

Third Amendment to and Extension of Agreement

This Third Amendment to and Extension of Agreement (the " Third Amendment ") is dated _____, **2016** but effective as of February 5, 2016 (the " Effective Date ") between the CITY OF FORT WAYNE **BOARD OF PARK COMMISSIONERS** (" BPC ") and **SETTLERS, INC.** an Indiana non-profit corporation (" Settlers ").

RECITALS:

BPC is the owner of certain real estate located in Swinney Park, Fort Wayne, Indiana commonly known as " The Homestead " and the residence located thereon (" Swinney Homestead ") (The Homestead and Swinney Homestead are sometimes collectively referred to herein as " the Swinney Homestead "). BPC and Settlers entered into an Agreement regarding the use and maintenance of Swinney Homestead by Settlers dated February 5, 1991 (the " Agreement ") and an Extension and Amendment of Agreement dated February 5, 2001 (the " Extension and Amendment ") [and a Second Amendment to and Extension dated February 9, 2012 (the "Second Amendment"). The Agreement Extension and Amendment, Second Amendment, and this Third Amendment are collectively referred to herein as the "Agreement".

The Extension and Amendment will expire on February 4, 2016 and Settlers desires an additional extension of the Agreement in order to continue operating Swinney Homestead as a period home and to make Swinney Homestead available for use by the public.

BPC is willing to an additional extension of the Agreement in accordance with the terms of this Third Amendment. Accordingly, BPC and Settlers, in consideration of the covenants hereinafter contained, agree as follows;

1. The term of the Agreement is extended for one (1) additional five (5) year period commencing on the Effective Date and continuing thereafter to and including **February 4, 2021** (the " Additional Term ").
2. Subject to the terms and conditions of the Agreement, Settlers shall have: (a) the right to occupy and use Swinney Homestead as a period home; (b) access to the Swinney Homestead from public streets and; the non-exclusive use of the parking lot to the immediate south of Swinney Homestead in connection with the use of Swinney Homestead by Settlers described herein.
3. Subject to the prior written approval of BPC, Settlers may: (a) rent Swinney Homestead to groups for meetings, luncheons, tours, programs and special events; and (b) allow one (1) tenant (to include a husband and wife) to occupy an apartment in the South Wing of Swinney Homestead in order to assist in providing security for Swinney Homestead.
4. Revenues realized by Settlers from programs and events conducted at Swinney Homestead shall be retained by Settlers, provided that Settlers allocates to the cost of maintaining and repairing

Swinney Homestead that portion of such revenues as may be required to fulfill Settlers' maintenance and repair obligations hereunder.

5. Subject to BPC's prior written approval, Settlers may perform or cause to be performed at its expense interior repairs and restoration to Swinney Homestead. Settlers shall be required to repair at its expense any damage to Swinney Homestead that arises directly or indirectly from: (a) Settlers' occupancy, possession or use of Swinney Homestead (including, without limitation, damage caused by third parties); (b) the exercise or failure to exercise any other rights granted to Settlers under the Agreement; or (c) the failure to perform any covenant or obligation which is the responsibility of Settlers hereunder.

6. BPC may at its election perform or cause to be performed at its expense maintenance and repair of Swinney Homestead, including but not limited to plumbing, heating, electrical, structural, roof, exterior, grounds maintenance (except garden, shrubs, flowers and other landscaping located on Swinney Homestead which shall be the responsibility of Settlers), lawn care and snow removal.

7. BPC shall bear the risk of loss for all structural damages to Swinney Homestead caused by fire, accident or other casualty and shall carry insurance coverage insuring against such losses in amounts and upon terms deemed appropriate by BPC. Settlers shall carry occurrence based hazard and extended coverage insurance insuring against damage to Swinney Homestead and occurrence based public liability insurance insuring against physical injury and death arising from Settlers' occupancy, possession, control and use of Swinney Homestead in the amount of \$1,000,000 per occurrence and \$1,000,000 aggregate. All such insurance carried by Settlers shall name The City of Fort Wayne and the City of Fort Wayne Board of Park Commissioners as additional insureds ("Additional Insureds"), thereon and shall provide a thirty (30) day written notice to the Additional Insureds if such insurance is terminated or cancelled for any reason. Settlers shall at all times during the Additional Term provide BPC a certificate or certificates of insurance evidencing compliance with the foregoing insurance requirements.

8. BPC shall provide and pay for the following utilities consumed by Swinney Homestead: electrical for outside lighting of the garage. Settlers shall pay for security costs, heat, telephone, electrical (inside Swinney Homestead only), and water and sewer charges incurred for Swinney Homestead.

9. Settlers shall bear all risk of loss to any personal property owned or held by Settlers and located in, on or about Swinney Homestead and shall carry insurance to insure against such personal property loss in such amounts as Settlers deems appropriate. In no event shall BPC bear any expense, cost or liability in connection with any such personal property loss.

10. Settlers shall promptly notify BPC in writing during the Additional Term of any major repair or maintenance issues affecting Swinney Homestead. In the event any such repair or maintenance issue is of an emergency nature, Settlers shall notify BPC forthwith by e-mail or telephone followed by a

written copy of such notification. No such notification by Settlers shall abrogate or modify the repair and maintenance obligations of Settlers contained herein.

11. Any amendment of this Agreement shall be by written instrument executed by BPC and Settlers.

12. This Agreement shall be governed by the laws of the State of Indiana. All proceedings relating to the interpretation, enforcement or other litigation or dispute resolution of this Agreement shall be venued in Allen County, Indiana.

13. If any provision of this Agreement shall be adjudged by a court of competent jurisdiction to be void or unenforceable for any reason, the same shall in no way affect any other provision of this Agreement, nor shall it affect the validity or enforceability of this Agreement as a whole.

14 This Agreement may be terminated in writing by either party hereto upon sixty (60) days prior written notice to the non-terminating party; provided, however, that in the event BPC deems conduct, circumstances or conditions in the Swinney Homestead or its immediate environs poses a risk to property or person, BPC may terminate this Agreement forthwith upon written notice to Settlers.

15. Upon reasonable advance notice to Settlers, BPC may enter Swinney Homestead at any time during the Additional Term to: (a) inspect the condition of Swinney Homestead, or (b) make any necessary repairs or improvements to Swinney Homestead. BPC may enter Swinney Homestead at any time during the Additional Term without notice to Settlers in the event BPC believes an emergency exist which places at risk any occupant of Swinney Homestead or the general public or the safety of Swinney Homestead.

16. All notices and other communications required or permitted under this Agreement must be in writing (except as provided in Section 10 hereof with respect to emergency repair maintenance) and shall be personally served or mailed postage prepaid via US Mail or sent via courier service, addressed to the respective parties as follows:

Fort Wayne Parks & Recreation Department
ATTN: Kathy Pargmann
705 E. State Blvd.
Fort Wayne, IN 46805
(260) 427-6004
e-mail: Kathy.pargmann@cityoffortwayne.org

Swinney Homestead
ATTN: President
1424 West Jefferson Blvd.
Fort Wayne, IN 46802
(260) 424-7212

17. Settlers shall defend, indemnify and hold harmless City of Fort Wayne, the City of Fort Wayne Board of Park Commissioners and their respective officers, members, employees, departments, divisions, business invitees, representatives and agents (each an "Indemnatee" and together the "Indemnitees") from and against all demands, claims, losses, costs and expenses (including legal costs and attorney fees, together "losses") that may be asserted, claimed or recovered against or from the Indemnitees or any of them in connection with any personal injuries, death or property damage, including loss of use thereof, which arises directly or indirectly or in any way associated with any act or mission to act by Settlers, or any of Settlers' employees, contractors, subcontractors, invitees, agents, representatives or guests in connection with this Agreement, Settler's occupancy, management, control and the use of Swinney Homestead and/or performance or failure to perform any of the covenants and obligations made or assumed by Settlers herein.

18. The Agreement, the Extension and Amendment and the Second Amendment are attached hereto as Exhibits A, B and C, respectively, and incorporated herein by reference.

IN WITNESS WHEREOF, the parties hereto have executed this Third Amendment to and

Extension of Agreement as of the date and year first above written.

THE CITY OF FORT WAYNE

BOARD OF PARK COMMISIONERS

SETTLERS, INC.

By: _____

By: _____

Its: _____

Its: _____

ATTEST: _____

ATTEST: _____

Date: _____

Date: _____