

RESOLUTION 48-2022

A RESOLUTION AUTHORIZING THE MAYOR AND FISCAL OFFICER TO ENTER INTO A SETTLEMENT AGREEMENT AND RELEASE WITH FOXFIRE GOLF CLUB, INC. TO RESOLVE A TAX ABATEMENT DISPUTE.

WHEREAS, on or about September 24, 2021, Foxfire Golf Club, Inc. ("Foxfire") submitted an application for a commercial or industrial tax abatement under the Community Reinvestment Area ("CRA") Act, Ohio Revised Code Sections 3735.65 to 3735.70, to the Village of Commercial Point (the "Village") for a tax abatement on a newly-constructed steel maintenance building of approximately 7,200 square feet, consisting of one story of slab pre-engineered metal to be used for storage and golf course maintenance; and

WHEREAS, on Foxfire's tax abatement application, Foxfire indicated that the construction of the steel maintenance building had been completed on or about September 20, 2021; and

WHEREAS, under these facts, the Village denied Foxfire's application for an industrial or commercial tax abatement under the Village's CRA Program because, pursuant to O.R.C. § 3735.671, applications for commercial or industrial tax abatements must be submitted "prior to the commencement of construction or remodeling"; and

WHEREAS, Foxfire maintains that the Village promised it a 15-year tax abatement on the steel maintenance building prior to the commencement of construction of the building (collectively, the "Tax Abatement Dispute");

WHEREAS, Foxfire and the Village each deny any and all allegations of liability or wrongdoing against them; and

WHEREAS, Foxfire and the Village desire to resolve any and all claims or allegations that Foxfire may have had, has, or will have arising from the Tax Abatement Dispute, and the Village Council wishes to authorize the Mayor and Fiscal Officer to enter into a Settlement Agreement and Release with Foxfire to resolve the Tax Abatement Dispute.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE VILLAGE OF COMMERCIAL POINT, PICKAWAY COUNTY, OHIO, THAT:

Section 1. Authorization to Enter into Settlement Agreement with Foxfire Golf Club, Inc. The Village Council hereby authorizes the Mayor, Fiscal Officer, and any other necessary Village personnel to enter into an Agreement with Foxfire Golf Club, Inc. for the settlement of the Tax Abatement Dispute on substantially the same terms as the Agreement attached as Exhibit A to this Resolution and incorporated herein by reference.

Section 2. Open Meetings Certification. It is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this Resolution were adopted in an open meeting of this Council and that all deliberations of this Council and of any other committees that resulted in such formal action were in meetings open to the public in compliance with all legal requirements including Section 121.22 of the Ohio Revised Code.

Section 3. Effective Date. This Resolution shall take effect and be in force from the earliest date allowed by law.

Vote on Suspension of the Readings:

Motion by: Ross Crego

2nd: Ryan Mitchem

Roll Call:

Yes Nancy Geiger

Yes Ryan Mitchem

N/A Audrea Ratliff

Yes Ross Crego

Yes Stacey Plybon

Yes Laura Wolfe

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Vote on Passage of the Resolution:

Motion by: Laura Wolfe

2nd: Ryan Mitchem

Roll Call:

Yes Nancy Geiger

Yes Ryan Mitchem

N/A Audrea Ratliff

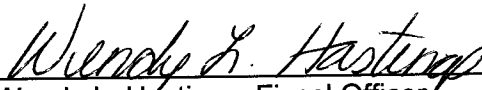
Yes Ross Crego

Yes Stacey Plybon


Yes Laura Wolfe

Adopted this 7th day of November, 2022.


Allan D. Goldhardt, Mayor


Wendy L. Hastings, Fiscal Officer

Approved as to Form:


Joshua Cartee, Village Solicitor

SETTLEMENT AND RELEASE
AGREEMENT

This Settlement and Release Agreement (the “Agreement”), dated December __, 2022, is between **FOXFIRE GOLF CLUB, INC.** (“Foxfire”), and **THE VILLAGE OF COMMERCIAL POINT, an Ohio municipal corporation** (the “Village”), (collectively, the “Parties”).

RECITALS

WHEREAS, on or about September 24, 2021, Foxfire submitted an application for a commercial or industrial tax abatement under the Community Reinvestment Area (“CRA”) Act, Ohio Revised Code Sections 3735.65 to 3735.70, to the Village for a tax abatement on a newly-constructed steel maintenance building of approximately 7,200 square feet, consisting of one story of slab pre-engineered metal to be used for storage and golf course maintenance; and

WHEREAS, on Foxfire’s tax abatement application, Foxfire indicated that the construction of the steel maintenance building had been completed on or about September 20, 2021; and

WHEREAS, under these facts, the Village denied Foxfire’s application for an industrial or commercial tax abatement under the Village’s CRA Program because, pursuant to O.R.C. § 3735.671, applications for commercial or industrial tax abatements must be submitted “prior to the commencement of construction or remodeling”; and

WHEREAS, Foxfire maintains that the Village promised it a 15-year tax abatement on the steel maintenance building prior to the commencement of construction of the building (collectively, the “Tax Abatement Dispute”);

WHEREAS, the Parties each deny any and all allegations of liability or wrongdoing against them; and

WHEREAS, the Parties to this Agreement desire to resolve any and all claims or allegations that Foxfire may have had, has, or will have arising from the Tax Abatement Dispute.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is acknowledged, the Parties intending to be legally bound, agree as follows:

1. **Incorporation of Recitals.** The above recitals are hereby incorporated into this Agreement as if fully set forth herein.
2. **Settlement.** In full settlement of any and all claims Foxfire ever had, may now have, or may hereafter have against the Village, whether known or unknown, relating in any way

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Exhibit A (continued)

to the Tax Abatement Dispute, the Parties agree to be bound by the remaining promises and representations herein.

3. **Settlement Payment Amount.** Within fourteen (14) days of the execution of this Agreement, the Village agrees to pay thirty-five thousand dollars and 00/100 cents (\$35,000.00) to Foxfire via check made payable to Foxfire Golf Club, Inc. The Settlement Payment shall be mailed to Kooperman Mentel Ferguson Yaross, Ltd., c/o Ryan Crossley, Esq., 250 E. Town Street, Suite 200, Columbus, Ohio 43215.
4. **Release of the Village.** In consideration of this Agreement, Foxfire, on behalf of itself and its representatives, assigns, officers, directors, employees agents, attorneys, grantors, predecessors, successors, parent or subsidiary companies, joint ventures, shareholders, partners, affiliates, and any other person or entity that may possess the capacity to bring claims on its behalf, hereby releases, acquits, and forever discharges the Village, and its receivers, legal representatives, trustees, assigns, employees, agents, attorneys, beneficiaries, grantors, predecessors, successors, subsidiaries, and any other person or entity with any relationship of any nature to the Village, effective as of the date that this Agreement is executed by the Parties, from all claims, actions, causes of action, demands, rights, damages, costs, and expenses, debts, contracts, promises, losses, liabilities, and judgments of whatever kind or nature, whether known or unknown, foreseen or unforeseen, and whether arising at law or at equity that Foxfire had, may have, or which may hereafter accrue against the Village relating in any way to the Tax Abatement Dispute.
5. **No Reliance.** The Parties acknowledge that prior to the execution and delivery of this Agreement, each of them has been apprised of all relevant information, through legal counsel or otherwise, to enable each intelligently to exercise independent judgment in determining the contents, terms, force and effect of this Agreement. Each party declares the decision of each to execute and deliver this Agreement was voluntary and not predicated on or influenced by any declaration, representation, or promise by any other party, except as set forth in this Agreement.
6. **Governing Law.** This Agreement is governed and must be construed by the laws of the State of Ohio, without regard to its conflict of laws provisions. Any disputes over this Agreement must be resolved in the Court of Common Pleas for Pickaway County, Ohio.
7. **No Admission.** Nothing in this Agreement shall be construed or interpreted as a concession or admission by any of the Parties with respect to any issue that has been or could have been disputed between them relating to the Tax Abatement Dispute.
8. **Representations and Warranties.** Each party represents and warrants that it is authorized to enter into this Agreement and that the Agreement is enforceable against it.
9. **Invalidity or Unenforceability.** If any portion of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, the other provisions will remain in full force and effect. Any provision of this Agreement held invalid or unenforceable only in part will remain in full force and effect to the extent not held invalid or unenforceable.

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Exhibit A (continued)

10. **Successor and Assigns.** Except as otherwise provided herein, this Agreement shall bind and inure to the benefit of and be enforceable by the Parties and their respective successors and assigns.
11. **Foxfire Representation.** Foxfire represents and agrees that it will not file another application for the steel maintenance building that was the subject of its September 2021 CRA application for the reason that the potential benefits to be received under the September 2021 application or any other CRA application for the steel maintenance building are realized through the negotiated resolution under this Agreement.
12. **Village Council Approval.** The Parties agree and acknowledge that this Agreement is not binding until the Council of the Village of Commercial Point takes formal action, via Ordinance or Resolution, to authorize and direct the Mayor and Fiscal Officer to enter into this Agreement or an Agreement in substantially the same form and on substantially the same terms as this Agreement. This Agreement was authorized and directed by the Village Council via Resolution __-2022, adopted on November __, 2022.
13. **Counterparts.** The parties agree that this Agreement may be executed in counterparts with each document deemed an original.
14. **Entire Agreement.** This Agreement constitutes the entire Agreement among the parties with respect to the subject matter hereof. The terms set forth herein are intended by the parties as a final expression of their agreement with respect to those terms and supersedes and cancels all prior agreements between them, whether written, oral, or implied. No modification, amendment, or waiver of this Agreement or any of its provisions, will be binding on any party unless evidenced by a written instrument duly executed by all parties.
15. **Effective Date.** This Agreement shall not take effect until all Parties hereto have signed and dated this Agreement (“Effective Date”).

IN WITNESS WHEREOF, the Parties hereto have executed this Settlement and Release, Agreement on the date written above.

[Signature Page Follows]

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Exhibit A (continued)

FOXFIRE GOLF CLUB, INC.

Print: _____

Title: _____

Signed: _____

Date: _____

**THE VILLAGE OF COMMERCIAL POINT, AN OHIO
MUNICIPAL CORPORATION**

Print: Allan D. Goldhardt _____

Title: Mayor _____

Signed: _____

Date: _____

Print: Wendy L. Hastings _____

Title: Fiscal Officer _____

Signed: _____

Date: _____

APPROVED AS TO FORM:

Joshua M. Cartee, Village Solicitor
Dinsmore & Shohl, LLP