

SIXTH AMENDMENT TO AND EXTENSION OF AGREEMENT

This Sixth Amendment to and Extension of Agreement (“Sixth Amendment”) is dated February 9, 2023 but is effective as of February 5, 2023 (the “Effective Date”) between the City of Fort Wayne, Indiana 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 historic residence located thereon (the “Swinney Homestead”). The Homestead and Swinney Homestead are sometimes referred to collectively herein as the “Swinney Park Homestead”. BPC and Settlers entered into a certain agreement regarding the use and maintenance of the Swinney Homestead dated February 5, 1991 (the “Agreement”) which was subsequently extended and amended by First, Second, Third, Fourth and Fifth Amendment and Extension Agreements between BPC and Settlers, dated February 5, 2001, February 9, 2012, February 11, 2016, February 11, 2021, and March 10, 2022, respectively. This Sixth Amendment, together with the Agreement and the First, Second, Third Fourth and Fifth Amendment and Extension Agreements are collectively referred to herein as the “Current Agreement”.

The Current Agreement will expire on February 4, 2023 and BPC and Settlers desire to extend the Current Agreement for an additional one (1) year term commencing February 5, 2023 to February 4, 2024 and thereafter for consecutive one (1) year terms in order that Settlers may continue to operate the Swinney Homestead as a period home and to cause Swinney Homestead to be available for use by the public from time to time, all as hereinafter set forth.

NOW, THEREFORE, in consideration of the premises and for other good and valuable consideration, the receipt and sufficiency is hereby acknowledged, BPC and Settlers agree as follows.

1. The Current Agreement is extended for one (1) additional one (1) year term from February 5, 2023 to February 4, 2024 (the “Sixth Additional Term”) and thereafter for succeeding consecutive one (1) year terms commencing on February 5 and expiring on the following February 4 of each succeeding twelve (12) month period (each an “Extension Term”) subject to BPC or Settlers providing the other party hereto with written notice of intent to not renew for the next succeeding Extension Term, which notice shall be given not less than ninety (90) days prior to the expiration of the then current Extension Term. This Agreement is not subject to early termination by either BPC or Settlers during the Sixth Additional Term or any Extension Term except as expressly provided in Section 14 hereof.
2. Subject to the terms hereof, Settlers shall have the right to occupy and use Swinney Homestead as a period home during the Sixth Additional Term and each Extension Term

and, in connection therewith, may: (a) license or rent Swinney Homestead to members of the public for meetings, luncheons, tours, programs and special events; and (b) permit one (1) tenant to rent the apartment in the South Wing of Swinney Homestead in order to contribute to the providing of security for Swinney Homestead. Settlers shall be responsible for the payment of all expenses incurred in the use of Swinney Homestead by Settlers or the public for any such programs and events and the leasing of the apartment.

3. Subject to the terms of this Agreement, Settlers shall have: (a) access to the Swinney Homestead from public streets; and (b) the non-exclusive use of the parking lot located to the immediate south of Swinney Homestead in connection with the use of Swinney Homestead by Settlers and the public as described herein.
4. Revenues realized by Settlers from programs and events held and uses permitted at Swinney Homestead shall be retained by Settlers which shall allocate to the maintenance and repair of Swinney Homestead that portion of such revenues which is required to perform Settlers' maintenance and repair obligations hereunder.
5. Settlers shall, at its cost, provide normal and customary maintenance for Swinney Homestead and repair any damage to Swinney Park Homestead which arises directly or indirectly from: (a) Settlers' lease possession, occupancy, control, management, license, use or rental of Swinney Park Homestead (including without limitation damage caused to Swinney Park Homestead by members of the public); (b) the exercise or failure to exercise any other rights granted to Settlers under the Agreement; or (c) the failure to properly perform any covenant or obligation which is the responsibility of Settlers hereunder.
6. BPC may at its election perform or caused to be performed at BPC's cost maintenance and/or repair of Swinney Park Homestead, including but not limited to plumbing, heating, electrical, structural, roof, exterior, grounds maintenance (except garden, shrubs, flowers and other landscaping which beautify and enhance Swinney Park Homestead which shall be the responsibility of Settlers), lawn care and snow removal.
7. BPC shall bear the risk of loss for all structural damage to Swinney Homestead caused by fire, accident or other casualty (except to the extent caused by Settlers) and shall carry insurance coverage insuring against such losses in amounts and upon terms deemed appropriate by BPC. Settlers shall carry: (a) occurrence based hazard and extended coverage insurance insuring against damage to Swinney Homestead and (b) occurrence based public liability insurance at all times during the Sixth Renewal Term and each Extension Term insuring against physical injury and death arising from Settlers' occupancy, possession, control, management, license, rental and use of Swinney Homestead in the amount of \$1,000,000 per occurrence and \$2,000,000 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 thereon (the "Additional

Insureds") and shall provide a thirty (30) day written notice to the Additional Insureds if such insurance is terminated, reduced, modified, cancelled or ineligible for renewal for any reason. Settlers shall at the commencement of the Sixth Additional Term and each Extension Term provide BPC a certificate or certificates of insurance evidencing compliance with the foregoing insurance requirements for the following twelve (12) month period.

8. BPC shall provide and pay for the following utilities used 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 sewage charges incurred for Swinney Homestead.
9. Settlers shall bear the 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 any such personal property loss during the Sixth Additional Term and each Extension Term, in such amount 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 upon notice thereof notify BPC in writing during the Sixth Additional Term and each Extension 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 forthwith 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. Any damage to Swinney Homestead which arises from Settlers failure to timely (as set forth above) notify BPC of a major repair or maintenance issue shall be repaired by Settlers at its cost.
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. In the event BPC deems that any conduct, circumstances or conditions in, on or about the Swinney Park Homestead or its immediate environs during the Sixth Additional Term or any Extension Term poses a risk to property or person, BPC may terminate this Agreement forthwith upon written notice to Settlers. Termination of this Agreement by

BPC shall not void any obligation of Settlers which exists hereunder as of the effective date of the termination.

15. Upon reasonable advance notice to Settlers, BPC may enter Swinney Homestead at any time during the Sixth Additional Term and any Extension 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 Sixth Additional Term or any Extension Term without notice to Settlers in the event BPC believes an emergency exists which places at risk any occupant of Swinney Homestead, any member of the general public or the physical safety or integrity 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 and maintenance and Section 15 hereof with respect to the inspection of the condition of Swinney Homestead or in response to a perceived emergency) and shall be personally served or mailed postage prepaid via U.S. mail, or sent via personal courier service with guaranteed next day delivery, addressed to the respective parties as follows:

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

Swinney Homestead
ATTN: President
1424 West Jefferson Boulevard
Fort Wayne, Indiana 46802
(260) 424-7212
17. Settlers shall waive, release, defend, indemnify and hold harmless the 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 "Indemnitee" and together the "Indemnitees") from and against all demands, claims, losses, costs and expenses (including legal costs and attorney's fees) (together, the "Losses") that may be asserted, claimed or recovered against Settlers or by Settlers or any third party against 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 is in any way associated with any act or omission to act by Settlers or any of Settlers' employees, contractors, subcontractors, invitees, agents, representatives or guests during the Sixth Additional Term or any Extension Term in connection with : (a) this Agreement, (b) Settlers'

possession, occupancy control, management, license, rental or use of Swinney Park Homestead and/or Settlers' performance of or failure to perform any of the covenants and obligations made or assumed by Settlers herein.

18. The Agreement and the First, Second, Third, Fourth and Fifth Amendments and Extensions thereof are attached hereto as Exhibits A, B, C, D E and F, respectively, and incorporated herein by reference.

IN WITNESS WHEREOF, the parties have executed this Sixth Amendment to and Extension of Agreement as of the date and year first above written.

BPC:

THE CITY OF FORT WAYNE BOARD OF PARK COMMISSIONERS

BY: _____
Commissioner

BY: _____
Commissioner

BY: _____
Commissioner

BY: _____
Commissioner

ATTEST: _____, Secretary

SETTLERS:

SETTLERS, INC.

BY: Louisa A. Davison
ITS: Park Dept Rep

ATTEST: Louisa A. Davison
ITS: Council Advisor
of Settlers.
27 Jan, 2023.