

ORDINANCE NO. 2008-025

**AN ORDINANCE AUTHORIZING A SETTLEMENT AGREEMENT  
WITH KRISTIN SPIEKERMAN AND DECLARING AN EMERGENCY**

WHEREAS, Kristin Spiekerman has previously filed a lawsuit against the Village of Waynesville, Ohio in United States District Court, Southern District of Ohio; and

WHEREAS, the parties have agreed to settle the lawsuit upon mutually agreeable terms.

NOW THEREFORE BE IT ORDAINED by the Village Council of the Village of Waynesville, 6 members elected thereto concurring:

**Section 1.** That the Village Manager is hereby authorized to execute a settlement agreement substantially in the form of the agreement attached hereto as Exhibit "A."

**Section 2.** That the Finance Director is authorized to make payment in the amount of \$2500.00 as payment of the Village's contribution to the settlement amount.

**Section 3.** That the Law Director is authorized to execute and file any necessary pleadings with the Court to carry out the terms of the settlement agreement.

**Section 4** That is Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, safety and general welfare and shall be effective immediately upon its passage. The reason for said declaration of emergency is the need to execute the settlement agreement before the expiration of the settlement offer.

Adopted this 4th day of AUGUST 2008.

Attest:

~~Staci Morris, Clerk of Council~~

STEPHANIE MORGAN  
INTERIM CLERK OF COUNCIL

~~Earl J. Isaacs, Mayor~~

SANDRA STAMPLE,  
PRESIDENT PRO TEM

**FULL AND FINAL RELEASE  
AND SETTLEMENT AGREEMENT**

The parties to this Full and Final Release and Settlement Agreement (hereinafter "Agreement") are:

- **KRISTIN SPIEKERMAN**  
(hereinafter "Plaintiff"), and
- **VILLAGE OF WAYNESVILLE, OHIO, and the OHIO  
GOVERNMENT RISK MANAGEMENT PLAN**  
(hereinafter "Releasees").

**WITNESSETH:**

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WHEREAS, the parties listed above are or were parties to an action filed in the United States District Court for the Southern District of Ohio, Western Division, styled *Kristin Spiekerman v. Village of Waynesville, Ohio*, Case No. 1:07cv00572, (hereinafter the "Action"); and

WHEREAS, the Releasees have denied and continue to deny any liability in the Action; the Plaintiff has denied and continues to deny any liability in the Action; and

WHEREAS, it is expressly understood and agreed, as a condition hereof, that this Agreement shall not constitute an admission by any party or evidence or indicate in any degree an admission of the truth or correctness of any claim or defense asserted in this Action;

WHEREAS, because of the cost and uncertainty of litigation, and because Plaintiff and Releasees are desirous of settling and compromising the aforementioned Action and all civil claims, demands, actions, and causes of action existing between Plaintiff and

Releasees in accordance with the terms set out in this Agreement, the parties have stipulated that the Action referred to above will be dismissed with prejudice;

**NOW, THEREFORE**, in consideration of the foregoing and the following promises and covenants and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and in consideration of the obligations and covenants of this Agreement which are made by the parties, the parties agree as follows:

1. Plaintiff, on her own behalf and on behalf of any other person or entity claiming by, through, or under her:

(a) Accepts the sum of ~~Twelve Thousand Five Hundred Dollars (\$12,500.00)~~, in full accord and satisfaction of all claims relating to the Action, including but not limited to all claims for damages, attorneys fees, and attorneys fees pursuant to 42 U.S.C. §1988;

(b) Forever releases and discharges the **VILLAGE OF WAYNESVILLE, OHIO, and the OHIO GOVERNMENT RISK MANAGEMENT PLAN** in all capacities, and all of their agents, servants, insurers, representatives, officers, officials, employees, heirs, executors, administrators, successors, assigns, and attorneys from any and all obligations, liabilities, actions, claims, demands, debts, damages, attorneys' fees, attorneys' fees pursuant to 42 U.S.C. §1988, and causes of action or suits of whatever kind, whether known, unknown, or unanticipated arising out of, relating to, or in any way connected with the Action or the incidents alleged therein, or constituting matters which could have been alleged in the Action, and agrees to dismiss the Action with prejudice;

(c) Covenants that she will never again institute, prosecute, or in any way aid in the institution or prosecution of any action at law or in equity against the Releasees that she heretofore had or now has, whether known or unknown, arising out of, relating to, or in any way connected with any act or omission that occurred at any time prior to the complete execution of this Agreement by Plaintiff;

(d) Warrants that she has not assigned or caused to be transferred in any way to any other person or entity any of the rights that she might have had or now have of the nature described in paragraphs 1(b) through (d).

2. Releasees covenant to pay to *Kristin Spiekerman* the total sum of **\$12,500**, payable on the effective date of this Agreement and agree to release and dismiss the Counterclaim with prejudice.

3. Plaintiff further acknowledges and agrees that the terms of this Agreement, all consideration, and all promises and undertakings are with the express understanding that no liability, legal or otherwise, negligence or act of wrongdoing of any kind is admitted by the Releasees, and that all consideration is made and received and the promises and undertakings are made in full satisfaction, discharge, and release of all claims as provided in this Agreement.

4. It is expressly understood and agreed by Plaintiff that the releases contained in this Agreement include a full and final release of any and all actual and potential civil claims, injuries, losses, damages, costs, expenses, attorneys' fees, attorneys fees pursuant to 42 U.S.C. §1988, and other compensation of whatever kind and nature Plaintiff may have against Releasees as of the effective date of the Agreement, whether known or unknown, foreseen or unforeseen, including but not limited to claims based upon contract, employment discrimination, alleged constitutional violations, personal injury, alleged violations of statute, in equity and/or in tort, and whether the effects and consequences are known or unknown, foreseen or unforeseen.

5. Plaintiff confirms that the terms of this Agreement are contractual, not mere recitals; that this Agreement cannot be altered by any oral Agreement; and further that the

Plaintiff fully understands the meaning and intent of this Agreement, including, but not limited to, its final and binding effect.

6. Plaintiff agrees to satisfy all outstanding claims and liens, including, but not limited to, liens for medical expenses, from the proceeds of this settlement. Plaintiff further agrees to protect, indemnify, hold harmless, and defend Releasees from and against any and all liability, claims, demands, actions, causes of action and suits at law or in equity for injuries, expenses, and damages known or unknown, made against or sustained by the Releasees, as a result of any amounts sought, claimed, or recovered by any insurer, person, governmental agency or other entity subrogated to the rights of Plaintiff against the Releasee, or by any hospital, physician, psychiatrist, psychologist, or other medical provider of whatever kind that provided or that may provide medical, psychological, hospital, or services of any kind to Plaintiff related to the occurrences alleged in the Action.

7. Plaintiff states and represents that she has never filed for bankruptcy and that no bankruptcy action is presently pending in which she is the one seeking bankruptcy. Plaintiff acknowledges that the Releasees are entering into this Agreement in reliance upon this warranty by the Plaintiff. Plaintiff hereby agrees to save, defend, and hold harmless the Releasees from any and all claims and damages resulting from any bankruptcy action filed by Plaintiff.

8. The settlement date for the claims released herein by Plaintiff, and the effective date of this Agreement, is the last date this Full and Final Release is signed by Plaintiff. Plaintiff specifically releases all claims for attorneys fees, costs and interest, including any claim for interest contemplated under or that might be claimed under Ohio Revised Code §1343.03 or any other state or federal statute.

9. This Agreement is a complete and exclusive statement of the terms of the agreement between Plaintiff and Releasees. No conditions, understandings, or agreements purporting to modify or vary the terms of this Agreement shall be binding on the parties hereto unless hereinafter made in writing and signed by the party to be bound.

10. The provisions of this Agreement are severable and if any one or more provisions are determined to be illegal or otherwise unenforceable, in whole or in part, the remaining provisions shall be binding and enforceable. Further, a court may modify any portion of this Agreement deemed to be unenforceable to the extent necessary, consistent with the intent of the parties, to make it enforceable.

11. This Agreement, its terms and conditions, and the payments referred to herein shall remain confidential to the extent permitted by law. Plaintiff shall not disclose or discuss the contents, terms, or conditions of this Agreement, in whole or in part, with any person not a party hereto, other than her family, friends, attorneys, tax advisors, and financial advisers, unless directed to do so by a court or unless prior consent has been obtained by the trial attorneys of record for the other parties.

12. Claims for attorneys' fees were asserted by Plaintiff against the Releasees in the Action. The \$12,500.00 payment referred to in paragraph 2 above includes Plaintiff's claimed damages, all claimed attorneys fees, and all claimed attorneys fees under 42 U.S.C. §1988.

**13. LETTER OF REFERENCE**

The Village of Waynesville agrees to provide Plaintiff with a letter of reference as set forth in **Exhibit A** hereto and agrees to respond to inquiries regarding Plaintiff's employment consistently with that letter.

**14. RETURN OF CONFIDENTIAL MATERIALS**

Plaintiff shall return to the Village of Waynesville any confidential materials or information currently in her possession.

**15. NON-DISPARAGEMENT.**

Plaintiff agrees that she will not make disparaging, uncomplimentary or negative remarks about the Village of Waynesville or its employees or agents. The Village of Waynesville agrees that it shall not make disparaging, uncomplimentary, or negative remarks about Plaintiff. This non-disparagement clause shall not apply to statements made in response to official investigations or in court proceedings.

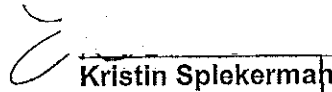
**16. WAIVER OF AGE CLAIMS**

Plaintiff expressly acknowledges and agrees that by entering into this Agreement, she is waiving any and all rights or claims that she may have arising under the Age Discrimination in Employment Act of 1967, as amended, which have arisen on or before the date of execution of this Agreement. The Employee further expressly acknowledges and agrees that in return for this Agreement: (a) she will receive the consideration set forth herein; (b) she was given a copy of this Agreement on July 28<sup>th</sup>, 2008, and informed that she had 21 days within which to consider the Agreement; (c) she was orally advised by Releasees and is hereby advised in writing by this Agreement to consult with an attorney

before signing this Agreement; and (d) she was informed that she has seven days following the date of execution of the Agreement in which to revoke the Agreement.


KRISTIN SPIEKERMAN, BEFORE SIGNING HER NAME BELOW, DECLARES THAT SHE HAS COMPLETELY READ THIS INSTRUMENT, THAT SHE HAS CONSULTED WITH HER ATTORNEY REGARDING IT, AND THAT SHE UNDERSTANDS THE TERMS HEREOF.

IN WITNESS WHEREOF, Kristin Spiekerman executed this Release and Settlement Agreement on the date appearing below.

  
Kristin Spiekerman

STATE OF OHIO  
COUNTY OF Hamilton

Sworn to and subscribed before me this 29<sup>th</sup> day of July, 2008, by  
Kristin Spiekerman.

Notary Public 



LESLIE ELIZABETH GHIZ  
Attorney at Law  
Notary Public, State of Ohio  
My Commission Has No Expiration  
Date, Section 147.03 O.R.C.

EXHIBIT A

To Whom It May Concern:

Kristin Spiekerman was employed by the Village of Waynesville, Ohio, as fiscal officer from August 1, 2006, until February 5, 2007.

Any questions about Kristin Spiekerman should be referred to the undersigned.

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*Bruce Snell, Village Manager*  
*Village of Waynesville, Ohio*