

AN ORDINANCE AUTHORIZING THE MAYOR AND FINANCE DIRECTOR TO ENTER INTO A RELEASE AND SETTLEMENT AGREEMENT WITH MARY R. SPERLI AND DECLARING AN EMERGENCY

BE IT ORDAINED by the Council of the Village of Richfield, State of Ohio:

SECTION 1. That the Mayor and Finance Director be, and they hereby are, authorized and directed to enter into a Release and Settlement Agreement with Mary R. Sperli settling litigation entitled Mary R. Sperli, et al. v. Village of Richfield, et al., Summit County Common Pleas Court Case No. CV90 10 3741.

SECTION 2. This Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public health, safety and welfare and for the further reason that it is immediately necessary to reduce legal expenses; wherefore, provided this Ordinance receives the affirmative vote of two-thirds of the members of Council elected or appointed, it shall take effect and be in force immediately upon its passage and execution by the Mayor; otherwise, it shall take effect and be in force from and after the earliest period allowed by law.

Passed: January 5, 1993

David W. Howard
President of Council

[Signature]
Mayor

Dated: 1/5/93

ATTEST:
[Signature]
Clerk of Council

RELEASE AND SETTLEMENT AGREEMENT

This Release and Settlement Agreement (hereinafter referred to as the "AGREEMENT") is entered into this 2nd day of ~~July~~^{SEPT}, 1992, by and between MARY R. SPERLI (hereinafter referred to as "SPERLI") and the VILLAGE OF RICHFIELD (hereinafter referred to as "RICHFIELD") and the SUMMIT COUNTY TREASURER (hereinafter referred to as "TREASURER").

WHEREAS, on or about October 30, 1990, SPERLI commenced litigation against RICHFIELD and the TREASURER in the Court of Common Pleas for Summit County, Ohio, entitled Mary R. Sperli, Plaintiff v. Village of Richfield, et al., Case No. CV 90 10 3741, where it now pends (the "ACTION");

WHEREAS, the parties hereto wish mutually to compromise, resolve and settle their disputes and claims raised by the ACTION to effect a dismissal with prejudice of SPERLI's Complaint, without the necessity of incurring the extensive costs of trial, and to do so without making any admission as to the truth, or lack thereof, of any allegation of any party in the ACTION and without making any admission whatsoever of liability on the part of RICHFIELD, which liability is expressly denied by RICHFIELD;

WHEREAS, the parties hereto also wish to compromise, resolve and settle all other disputes and claims they may have against one another, both asserted and unasserted, whether known or unknown;

WHEREAS, the basis of the ACTION by SPERLI against RICHFIELD is the special assessment levied against Permanent Parcel No. 50-00959 in the amount of Two Hundred Eleven Thousand, Three Hundred Sixteen Dollars (\$211,316.00), said assessment being levied

pursuant to the Council for the Village of Richfield's adoption of Ordinance No. 85-1990. SPERLI and RICHFIELD, based on expert opinion, have agreed to compromise and adjust the weight given to the treatment plant only in the assessment formula so that it is now agreed that SPERLI's assessment should have been One Hundred Twenty-Seven Thousand Five Hundred Dollars (\$127,500.00);

WHEREAS, SPERLI, widowed and unremarried, avers and declares that she is the sole title owner of Permanent Parcel No. 50-00959 and has authority on behalf of herself and all successors and assigns in title to enter into this AGREEMENT;

WHEREAS, SPERLI and RICHFIELD further agree that the terms and factors leading to this settlement and compromise are unique to the SPERLI property and have no application to any other properties in the assessment district.

NOW, THEREFORE, in consideration of the following terms, covenants and conditions, the parties agree as follows:

Section 1. Assessment to Permanent Parcel No. 50-00959. Upon the delivery to RICHFIELD's Council of this AGREEMENT signed by SPERLI and upon the agreement of the Council of RICHFIELD, RICHFIELD shall make the necessary arrangements with the Summit County Treasurer and Summit County Auditor, so that the assessment to be paid on Permanent Parcel No. 50-00959 shall be One Hundred Twenty-Seven Thousand, Five Hundred Dollars (\$127,500.00). SPERLI and RICHFIELD agree that SPERLI has paid to date \$30,987.15 which were the first three payments on the originally assessed \$211,316 assessment. SPERLI and RICHFIELD agree that SPERLI, her successors

and assigns, shall receive credit for the overpayments which are calculated as follows:

1. The assessment was issued on September 24, 1990 and provided that SPERLI had thirty (30) days to pay the entire assessment in cash.
2. SPERLI elected not to pay the entire assessment in cash.
3. Thereafter, the assessment was placed upon the tax duplicate to be paid for Permanent Parcel No. 50-00959 in fifty (50) equal semi-annual installments bearing an interest rate at the same rate that the Village is paying to the Ohio Water Development Authority which is 8.04%.
4. SPERLI has paid, to date, three equal payments of \$10,329.05 for a total payment of \$30,987.15.
5. SPERLI would have paid at the settlement amount three equal payments of \$5,955.49 for a total of \$17,866.47.
6. Accordingly, SPERLI is entitled to received a credit of \$13,120.68 for overpayments. The credit shall be granted by the Village as follows:
 - a. A credit of \$5,955.49 for the payment due on or about July 1, 1992.
 - b. A credit of \$5,955.49 for the payment due on or about January 1, 1993.
 - c. A final credit of \$1,209.70 against the payment due on or about July 1, 1993 (requiring a payment by SPERLI of \$4,745.79 for the payment due on or about July 1, 1993).

7. Thereafter with the payment due on or about January 1, 1994, SPERLI shall pay the remaining 44 semi-annual payments of \$5,955.49 each commencing on January 1, 1994.

SPERLI and RICHFIELD agree that SPERLI, her successors and assigns, shall not in any manner contest the amount or validity of the assessment in the future.

Section 2. Dismissal of ACTION. Upon receipt by the parties' counsel of this AGREEMENT signed by all parties, the parties shall forthwith cause to have entered a dismissal, with prejudice, of the Complaint in the ACTION, each party to bear its own costs, and attorneys' fees.

Section 3. General Release of Claims. SPERLI on behalf of herself, her heirs, representatives and assigns, and each of them, hereby releases and forever discharges RICHFIELD and its past, present and future officers, elected officials, employees, agents, representatives, and any other person, firm or corporation with whom any of them is now or may hereafter be affiliated, and each of them, from any and all claims, demands, obligations, losses, causes of action, costs, expenses, attorneys' fees, liabilities, and indemnities of any nature whatsoever, whether based on contract, tort, or other legal or equitable theory of recovery, whether known or unknown, mature or to mature in the future, which, as of the date of this AGREEMENT, SPERLI had, now has, or claims to have against RICHFIELD.

The general release set forth above specifically includes any and all claims, demands, obligations, and/or causes of action for

compensatory damages and/or injunctive and/or declaratory relief relating to or in any way connected with the subject matter of the ACTION, terms and conditions of the assessment levied on SPERLI's property, whether or not specifically or particularly described herein. SPERLI expressly waives any right or claim of right to assert hereafter that any claim, demand, obligation and/or cause of action has, through ignorance, oversight, or error, been omitted from the terms of this AGREEMENT. It is the express intent of SPERLI hereto to waive any and all claims she may have against RICHFIELD, including, without limitation, all claims based upon assessments levied for the construction of Sewer District No. 3 of the Village of Richfield, including any which are presently unknown, unsuspected, unanticipated or undisclosed.

Section 4. Binding Effect. This AGREEMENT shall be binding on, and inure to the benefit of, the successors and assigns of the parties hereto. Nothing in this AGREEMENT, express or implied, is intended to confer upon any person other than the parties hereto, or their respective successors and assigns, any rights or benefits under or by reason of this AGREEMENT. This AGREEMENT shall not be assignable to any party hereto without the written prior consent of the other parties.

Section 5. Non-Admission and Confidentiality. The parties acknowledge and agree that the lowering of the assessment levied on SPERLI's property and the acceptance thereof as set forth in Section 1, together with the execution of this AGREEMENT, are the result of compromise and are entered into in good faith and shall

never for any purpose be considered an admission of liability or of responsibility concerning any of the claims referred to in the ACTION, and no past or present wrongdoing on the part of any of the parties shall be implied. SPERLI shall maintain in confidence the contents of this AGREEMENT and the consideration therefor (hereinafter collectively referred to as "such information"), and shall not disclose such information to third parties. Without limiting in any way the foregoing, the parties specifically agree that SPERLI will not release such information or the fact that the lowering of the assessment on her property was included in the settlement to any third party, including, without limitation, any former, present or future landowners within the Village of Richfield. SPERLI shall take every precaution to disclose such information only to such of her agents, representatives and accountants who have a reasonable need to know such information which includes real estate agents and prospective purchasers. The parties agree that if this AGREEMENT does not become effective for any reason, this AGREEMENT shall be deemed negotiation for settlement only and will not be admissible in evidence or usable for any purpose whatsoever in connection with or at any trial or appeal in connection with the ACTION.

Section 6. Integration Clause. This AGREEMENT represents and contains the entire agreement and understanding between the parties hereto with respect to the subject matter of this AGREEMENT, and supersedes any and all prior oral and/or written agreements and understandings, and no representation, warranty, condition,

understanding or agreement of any kind with respect to the subject matter hereof shall be relied upon by the parties unless incorporated herein. This AGREEMENT may not be amended or modified except by an agreement in writing signed by the party against whom the enforcement of any modification or amendment is sought.

Section 7. Fees and Expenses. Each of the parties hereto shall pay its own expenses, including legal fees, incurred in the prosecution and defense of the ACTION, or incurred in the negotiation, preparation and execution of this AGREEMENT.

Section 8. Construction. Each party and counsel for each party have reviewed this AGREEMENT and accordingly the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this AGREEMENT. In entering into the AGREEMENT, the parties represent that they have relied upon the legal advice of their attorneys, who are the attorneys of their own choice. The parties further represent that the terms of this AGREEMENT have been completely read and explained to them by their attorneys and that these terms are fully understood and voluntarily accepted by them.

Section 9. Counterparts. This AGREEMENT may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of which together shall be deemed one and the same instrument.

Section 10. Effective Agreement. This AGREEMENT may be pleaded as a full and complete defense to, and may be used as the

basis for, an injunction against any action, suit or other proceeding which may be instituted, prosecuted or attempted in breach of this AGREEMENT, except for an action based upon a breach of this AGREEMENT.

IN WITNESS WHEREOF, the parties have executed this AGREEMENT as of the day and year first written above.

WITNESSED:

Sidney Ann Powers
SIDNEY ANN POWERS

Linda A. Roman
LINDA A. ROMAN

WITNESSED:

WITNESSED:

Mary R. Sperli
MARY R. SPERLI

VILLAGE OF RICHFIELD

By: _____

Title: _____

SUMMIT COUNTY TREASURER

By: _____

Title: _____