The formula for real estate tax year 2016 is the Auditor's Assessed Building Value in the amount of \$882,650.00 multiplied by the School Board's effective commercial tax rate for fixed rate levies for tax year 2016 of 45.500457 mills multiplied by 50% for a total of \$20,080.49, which amount would equal the Payment for 2017.

North Ridge shall promptly provide the City with a mortgage securing the estimated total amount of North Ridge payments through the remaining Exemption Period, thereby guaranteeing timely payments to the City and School Board.

2. In further consideration of North Ridge continuing to receive the full Exemption for the remainder of the Exemption Period, the full and complete performance and occurrence of the terms and conditions set forth herein, and commensurate with the execution of the School Board agreement described herein, the City shall make a one-time payment to the School Board, the amount of which represents the tax formula described above applied for tax years 2014 through 2016, and an amount prorated to the date of complete execution and delivery of this Agreement for tax year 2017.
3. In consideration for North Ridge's above-described Payments, the City shall enter into an agreement with the School Board (the "School Board Agreement") under which the School Board shall dismiss its Complaint with prejudice. The School Board shall file with the City a Notice of Dismissal within three days of its receipt of the execution of this Agreement.
4. The City agrees that the agreement it reaches with the School Board described herein, shall provide the School Board shall not file another complaint, or otherwise, challenge the validity of the Exemption for the remaining Exemption Period for the Subject Property, and that the School Board shall waive any and all claims against the City and /or North Ridge regarding the Exemption for the Subject Property.

5. The City and North Ridge agree the City shall timely pay the School District the full amount of the Payments received under the terms of the School Board Agreement.
6. The City shall further seek the withdrawal of the Pending Appeals on or before the scheduled Hearing on the Pending Appeals, as the same may be further continued in furtherance of the efforts of resolution as set forth herein, and shall continue to defend the North Ridge's receipt of the CRA tax abatement.
7. If the Pending Appeals, or one or more of the specific Revoldt, Roll, Baughman and/or Osborne Appeals are not ultimately withdrawn, and the Housing Council proceeds to hearing on the Pending Appeals, a final determination in favor of the continuation of the Exemption for the entire Exemption Period shall be a condition precedent to any continued Payment obligation of North Ridge herein.
8. In any event, and for all purposes hereunder, the withdrawal or the denial of all of the Pending Appeals, together with the affirmance of a denial under any subsequent complaints and/or appeals under the further adjudication thereof (including appeals to the Court of Common Pleas, District County of Appeals and/or Ohio Supreme Court), shall be and shall remain a condition precedent to any continued Payment obligation of North Ridge herein.
9. In addition to the conditions precedent in Section 7 and Section 8 above, this Agreement is conditioned upon the approval as may be required, by the City and the School Board, and shall only become effective upon said respective approvals.
10. In the event that there is a successful appeal prosecuted against the Subject Property pursuant to Ohio Revised Code Section 3735.70, or otherwise, North Ridge's Payment obligations hereunder shall terminate. The obligation to make Payments shall not be stayed during the pendency of any determination of an appeal pursuant to Ohio Revised Code Section 3735.70, or otherwise.
11. In the event the School Board successfully prosecutes a complaint against the Subject Property under Ohio Revised Code Section 3735.67(E), or otherwise, North Ridge's Payment obligations hereunder shall terminate. The obligation to make Payments shall not be stayed during the pendency of any determination of a complaint under Ohio Revised Code Section 3735.67(E), or otherwise.
12. The Parties further agree the Agreement does not bar North Ridge from filing a complaint on the Subject Property pursuant to Ohio Revised Code Section 5715.19, a complaint against valuation or assessment – determination of complaint – tender of tax – determination of common level assessment.
13. The City reaffirms to North Ridge the City's obligations and all of the benefits to North Ridge under the CRA program as enacted at the time of the certification of the Exemption, and the City remises, releases, and forever discharges North Ridge from and against any and all current liability for real estate taxes and assessments for the

dwellings on the Subject Property during the Exemption Period. Nothing in this Agreement, however, waives North Ridge's obligation to properly maintain and repair the Subject Property, prevents the Housing Officer from complying with the requirements found in Ohio Revised Code Section 3735.68, or prevents the City from responding according to law to subsequent appeals under Ohio Revised Code Section 3735.70.

14. The Parties agree that this Agreement shall not be construed as an admission by any Party nor used as evidence of the fair market value of the Property for any given tax year. Rather, this Agreement should be construed solely as a global compromise and settlement of a dispute between the Parties arising from the School Board Complaint and under the Pending Appeals.
15. Failure of a Party to complain of any act or omission on the part of the other Party regarding this Agreement, no matter how long the same may continue, shall not be deemed a waiver by said Party of any of its rights there under.
16. This Agreement shall be binding upon the Parties hereto, their successors and assigns, to the extent permitted by law. Each Party shall execute and deliver to the requesting Party all instruments, certificates and other documents reasonably requested by a Party with respect thereto.
17. All the individuals signatory hereto represent and warrant their authority to execute and deliver this instrument.
18. This Agreement may be executed in any number of counterparts, each of which, when so executed and delivered, shall be deemed an original, but such counterparts together shall constitute but one and same instrument.
19. In the event any provision or term of this Agreement is found to be void or unenforceable to any extent and for any reason, it is the agreed upon intent of the Parties hereto that all remaining provisions or terms of this Agreement shall remain in full force and effect to the maximum extent permitted and that this Agreement shall be enforceable as if such void or unenforceable provision or term had never been a part hereof.
20. Relative to the School Board Complaint and the Pending Appeals, this Agreement sets forth the entire Agreement between the Parties and fully supersedes any and all other prior agreements or understandings between the Parties pertaining to the subject matter hereof. No provision of this Agreement may be modified, waived, or discharged unless the waiver, modification or discharge is agreed to in writing and signed by the Parties. No agreements, or representations, oral or otherwise, express or implied, with respect to the subject matter hereof, have been made by either Party that are not set forth expressly in this Agreement.

21. The Parties agree they have read this Agreement, understand its terms and voluntarily accept the consideration recited above for the purpose of making a full and complete compromise, adjustment and settlement of any and all claims.
22. This Agreement shall be interpreted and construed in accordance with the laws of the State of Ohio and the Parties consent to the jurisdiction of a court of competent jurisdiction in the event this Agreement is breached.

WHEREFORE, the Parties now voluntarily and knowingly execute this Agreement, consisting of five pages.

FOR CITY OF NORTH CANTON

FOR NORTH RIDGE PLACE, LLC

David J. Held, Mayor

Daniel J. DeHoff, Manager

Date: _____

Date: _____

Approved as to form and content.

Timothy L. Fox, Director of Law