

RESOLUTION NO. 2015-7

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF
SPEEDWAY, INDIANA APPROVING A NEGOTIATED SETTLEMENT WITH
SEXTON APARTMENTS REGARDING THE UTILITY BILLING DISPUTE**

WHEREAS, the Town of Speedway, Indiana (the "Town") owns and operates certain utility services which are billed monthly to residential, commercial and industrial customers; and

WHEREAS, a dispute has arisen regarding the validity of certain utility charges for Sexton LF Properties, L.P. d/b/a Sebring Courts; Sexton LF Properties, L.P. d/b/a Eagle Creek Courts; Sexton Darby, LLC; and Sexton Stanford, LLC (collectively referred to as the "Sexton Apartments"); and

WHEREAS, the Town and the Sexton Apartments desire to settle the disputes and avoid additional legal expenses pursuant to the terms of a Settlement Agreement and Mutual Release, subject to the approval of the Town Council of the town of Speedway (the "Town Council") as outlined at **Attachment A**.

NOW, THEREFORE BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF SPEEDWAY, INDIANA:

1. The Council approves and authorizes the actions outlined in the Settlement Agreement and Mutual Release, as included at **Attachment A** hereto.

2. The Council instructs the Town Manager to undertake the steps necessary to execute the Settlement Agreement and Mutual Release and is hereby authorized to sign the document.

PASSED BY the Speedway Town Council this 13th day of April, 2015.

TOWN COUNCIL OF THE TOWN OF
SPEEDWAY, INDIANA

Abstain

David Lindsey, President

Eileen Fisher, Vice President

Jeffery R. Matthews, Member

Gary Raikes, Member

William Suffel, Member

ATTEST

Monty W. Combs
Monty W. Combs, Clerk-Treasurer

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This Settlement Agreement and Mutual Release ("Agreement") is entered into by and among the Town of Speedway (the "Town"), on one hand, and Sexton LF Properties, L.P. d/b/a Sebring Courts ("Sebring Courts"), Sexton LF Properties, L.P. d/b/a Eagle Creek Courts ("Eagle Creek Courts"), Sexton Darby, LLC ("Darby Courts"), and Sexton Stanford, LLC ("Stanford Courts") (Sebring Courts, Eagle Creek Courts, Darby Courts, and Stanford Courts are at times collectively referred to as the "Apartments"), on the other hand, and is effective upon being fully executed by the parties hereto.

WITNESSETH:

WHEREAS, the Town alleges that it discovered that it had undercharged the Apartments for their wastewater utility bills for certain months during the period of January 1, 2009 through September 30, 2012 (the "Disputed Charges");

WHEREAS, the Town provided notice of the Disputed Charges to the Apartments in or about December of 2012, and demanded payment of some of the Disputed Charges;

WHEREAS, the Apartments have asserted that the Town is incorrect in this regard and / or does not have the authority to collect the Disputed Charges and have suggested that litigation may be necessary to resolve the dispute between the Town and the Apartments;

WHEREAS, the parties wish to resolve their disputes concerning the Disputed Charges pursuant to the terms of this Agreement and without admitting to any liability or obligation with respect to the Disputed Charges.

NOW, THEREFORE, it is agreed as follows:

I. CONSIDERATION

The Town and the Apartments execute this Agreement in exchange for the mutual releases contained herein and the following payments from the Apartments to the Town (collectively, the "Settlement Payments"):

- A. Sebring Courts = \$11,076.61.
- B. Eagle Creek Courts = \$13,694.55.
- C. Darby Courts = \$9,233.98.
- D. Stanford Courts = \$4,720.54.

The Settlement Payments shall be made at the time the Apartments deliver the fully executed Agreement to the Town, which date shall be no later than seven (7) days after the Town executes and delivers a counterpart of this Agreement to the Apartments.

II. RELEASE

In exchange for the consideration set forth in Section I and other sufficient and valuable consideration, the parties hereto and each and all predecessors, successors, assigns, subsidiaries, parent corporations, partners, affiliates, management companies, departments, boards and divisions, and each and all of the public officials, legislative bodies, managers, officers, directors, members, shareholders, employees, attorneys, agents, partners, and representatives of the parties (collectively, the "Releasing Parties") release and forever discharge one another, and each and all predecessors, successors, assigns, subsidiaries, parent corporations, partners, affiliates, management companies, departments, boards and divisions, and each and all of the public officials, legislative bodies, managers, officers, directors, members, shareholders, employees, attorneys, agents, partners, and representatives of each party (collectively, the "Released Parties") from any and all past, present or future claims, causes of action, suits, debts, accounts, contracts, demands, fees, fines, penalties, agreements, controversies, judgments, obligations, damages and liabilities of any nature whatsoever arising out of, relating to, or based upon, in whole or in part, to the Disputed Charges (collectively, the "Potential Obligations"), whether or not now known, suspected, or claimed, which the Releasing Parties had, now have, or hereafter may have, or claim to have, against the Released Parties by reason of any act, transaction, practice, conduct, or omission of any matter, cause, effect, or thing of any kind whatsoever arising out of, relating to, or based upon, in whole or in part, to the Disputed Charges; provided, however, the scope of this release shall not extend to the parties' respective obligations under this Agreement.

III. ADEQUATE CONSIDERATION - DENIAL OF LIABILITY

The parties agree and acknowledge that the delivery of this Agreement and the Settlement Payments set forth in Section I under the terms described herein are a full, complete, final and binding compromise of all matters involving the Disputed Charges and no Potential Obligations are owing from the Apartments to the Town with respect to the Disputed Charges. It is understood that the execution of this Agreement effects the settlement of disputes and differences between the parties which are contested and denied. The execution of this Agreement shall not be construed as an admission of any kind by the parties and shall not imply any past or present fault or wrongdoing on the part of any party hereto.

IV. ENTIRE AGREEMENT AND ADVICE OF COUNSEL

This Agreement, including its recitals, contains the entire agreement with regard to the matters set forth herein. There are no understandings or agreements, verbal or otherwise, in relation thereto, except as herein expressly set forth. All prior negotiations, representations and promises regarding the settlement and this Agreement are merged into and expressed by this Agreement. By entering into this Agreement the parties each represent that they have completely read all the provisions hereof and that such provisions are fully understood and voluntarily accepted by them, and that they have been adequately represented by counsel of their choice.

V. NEGOTIATION OF AGREEMENT

This Agreement has been negotiated by the parties through their respective counsel. The parties agree that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting parties shall not be employed in the interpretation of this Agreement or any amendments hereto.

VI. AMENDMENT AND WAIVER

This Agreement may not be amended, changed, waived, discharged or terminated without the written consent of all parties.

VII. SEVERABILITY

If any one or more of the provisions contained in this Agreement shall be invalid, illegal or unenforceable in any respect, the validity, legality or enforceability of the remaining provisions contained therein shall not in any way be affected or impaired thereby.

VIII. COSTS, ATTORNEYS' FEES, TAXES

Each party shall pay its own costs, attorneys' fees and taxes incurred in connection with the Disputed Charges, this Agreement and the completion of any transactions contemplated by this Agreement.

IX. COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which shall be an original, but such counterparts shall together constitute one and the same instrument.

X. CONTROLLING LAW

This Agreement shall be construed and interpreted in accordance with the laws of the State of Indiana without reference to its choice of law rules.

XI. SIGNATURES AND AUTHORITY

The undersigned M&J Management Company, LLC represents and warrants that it has been duly authorized by the Apartments to execute this Agreement on behalf of the Apartments and bind the Apartments to the terms hereof, and the Apartments have authority to enter into this Agreement. The undersigned Town Manager represents and warrants that she has been duly authorized by the Speedway Town Council to execute this Agreement on behalf of the Town and bind the Town to the terms hereof, and the Town has authority to enter into this Agreement and accept the Settlement Payments in full satisfaction of the Potential Obligations. The parties agree that this Agreement, and any amendments to this Agreement, may be transmitted by email or facsimile. The parties intend that emailed or faxed signatures constitute original signatures and are binding on all parties.

IN WITNESS WHEREOF, and intending to be legally bound hereby, each of the parties, through their authorized agents and representatives, have set their hand and seal as follows:

Dated: _____

Sexton LF Properties, L.P. d/b/a Sebring Courts

By: _____

M&J Management Company, LLC
Authorized Agent

Title: _____

Dated: _____

Sexton LF Properties, L.P. d/b/a Eagle Creek Courts

By: _____

M&J Management Company, LLC
Authorized Agent

Title: _____

Dated: _____

Sexton Darby, LLC

By: _____

M&J Management Company, LLC
Authorized Agent

Title: _____

Dated: _____

Sexton Stanford, LLC

By: _____

M&J Management Company, LLC
Authorized Agent

Title: _____

Dated: _____

Town of Speedway

By: _____

Its: _____