

**CHARTER TOWNSHIP OF YORK  
WASHTENAW COUNTY, MICHIGAN**

**RESOLUTION NO. 2010 -11**

*[RESOLUTION TO APPROVE MUTUAL RELEASE AND SETTLEMENT AGREEMENT WITH  
YORK CROSSING, LLC]*

Minutes of a Regular Meeting of the Township Board of the Charter Township of York, Washtenaw County, Michigan held at the Township Hall in said Township on the 14<sup>th</sup> day of December, 2010.

**PRESENT:** Members Joe Zurawski, Helen Neill, Sally Donahue, Jill Hargrove,  
Wayne Meier, Jane Kartje

**ABSENT:** Members Gary Zajac

The following preamble and Resolution were offered by Member Wayne Meier and seconded by Member Jill Hargrove.

**WHEREAS**, representatives of the Township and York Crossing, LLC have been negotiating a proposed Mutual Release and Settlement Agreement (the "AGREEMENT") to resolve a lawsuit between York Crossing, LLC as Third-Party Plaintiff and the Charter Township of York as Third-Party Defendant, which is currently pending in the Oakland County Circuit Court, Case No. 10-109551-CK;

**WHEREAS**, Representatives of the Township have approved the terms of the AGREEMENT in the form attached hereto, subject to the removal of the present paragraph 5 and replacement thereof by the following:

5. *Installation of Farm Fence.*

*This Agreement confirms that, as permitted by the Township ordinances, York Crossing has a right to install a farm fence on its own property. The installation and maintenance of the fence shall be at York Crossing's sole expense without utilizing or trespassing on the Township's property, unless approved by the Township Supervisor.*

**WHEREAS**, said AGREEMENT has been approved as to form by the Township's attorney, subject to the proposed change to paragraph 5 set forth above; and

WHEREAS, this Board has reviewed the terms and conditions of the proposed AGREEMENT, and believes that it is in the best interests of the Township, its residents and the residents of the community to enter into said AGREEMENT.

NOW, THEREFORE, BE IT RESOLVED that this Board hereby approves the terms of the proposed AGREEMENT in the form attached hereto and made a part hereof, subject to the replacement of the present paragraph 5 with the revised language set forth above and does hereby authorize and direct the Supervisor to execute the same on behalf of the Township after notice of approval from York Crossing, LLC.

**ROLL CALL VOTE:**

**AYES:** Meier, Neill, Zurawski, Donahue, Kartje, Hargrove

**NAYES:** None

**ABSENT:** Zajac

**ABSTAIN:** None

**RESOLUTION DECLARED ADOPTED 6-0-1**

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Helen Neill, Clerk  
Charter Township of York  
Dated: December 14, 2010

**CERTIFICATE**

I, Helen Neill, certify that the foregoing is a true and complete copy of Resolution No. 2010-11 adopted by the Township Board for the Charter Township of York, Washtenaw County, State of Michigan, at a Regular Meeting held on December 14, 2010, and that public notice of said meeting was given pursuant to Act No. 267, Public Acts of Michigan, 1976, as amended.

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Helen Neill, Clerk  
Charter Township of York  
Dated: \_\_\_\_\_, 2010

## **MUTUAL RELEASE AND SETTLEMENT AGREEMENT**

This Mutual Release and Settlement Agreement (“Agreement”) is made and entered into on December\_\_\_\_, 2010, between York Crossing, LLC whose address is 30400 Telegraph Road, Suite 100, Bingham Farms, Michigan 48025 (“York Crossing”) and Charter Township of York, a Michigan municipal corporation, whose address is 11560 Stony Creek Road, Milan, Michigan 48160 (the “Township”).

### **RECITALS**

A. On April 5, 2010, Kilanski Excavating & Land-Clearing, LLC filed a Complaint against York Crossing, Milan Company, LLC, and Ephraim Ronald Milan, personally. The Defendants responded and, on June 8, 2010, York Crossing filed a Third-Party Complaint against the Township. The entire matter is captioned: *Kilanski Excavating & Land Clearing, LLC v Milan Company, LLC et al. and York Crossing, LLC v Charter Township of York*, Case No. 10-109551-CK. The claims asserted by York Crossing in the Third-Party Complaint and any defenses that could be pleaded by the Township in Case No. 10-109551-CK are hereinafter referred to as the “Third-Party Lawsuit.”

B. As described more fully in York Crossing’s Third-Party Complaint against the Township, the events giving rise to the Third-Party Lawsuit initially began in December 2006 and continued sporadically thereafter. In March 2007, the parties believed they had reached an agreement as to the scope of certain activities that York Crossing could undertake on the parties’ respective properties (the “March Agreement”). Based on the terms of the March Agreement, York Crossing commenced work on the parties’ properties. Thereafter a dispute arose between the parties as to the scope of their March Agreement, and in particular what trees could be removed from the Township’s property. Subsequently, the Township, through its elected and/or

appointed officials alleged that York Crossing had trespassed onto its property and illegally removed viable trees, outside the scope of the parties' March Agreement. York Crossing denied these allegations. These events, the ensuing dispute, and all claims, demands, rights, or obligations that relate or may relate to only this dispute, and specifically, York Crossing's cutting or removal of trees or other assets from Sandra Richardson Park between December 2006 and August 2007 shall hereinafter be referred to as the "Township's Claims."

C. The parties desire to bring the Third-Party Lawsuit and the Township's Claims to a conclusion, to compromise and settle their claims in the Third-Party Lawsuit, and to avoid further cost and expense regarding the subject matter of the Third-Party Lawsuit and/or the Township's Claims.

**FOR THESE REASONS, AND IN CONSIDERATION OF THE MUTUAL PROMISES DESCRIBED HEREIN, THE PARTIES AGREE AS FOLLOWS:**

**1. Definitions**

(a) "Agreement," "March Agreement," "Third-Party Lawsuit," and "Township's Claims" each has the meaning set forth for it in the preamble above.

(b) "York Crossing" refers to York Crossing, LLC, its members and officers individually and collectively, and together with their executors, administrators, legal representatives, insurers, sureties, successors, beneficiaries and assigns, and anyone claiming through them.

(c) "Township" refers to Charter Township of York, a Michigan municipal corporation, together with its board of trustees, elected officials, employees, legal representatives, insurers, sureties, successors, beneficiaries and assigns, and anyone claiming through them.

(d) “Claims” means all theories of recovery of whatever nature that were pleaded in the Third-Party Lawsuit and/or raised in the Township’s Claims. This term includes causes of action, charges, indebtedness, damages, injuries, losses, claims, liabilities, and demands, whether arising in equity or under the common law of under any statute, which the parties pleaded against the other in the Third-Party Lawsuit and/or raised in the Township’s Claims.

(e) “Relief” means all elements of relief or recovery of whatever nature, whether known or unknown, which are recognized by the law or equity of any jurisdiction. This term includes injunctive and any other equitable relief, as well as actual, incidental, indirect, consequential, compensatory, exemplary, and punitive damages, rescission, attorneys’ fees, interest, costs, and expenses. This term includes equitable relief and any damages which were requested by York Crossing in the pleadings of the Third-Party Lawsuit or would have been alleged by the Township in defense of the Third-Party Lawsuit, or raised in the Township’s Claims.

**2. Dismissal of Case**

Upon the execution of this Agreement, the parties shall direct their counsel to prepare and enter the necessary documents to dismiss the Third-Party Lawsuit with prejudice and without costs to either party.

**3. Mutual Release**

In exchange for agreements to dismiss the Third-Party Lawsuit with prejudice and without costs to any party, release each other from the Third-Party Lawsuit, the Township’s Claims, and other valuable consideration, the parties to this Agreement do hereby knowingly and voluntarily release and forever discharge each other from all Claims and Relief alleged in the

Third-Party Lawsuit and all Claims and Relief alleged in the Township's Claims. The parties understand and expressly agree that this release extends to all Claims and Relief of every nature and kind, known or unknown, suspected or unsuspected, past or present, which were (i) pleaded in the Third-Party Lawsuit and which would have been pleaded by the Township in defense, and/or (ii) alleged in the Township's Claims. The parties further understand and expressly agree that all such Claims and Relief are hereby expressly settled or waived.

**4. Limitation to Mutual Release**

This Agreement shall not be construed to waive or release any rights or obligations of the parties to each other with respect to any other agreement or legal duty that is not specifically waived herein.

**5. Installation of Farm Fence**

This Agreement confirms that, as permitted by the Township ordinances, York Crossing has a right to install a farm fence on its own property. The installation and maintenance of the fence shall be at York Crossing's sole expense without utilizing or trespassing on the Township's property, unless approved by the Township Supervisor.

**6. Representations and Warranties**

The parties agree, represent, and warrant: (1) that the consideration set forth in this Agreement is the sole consideration for execution of this Agreement and is given by or on behalf of the other in full satisfaction and settlement of all Claims and Relief; and (2) that each party is the sole owner of any Claims that have been or could have been asserted in the Third-Party Lawsuit and as raised in Township's Claims, that each party has the requisite capacity and authority to make this Agreement, and that no portion of any existing or potential claims have been sold, assigned, pledged, or hypothecated by them to any third party.

**7. Choice of Law**

This Agreement shall be interpreted and construed in accordance with and shall be governed by the laws of the State of Michigan.

**8. Entire Agreement**

This Agreement constitutes the entire agreement of the parties relating to settlement of the Third-Party Lawsuit and Township's Claims. Any previous agreements with respect thereto are superseded by this Agreement. No term, provision, or condition of this Agreement may be modified in any respect except by a writing executed by all of the parties hereto. No person has any authority to make any representation or promise on behalf of any of the parties other than those representations or promises set forth in this Agreement. This Agreement has not been executed in reliance upon any representation or promise except those contained herein.

**9. Acknowledgement of Terms**

The parties acknowledge that they have read this Agreement carefully, that they have had the opportunity to review it with their attorneys, that they fully understand its final and binding effect, that this Agreement is intended as a compromise of all Claims the parties have alleged in the Third-Party Lawsuit and Township's Claims, that the only promises or representations made to any of the parties to sign this Agreement are those stated herein, and that the parties are signing this Agreement voluntarily.

**10. Waiver**

The failure of any party to enforce or to acquire timely compliance with any term or provision of this Agreement shall not be deemed a waiver or relinquishment of rights or obligations arising hereunder, nor shall this failure preclude the enforcement of any term or provision to avoid the liability for any breach of this Agreement.

Deleted: ¶

**11. Severability**

Each part, term, or provision of this Agreement is severable from the others. Notwithstanding any possible future finding by a duly constituted authority that a particular part, term, or provision is invalid, void, or unenforceable, this Agreement has been made with the clear intention that the validity and enforceability of the remaining parts, terms, and provisions shall not be affected thereby.

**12. Construction**

This Agreement shall be deemed drafted equally by all the parties. Its language shall be construed as a whole and according to its fair meaning. Any presumption or principle that the language is to be construed against any party shall not apply. The headings in this Agreement are for convenience and are not intended to affect construction or interpretation. Unless the context clearly indicated to the contrary, the plural included the singular and the singular included the plural, “any,” “all,” “each,” and “every” mean “any and all, and each and every,” and “including” and “includes” respectively mean “including, but not limited to” and “includes, without limitation.”

**13. Execution**

The parties acknowledge that this Agreement may be executed in several counterparts, all of which taken together shall constitute one single Agreement.

(Signatures on following page)

THE PARTIES HAVING EXECUTED THIS AGREEMENT ON THE DATE SET FORTH BELOW THEIR NAMES.

York Crossing, LLC,  
a Michigan limited liability company

Charter Township of York,  
a Michigan municipal corporation

By: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_  
Managing Member

Its: Supervisor \_\_\_\_\_