

VILLAGE OF WINDHAM  
OHIO  
RESOLUTION NO. R-2012-34

**A RESOLUTION APPROVING A RELEASE AND SETTLEMENT AGREEMENT BETWEEN  
ROBERT CAETTA AND THE VILLAGE OF WINDHAM AND DECLARING AN EMERGENCY**

WHEREAS, an former employee of the Village of Windham, Robert Caetta, has filed a Complaint in the Portage County Common Pleas Court, making various allegations against the Village of Windham with respect to his employment; and

WHEREAS, Robert Caetta and his attorneys and the Village of Windham have attended a mediation session on the matter of the allegations made by Robert Caetta and the mediation has resulted in a settlement of the pending lawsuit; and

WHEREAS, the Council of the Village of Windham desires to approve the Mediation Release and Settlement Agreement.

NOW, THEREFORE, BE IT RESOLVED, by the Council of the Village of Windham, Portage County, Ohio, two thirds or more of the members thereto elected concurring that:

Section 1: The Mediation Settlement Agreement between Robert Caetta and the Village of Windham in substantial conformity with that set forth in the attached Exhibit, marked for identification as Exhibit "A" and incorporated herein by reference, is hereby authorized, ratified, confirmed and approved.

Section 2: It is hereby found and determined that all actions of this Council concerning and relating to the passage of this Ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and of any of its committees that resulted in such formal actions were in meetings open to the public in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

Section 3: This Resolution is declared to be an emergency measure, effective immediately upon passage by Council and approval by the Mayor, for the reason that it is essential to resolve and confirm the resolution of the allegations against the Village of Windham in a timely fashion.

Passed as an Emergency in Council this 25<sup>th</sup> day of September 2012.

Vote of Council: Ayes: Mr. Snyder, Mr. Garrett, Mrs. Barrett, Ms. Blewitt, Mrs. Miranda

Nays: None.

ATTEST:

APPROVED:

\_\_\_\_\_  
Fiscal Officer - Lloyd Billman

\_\_\_\_\_  
Robert Donham, Mayor

APPROVED AS TO FORM:

\_\_\_\_\_  
Village Solicitor – Thomas Reitz

## **Release and Settlement Agreement**

This Release and Settlement Agreement (the "Agreement") is entered into on the 10<sup>th</sup> day of September 2012, by Robert Caetta on behalf of himself, his heirs, assigns, successors, anyone acting by or through him or in concert with him, and each of them, jointly and severally (hereinafter referred to as the "Plaintiff"), and the Village of Windham and all its current and former officials, including but not limited to Robert Donham and Eugene Fixler (hereinafter singularly and collectively referred to as "Defendants"), all of whom shall collectively be referred to herein as the "Parties."

### **WITNESSETH:**

**WHEREAS**, Plaintiff filed a lawsuit entitled *Robert Caetta v. Village of Windham, et al.* in the Portage County Common Pleas Court, Case No. 2011CV01404 (hereafter collectively referred to as the "Litigation"); and

**WHEREAS**, the Parties desire to completely dispose of all claims, actions and causes of action, whether legal or equitable, which the Parties may have, or could have had, against each other up to the date of this Agreement; and

**WHEREAS**, it is understood and agreed that the provisions hereof are not intended to be, and shall not be taken as, an admission of liability by the Parties, either with respect to the claims and subject matter to the Litigation or otherwise, and that this Agreement is made simply as a compromise of disputed claims to avoid further costs of litigation; and

**WHEREAS**, the releases made and given herein have been made and given without reliance upon any statement or representation of the Parties hereto, except for the express representations and warranties contained herein.

NOW, THEREFORE, for and in consideration of the above premises, the mutual promises, releases, and agreements herein contained, and for other good and valuable consideration, the Parties hereto agree as follows:

**Section 1.**     Dismissal with Prejudice and Waiver of Reconsideration/Appeal Rights.

Plaintiff agrees that his legal counsel, and Defendants agree that their legal counsel, have their express permission to approve a Stipulation for Dismissal of the Complaint with Prejudice, with any and all appeal rights being waived, and any court costs balance taxed to Defendant Village of Windham. The Parties further agree to do any and all other things necessary to accomplish dismissal of the Litigation with prejudice within fourteen (14) calendar days after Plaintiff's counsel's receipt of this fully executed Agreement and the settlement checks referenced hereinbelow in Section 2(A).

**Section 2.**     Consideration.

(A) For the purpose of settling all of Plaintiff's claims that were raised or could have been raised in the Litigation, or otherwise, up to the date of this Agreement, within fourteen (14) calendar days of Defendants' counsel's receipt of the signed and executed original of this Agreement by Plaintiff, on behalf of Defendants, the Defendants insurer, the Ohio Plan, agrees to deliver to Caryn Groedel & Associates Co., LPA, 31340 Solon Road, Suite 27, Solon, OH 44264, Plaintiff's legal counsel, the total sum of \$27,000.00 as follows:



1. A check payable to Caryn Groedel & Associates Co., L.P.A in the gross amount of Eleven Thousand Thirty-Three Dollars and Eighty Cents (\$11,033.80), which shall be considered payment for attorneys' fees and costs, and which shall be reported to the IRS via a Form 1099-Misc.; and
2. A separate check payable to Robert Caetta in the amount of Fifteen Thousand Nine Hundred Sixty-Six Dollars and Twenty Cents (\$15,966.20) ,

(B) The Village of Windham further agrees that Plaintiff will be provided a signed neutral letter of reference, on Village of Windham letterhead, which contains his job title/position, dates employed, job duties, and last rate of pay. The Parties agree that documents reflecting negatively upon Plaintiff's job performance and those relating to his EEOC charge and/or litigation will be segregated from his personnel file and placed in a separate file labeled "Caetta Litigation." Upon receipt of a public records request for Plaintiff's personnel file, the Village agrees to provide only the post-segregation version of the personnel file, not the Caetta Litigation file. However, if the Village receives a general or broad request for any and all documents referencing Plaintiff, then Plaintiff hereby acknowledges that the Village has a mandatory legal duty to provide public records upon request (pursuant to R.C. § 149.43), which may include the Caetta Litigation file.

**Section 3.    Release.**

(A) **Release by Robert Caetta:** In consideration of the Settlement herein, the proceeds paid, and other good and valuable benefits, Robert Caetta does hereby release and forever discharge Defendants, all other current or former officials, including but not limited to, current Mayor Robert Donham and Police Chief Eugene Fixler, agents, independent contractors, officers, in

both individual and official capacities, insurers (including the Ohio Government Risk Management Plan aka the Ohio Plan), together with its' parents, subsidiaries, affiliates, administrators (including HAS Claims Service, Inc.), employees, principals, agents, legal counsel, officers, directors, predecessors, successors and assigns (collective referred to herein as the "Releasees"), of and from all manner of action, causes of action, suits, debts, dues, sums of money, attorneys' fees, accounts, bonds, bills, promises, controversies, covenants, contracts, agreements, damages (whether compensatory, economic, restitution, punitive, or otherwise), back pay, front pay, pre-judgment, post-judgment or post-settlement interest, expenses, claims, and demands whatsoever, whether now known or unknown, existing at, or at any time prior to, the date hereof, in law, in equity or otherwise, which Plaintiff or his respective heirs, executors, trustees, administrators, representatives, spouses, and assigns had, have, or may ever have upon or by reason of any fact, matter, cause or thing whatsoever, up to the date of this Agreement, except those that by law cannot be waived, including but not limited to: (i) any and all claims arising from, related to, because of, or caused by the Defendants' alleged failure to reasonably accommodate his disability, termination of Plaintiff's employment, alleged failure to otherwise address Plaintiff's alleged complaints of disability discrimination, and alleged heightened scrutiny of Plaintiff's job performance; (ii) any claim of retaliation of any kind, any claim of discrimination or harassment of any kind; (iii) any and all claims based upon the Americans with Disabilities Act (ADA and ADAAA), the Rehabilitation Act, and the Ohio Civil Rights Act-- R.C. Chapter 4112; (iv) any claims based upon the United States Constitution and its Amendments including, but not limited to, the First Amendment right to freedoms of speech, association, to petition the government for redress of grievances, due process, equal protection, and correlative rights under the Ohio Constitution; (v) any claims based upon Ohio Revised

Code Chapter 4117 (SERB), the National Labor Relations Act (NLRA), the Family and Medical Leave Act (FMLA); (vi) any and all claims based upon any other federal or state statute including, but not limited to, 42 U.S.C. §§ 1981, 1983 or 1988, the Civil Rights Attorneys Fees Award Act of 1976, or otherwise; (vii) any and all contract, quasi-contract, estoppel, public policy, and tort claims, including but not limited to, those for gross negligence, negligence, willful and wanton misconduct, intentional tort, infliction of emotional distress (whether intentional, reckless, or negligently inflicted), defamation (slander or libel), invasion of privacy, release of confidential information, destruction of public records, spoliation of evidence, and the like; (viii) any and all past claims to appointment or promotion with the Village of Windham, any and all claims or rights to future employment with the Village of Windham and/or re-employment in any capacity, and any claims to other employment benefits arising from said position including matching PERS contributions by the Village; and (ix) any and all claims that Plaintiff suffered mental anguish, embarrassment, loss of reputation, loss of sleep, depression, nightmares, resentment, hyper-vigilance, abnormal appetite, reduced motivation, anxiety, fright, loss of self-esteem, extreme frustration, psychiatric or psychological disorder, and (x) any and all other claims, whether based on federal, state, or local statute, rule, regulation, or law, or common law, whether sounding in tort, contract, quasi-contract, equity, civil rights, discrimination, public policy, mandamus, injunction, prohibition, declaratory relief, quo warranto, administrative appeals, or otherwise, whether known or unknown, arising from any circumstances or facts, acts or omissions, pertaining to the relationship between the Parties, the Litigation and the allegations and controversies related or giving rise thereto, whether or not known to date. Plaintiff further specifically covenants and agrees that neither he, nor anyone on his behalf or in concert with him, will sue the Defendants or any of the aforementioned persons released herein, *i.e.* officials,



members, officers, employees, agents, representatives, attorneys, successors, or assigns, in either their personal or official capacities, with respect to any claim, matters, or issues covered by the foregoing Release, including without limitation any claim relating to or arising from the facts underlying the litigation, except the Parties retain the right to enforce this Agreement.

**(B) Release by the Defendants:** Defendants hereby irrevocably and unconditionally release and forever discharge Robert Caetta of and from all manner of action, causes of action, suits, debts, dues, sums of money, attorneys' fees, accounts, bonds, bills, promises, controversies, covenants, contracts, agreements, damages, pre-judgment, post-judgment or post-settlement interest, expenses, claims, and demands whatsoever, whether now known or unknown, existing at, or at any time prior to, the date hereof, in law, in equity, or otherwise, which Defendants or their respective heirs, executors, trustees, administrators, representatives, spouses, and assigns had, have, or may ever have upon or by reason of fact, matter, cause or thing whatsoever, without limitation, up to the date of this Agreement, except those that by law cannot be waived, including, but not limited to, any and all claims, causes of action, suits, and damages arising from allegations concerning any of the complaints made by Defendants including, but not limited to, job performance acts, errors, or omissions, and any employee claims of sexual harassment of any kind.

**(C) Later Discovered Facts.**

The Parties acknowledge that they may hereafter discover facts different or in addition to those which they now know or believe to be true with respect to the claims released, discharged and/or compromised by this Agreement, or may change their opinion as to the meaning or significance of the facts heretofore discovered. The Parties hereby agree that in such event, this Agreement

shall nevertheless be and remain binding and effective in all respects notwithstanding such different or additional facts, or the discovery thereof.

**Section 4. Representations and Warranties.**

**(A) Authority to Act.**

The Parties hereby represent and warrant to each other that they are duly authorized to execute and deliver this Agreement and have taken all action necessary to do so, it being understood that this Release and Settlement Agreement is not valid or effective until the Village Council authorizes the Mayor to sign the Settlement Agreement.

**(B) Independent Advice of Counsel.**

The Parties represent and declare that in executing this Agreement, they have relied upon their own judgment, belief, and knowledge as well as the advice and recommendation of their own independently selected counsel concerning the nature, extent and duration of each ones individual rights and claims and concerning the making and execution of this Agreement and all matters related thereto.

**(C) Voluntary Agreement.**

The Parties acknowledges, represent and declare that they have carefully read this Agreement and that they have entered and executed this Agreement freely, knowingly, and voluntarily.

**(D) No Prior Assignments.**

The Parties represent that they have not assigned or transferred and will not assign or otherwise transfer any of the claims, demands, charges, and causes of action disposed of by this



Agreement, including those claims specifically released and discharged by foregoing Section 3. Plaintiff further warrants that other than his attorney at law, whose claims for attorney's fees are fully and finally satisfied by the consideration paid under this Agreement, that any interest in any claim, demand, action, cause of action he has or may have, or may claim against the Defendants and other persons or entities, is released herein.

**(E) Non-Disparagement/No Comment Clause.**

In an effort to put this matter behind the Parties, the Parties agree that there will be no further public comment on this matter, whether be it via newspaper, email, blog, social media website, except to say that the matter was resolved to the mutual satisfaction of both Parties (or words to that effect). This clause will not prevent or prohibit any of the Parties or persons referenced herein from testifying as required by law.

**Section 5. No Admission.**

Nothing contained herein shall be deemed to be, or construed as, an admission of liability by Defendants hereto with respect to the claims and subject matter of the Litigation or otherwise. This Agreement shall not be used by the Parties in any administrative or judicial proceeding; provided, however, that nothing contained herein shall prejudice in any manner the right of the Parties to prove and enforce this Agreement.

**Section 6. Binding Effect.**

This Agreement is a legal, valid, and binding obligation enforceable in accordance with its terms when approved by the Parties. The Agreement shall be binding upon the Parties and, as applicable, any and all of the individual Plaintiff's heirs, executors, administrators, successors

and assigns, and attorneys, and the Village's officers, officials, agents, employees, attorneys, successors, and assigns or those acting directly or indirectly through them.

**Section 7.**     Waiver/Severability.

Any waiver by a party of any term of this Agreement shall not be deemed a waiver of any other term. No term or terms of this Agreement may be waived except by means of a written waiver signed by each of the parties hereto. If any portion of this Agreement is held invalid by operation of law, the remaining terms of this Agreement shall not be affected.

**Section 8.**     Entire Agreement.

This Agreement: (1) constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes any prior agreements, understandings, conditions, representations, or warranties, whether oral or written, with respect to the subject matter hereof; (2) may not be explained or supplemented by evidence of consistent additional terms or contradicted by evidence of any prior contemporaneous agreement. The parties further state that they have not relied on, nor have they been induced to execute this Agreement by any statements or representations, agreement or provisions, oral or written, made by anyone other than those expressly contained in the Agreement. Further, this Agreement may not be modified except by a writing signed by each of the parties hereto.

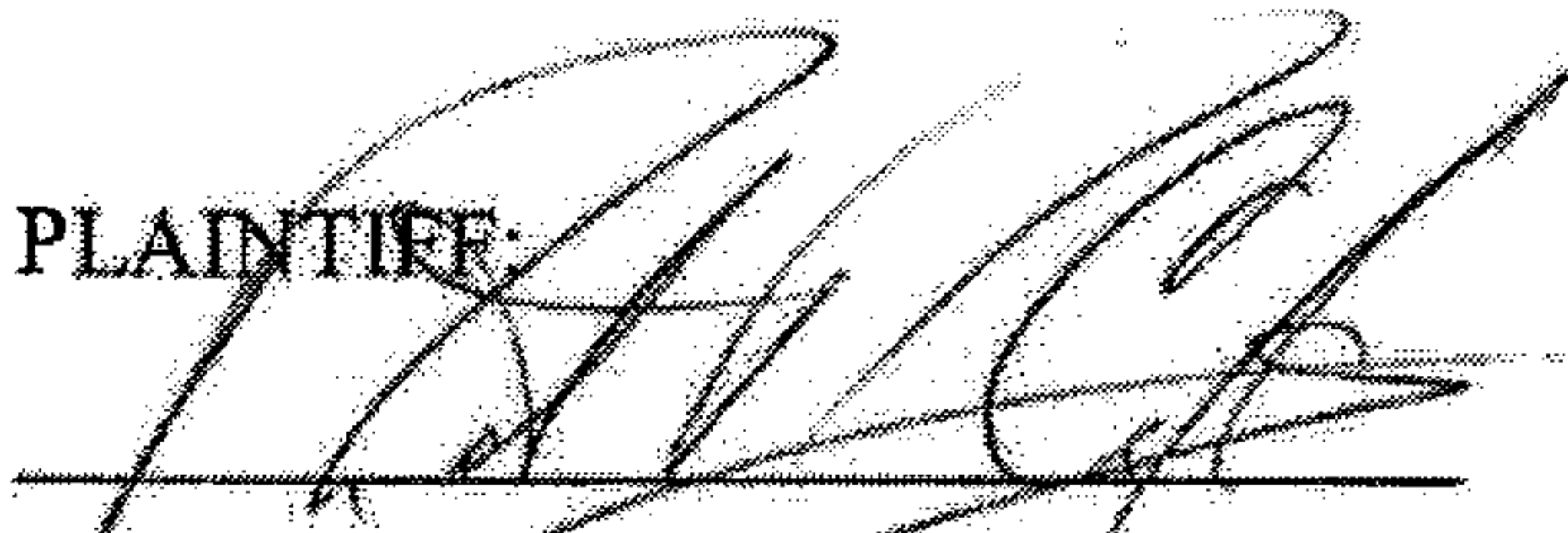
**Section 9.**     Acknowledgement Of Review.

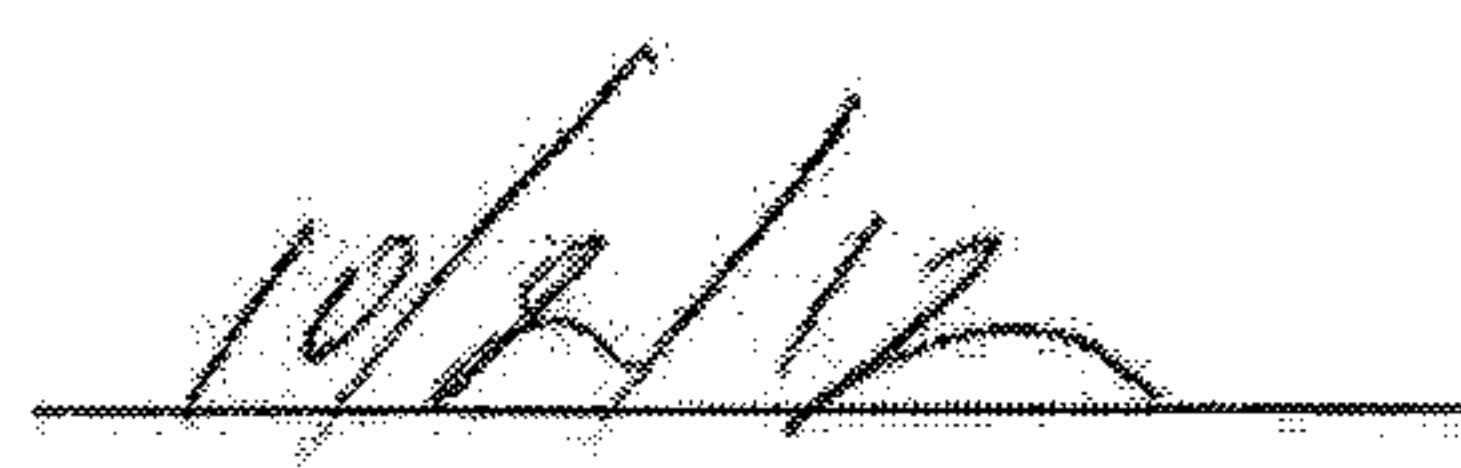
Plaintiff acknowledges that:

- (a) He has read this Agreement and understands its legal and binding effect.

- (b) He is acting voluntarily and of his own free will in executing this Agreement;
- (c) He has had the opportunity to seek, and is advised in writing to seek, legal counsel prior to signing this Agreement;
- (d) He has been given at least 21 days to consider the terms of this Agreement before signing it. He knowingly and voluntarily waives the remainder of the 21-day consideration period, if any, following the date he signs this Agreement below; and
- (e) He has seven (7) days after signing it to revoke it, and may do so by providing written notice to counsel for Defendants, John Latchney, Tomino & Latchney, LLC, LPA, 803 E. Washington Street, Suite 200, Medina, OH 44256, in person, by fax, by overnight delivery, or by United States registered mail, return receipt requested, postage prepaid. If revocation has not been made, then this Agreement shall become enforceable and effective on the eighth day after he affixes his signature to it.


IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date and year first above written.


PLAINTIFF:  
  
 \_\_\_\_\_  
 Robert Caetta


  
 \_\_\_\_\_  
 Date

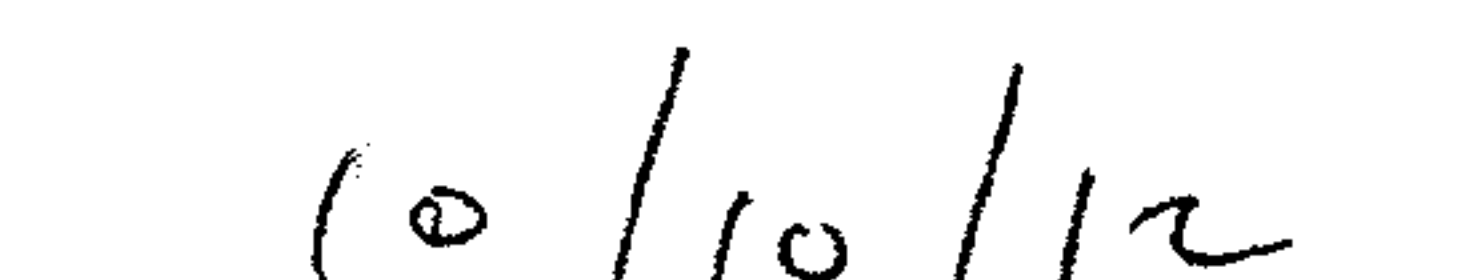
DEFENDANTS:

VILLAGE OF WINDHAM:

By:   
 \_\_\_\_\_  
 Robert Donham, in his official capacity as Mayor

  
 \_\_\_\_\_  
 Date

  
 \_\_\_\_\_  
 Eugene Fixler

  
 \_\_\_\_\_  
 Date