

MUTUAL SETTLEMENT AGREEMENT

Sauk County Civil Case No. 15 CV 401

This Mutual Settlement Agreement of all Claims (the “**Agreement**”) is made and entered into as of the final date as signed below (the “**Effective Date**”), by and between and among Plaintiffs, **Craig A. Beil, Jerelyn Bennett-Beil, Frederick W. Forst, and all others identified as those Plaintiffs being represented by Deutch Law Offices, S.C.** in Sauk County Civil Case No. 15 CV 401, their successors, spouses, heirs, beneficiaries, personal representatives, and trustees hereinafter referred to both collectively and individually as the “**Plaintiffs**;” Defendants, **Sauk County Board of Adjustment and Sauk County**, together with their members, representatives, insurers, reinsurers, successors, assigns, departments, divisions, employees, agents, and officers, hereinafter collectively referred to as the “**Defendants**.” Any reference to the Plaintiffs and the Defendants collectively shall be as “**Parties**.”

WHEREAS, the Parties are involved in a dispute, including but not limited to the propriety of the revocation of special exception permit SP-19-97 and the due process issues surrounding public hearings held on May 28, 2015 and July 7, 2015, as is more fully set forth in the pleadings in Case No. 2015-CV-401 (Sauk County, Wisconsin)(hereinafter the “**Litigation**”);

WHEREAS, the Litigation involves a parcel of real estate located in a Recreation Commercial zoning district, on real estate described as: Part of Sauk County CSM Number 1554 and all of Sauk County CSM Numbers 2117 and 3732, part of the SW ¼ - SW ¼, and part of the SE ¼-SW ¼ section 12, T13N, R5E, Town of Dellona. This same piece of real estate has been alternatively described as: lot 1 CSM 2117 and lot 1 CSM 3732, part of the S ½, SW ¼, section 12, T13N, R5E, Town of Dellona, tax parcels 006-0230-2 & 0230-3; in particular the three (3) phases containing 92 permanent recreational vehicle campsites (hereinafter “**Campground**”);

WHEREAS, after extensive negotiations, the Parties desire to enter into this Agreement in order to create certain obligations with the intent of resolving all claims which are or might have been the subject of the Litigation, upon the terms and conditions set forth herein; and

NOW, THEREFORE, in consideration of the mutual covenants and conditions of this Agreement, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, it is agreed by the Parties as follows:

1. AGREEMENT TO GRANT TEMPORARY ADMINISTRATIVE PERMISSION FOR NONCOMPLIANT CAMPSITE OCCUPANCY LIMITS PENDING COMPLIANCE EFFORTS

1.1 The Parties agree, understand and stipulate to all of the following:

a. The Plaintiffs, identified in Exhibit A attached hereto and made a party hereof, used their campsites, also identified in Exhibit A, year-round as a permanent abode and place of residence (the “**Year-Round Plaintiffs**”).

b. The Year-Round Plaintiffs received documents from the original Campground developer that contained language they relied on to occupy and use their campsites year-around as a permanent abode and place of residence and make their recreational vehicles immobile.

c. The Campground application and special permit (SP 19-97) issued by the Defendants for the Campground contained the word “permanent” and made individual ownership and control references for campsites.

d. Year-Round Plaintiffs purchased, improved and used campsites at the Campground based in part on their interpretation of SP19-97.

e. On August 29, 2014, the Sauk County Zoning Department notified the Year-Round Plaintiffs in writing of multiple Sauk County Zoning Code violations related to unauthorized year-round use and permanent structures and informed Year-Round Plaintiffs that SP19-97 might be revoked.

f. Year-Round Plaintiff’s recreational vehicles were originally mobile but some were modified and made immobile by Year-Round Plaintiffs and immediate removal from the Campground may be costly.

g. Immediately restricting Year-Round Plaintiffs use and enjoyment of the Campground is not in the public interest if they diligently seek compliance.

1.2 In order to resolve the Litigation and allow Year-Round Plaintiffs a reasonable time to comply with all applicable requirements, the Defendants agree to temporarily allow and not seek enforcement against the Year-Round Plaintiffs of the SP19-97 permit requirements and Sauk County Zoning Ordinance provisions prohibiting use of their Campground campsites for year-round occupancy. The temporary administrative authorization shall be, as to each campsite identified in Exhibit A, until the death of the Year-Round Plaintiff(s) shown as owning such campsite on Exhibit A, or until such time as the campsite or any interest in it is sold or otherwise conveyed to any person or entity who is not identified as owning such campsite on Exhibit A; so long as each Year-Round Plaintiff does not violate the exclusivity condition for the temporary non-enforcement period. Temporary non-enforcement by Defendants is in the public interest only if it is limited to Year-Round Plaintiffs who are current owners of Campground campsite and shall be exclusive to them. The temporary non-enforcement agreement shall not extend to or otherwise benefit any other person(s) who secure any interest, permanent or temporary, in the Campground campsites of the Year-Round Plaintiffs by any means with two exceptions being A) the spouse of any Year-Round Plaintiff and B) a revocable trust of the Year-Round Plaintiff. Notwithstanding the foregoing to the contrary, a Year-Round Plaintiff may transfer their current interest in a Campground campsite to a revocable trust for his/her benefit, whereupon the temporary non-enforcement agreement shall extend to such trust but not to any trust beneficiary or any other person except the Year-Round Plaintiff or his or her spouse

1.3 In conjunction with the foregoing, the Year-Round Plaintiffs shall not be required by the Defendants to participate in any Christmas Mountain tracking program or program that monitors the length of stay at the **Campground**.

2. AGREEMENT RELATING TO EXISTING NONCOMPLIANT IMPROVEMENTS AND STRUCTURES

2.1 The Parties understand, agree and stipulate that many Plaintiffs installed, located, placed, constructed or otherwise caused various improvements on or added various structures to their campsites including, but not limited to, sheds, gazebos, picnic shelters, porches, decks, garages, water fountains, rock gardens, lights, flag poles, landscaping, and signs, some with permits and some without a valid land use permit issued by Defendant Sauk County, but, in all cases, did so reasonably in good faith believing such improvements could legally be made. Attached to this agreement shall be exhibit AA for each of the named individual Plaintiffs (or trust), which said exhibit AA shall state the names of Plaintiffs, an identification of the PRV lot which was deeded to that Plaintiff and a description and pictures of their corresponding conditions and improvements for the property owned by that particular Plaintiff

That Plaintiffs made the conditions and improvements listed on to their Campground property or structures upon representations made to them by the developers of the Campground or those who sold them interests in their campsites and without any intent to violate any applicable ordinance or other law.

2.2 Defendants acknowledge that grounds may exist to equitably estop enforcement against the Plaintiffs for existing noncompliant improvements or structures and, subject to Sections 1 and 2.3, agree to forego enforcement against the Plaintiffs, their assigns or successors in interest to correct, remove, rectify, cease or in any other way comply with any of the following ordinances, laws and regulations for existing noncompliant structures or improvements described or shown the pictures in Exhibit AA:

- a. The county land use permit requirement and/or size requirement for any structure, park model, camping unit, addition, deck, or shed at the Campground;
- b. Front yard, side yard and rear yard setback requirements (including but not limited to Sauk County Ordinance §7.094(5)(c)). This includes any ordinance, code provision, statute or law prohibiting the presence of main structures (like PRV units) and accessory structures (like sheds, gazebos, picnic shelters, porches, decks, garages, water fountains, rock gardens, lights, flag poles, landscaping, signs, or vegetation, etc.) in said setback;
- c. Any Sauk County ordinance, code provision, statute or law which permits only permanent non-habitable structures in the Campground;
- d. Any Sauk County ordinance, code provision, statute or law that prohibits a camping unit or PRV from exceeding 400 square feet;
- e. Any Sauk County ordinance, code provision, statute or law that prohibits the placement of objects within the backyard easement;
- f. Any Sauk County ordinance, code provision, statute or law that prohibits or limits, in any way, improvements from being attached to PRVs or camping units; and

- g. Any deviations from the original plan in the constructions of the **Campground** including but not limited to the alley and/or road sizes, locations and conditions and similar improvements, and
- h. Any Sauk County ordinance, code provision, statute or law that requires a plat of the Campground to be recorded.

2.3 Notwithstanding the agreement in this Section to forego enforcement against existing noncompliant improvements or structures, Defendants may enforce any applicable law, ordinance or regulation against the Plaintiffs, their assigns or successors in interest upon any proposed or attempted addition, substitution or substantial material change to an existing noncompliant improvement or structure that occurs after December 17, 2019 (the date of the Sauk County Board's approval in principle of this Agreement).

2.4 **WAIVER OF NONCONFORMING STRUCTURE RIGHTS.** You acknowledge that there are various laws that protect the use and enjoyment of nonconforming structures. Such laws include common law principles and statutory provisions such as Wis. Stat. secs. 59.69(10e) and (10m). In consideration of this Agreement, you, on behalf of yourself, your heirs, executors, administrators, successors and assigns and except for the rights and terms stated in this agreement, hereby waive and release all rights you may have as of the date of your execution of this Agreement under these or any other laws with respect to repair, replacement, modification, alteration or any similar action related to a nonconforming structure in the Campground.

3. ADMINISTRATIVE PERMISSION PERIOD INDEMNIFICATION. Plaintiffs acknowledge that improper placement of accessory structures may increase fire and safety risks for their property in the Campground and agree to fully and completely accept all additional risk of harm or damage to property and person, including all harm or damage to property or person of all other campsite users, vendors, service providers, visitors or other persons at the Campground, and voluntarily agree to indemnify and hold the Defendants harmless during the permission period from any claims, demands, causes of actions, or judgments of any kind which may arise in whole or in part from their failure to cure any problem, defect or condition related to a preexisting nonconforming improvement or structure for which temporary administrative permission is granted in writing, and those Plaintiffs, individually and together, for themselves, their heirs, personal and legal representatives and assigns, hereby release the Defendants from any liability which may arise in whole or in part from their failure to cure any problem, defect or condition related to a preexisting nonconforming structure or improvement. Defendants' agreement to forego exercise of its enforcement authority as described above shall not apply to any Plaintiff that does not agree to assume the risks and indemnify as provided in this Section.

4. NO ADMISSION OF LIABILITY. It is further agreed and understood by the Plaintiffs that this Agreement is not and shall not be construed in whole or in part as an admission of any liability and is a compromise of a doubtful and disputed claim. This compromise and settlement of all claims of the Plaintiffs against the Defendants and all other persons set forth above, is being entered into following negotiations between the Plaintiffs, who were at all times represented by an attorney of their choice, and the Defendants.

5. FULL UNDERSTANDING. The Plaintiffs hereby declare that they fully understand the terms of this settlement; that they voluntarily accept this Agreement for the purpose of making a full and final compromise, adjustment and settlement of all claims for losses and damages resulting or to result from the actions of the Defendants.

6. EXTINGUISHING OF ALL CLAIMS WITH EXCEPTION. This Agreement fully extinguishes all of the Plaintiffs' claims and causes of action, including but not limited to those for: compensatory damages, punitive damages, costs and fees, attorneys' fees and statutory damage awards against the Defendants. This Agreement also fully extinguishes any claims or causes of action under the Wisconsin Uniform Marital Property Act. In making this Agreement, all rights of the Plaintiffs to bring any other claims against the Defendants are fully extinguished. However, it is also expressly agreed by the Parties that the Plaintiffs have not been made whole for their injuries caused by parties other than the Defendants by the settlement expressed in this Agreement. As such, the Parties agree that the Plaintiffs have reserved all of their claims against DELLONA ENTERPRISES, INC., BLUEGREEN VACATIONS UNLIMITED, INC., CHRISTMAS MOUNTAIN CAMPGROUND ASSOCIATION, U.A., and CHRISTMAS MOUNTAIN VILLAGE PROPERTY OWNERS' ASSOCIATION, INC., which is the subject of pending litigation, Anderson v. Dellona Enterprises, Inc., et. al., Case No. 2016-CV-116 (Sauk County, Wisconsin). The claims in that case are not extinguished by this Agreement.

7. NOTICE. Any notice or demand required or to be given hereunder shall be in writing, and shall be deemed to have been given and received when deposited in a post office or official depository of the United States Postal Service, sent by certified mail, postage prepaid, return receipt requested, addressed as follows:

If to PLAINTIFFS:

Alan H. Deutch
Deutch Law Offices, S.C.
7670 North Port Washington Rd, Ste 200
Fox Point, WI 53217

If to DEFENDANTS:

John M. Bruce
Schober Schober & Mitchell, S.C.
2835 South Moorland Road
New Berlin, WI 53151

The addresses set forth in this contract may be changed by any party by giving notice of such change to the other party in the manner provided herein for giving notice.

8. RESPONSIBILITY FOR COSTS. Each Party shall bear all of their own attorney fees, witness fees, expenses and costs arising from the actions of its own counsel in connection with this Litigation and the Agreement.

9. GOVERNING LAW. This Agreement shall be construed and interpreted in accordance with the laws of the State of Wisconsin.

10. JUDGMENT AND DISMISSAL OF LITIGATION. The Parties agree that upon the signing of this Agreement, they will cause a Stipulation and Order of Judgement in the Litigation to be filed stipulating a Judgment will be entered in accord with this stipulation and that the all other portions of Litigation may be dismissed upon its merits and with prejudice and without an award of costs or attorneys' fees to any party. The pending litigation, Anderson v. Dellona Enterprises, Inc., et. al., Case No. 2016-CV-116 (Sauk County, Wisconsin) shall not be dismissed.

11. BINDING EFFECT. This Agreement shall be binding upon, and inure to the benefit of and be enforceable by, the Parties and their respective heirs, personal representatives, trustees, agents, successors, legal representatives and assigns.

12. INVALID PROVISIONS. It is understood that each and every term or part of this agreement is of critical importance to each and every of the parties hereto. If any term or part of this Agreement shall be determined to be invalid, illegal, or unenforceable in whole or in part, then any party to this agreement may declare the entire agreement to be void and move the court to reopen the case which was previously closed by the action of this agreement.

13. COMPLETE AGREEMENT. Except as otherwise expressly provided herein, this Agreement represents the entire agreement between the Parties regarding the subject matter hereof and supersedes all prior or contemporaneous written or oral agreements, promises, representations and/or understandings between the Parties regarding the subject matter of this Agreement. The Parties acknowledge that there are no other written or oral agreements, promises, representations, warranties and/or understandings between the parties with respect to the subject matter hereof, except as otherwise expressly provided in this Agreement.

14. MUTUAL PREPARATION ACKNOWLEDGEMENT. This Agreement is acknowledged by the Parties to be the result of extensive good faith negotiations. The Parties acknowledge and agree that this Agreement is the result of the efforts and the work product of each one of the Parties and that no party will be construed to have been the party responsible for drafting it.

15. AUTHORITY REPRESENTATION. The Defendants represent that the County Board Chair signing this Agreement on Defendants' behalf has the necessary authorization to enter into this Mutual Settlement Agreement.

16. AGREEMENT AS BINDING OBLIGATIONS. This Agreement constitutes the valid, binding and legal obligations of all of the Parties enforceable in accordance with its terms.

17. EXECUTION OF AGREEMENT. This Agreement may be executed in any number of counterparts, all of which will constitute a single Agreement, and shall not be binding between the parties unless and until it is executed by each party hereto. The Agreement may be executed by facsimile or by email and shall become binding upon the Parties once executed copies have been exchanged.

19. APPROVALS. This Agreement is subject to approval of the Sauk County Board of Adjustment and County Board by vote at a duly noticed meeting.

IN WITNESS WHEREOF, I have set my hand and seal this _____ day of _____,
2020.

Craig A. Beil

ADD SIGNATURE PAGES FOR ALL PLAINTIFFS

CONFIDENTIAL

CAUTION – READ BEFORE SIGNING!

IN WITNESS WHEREOF, I have set my hand and seal this _____ day of _____,
2020.

Tim McCumber, Sauk County Board Chair
On behalf Sauk County

STATE OF WISCONSIN)
) ss.
SAUK COUNTY)

Personally came before me this _____ day of _____, 2020, the above-named Tim McCumber, to me known to be the persons who executed the foregoing instrument and acknowledged the same.

Sworn to and subscribed before me
this _____ day of _____, 2020.

A Notary Public of the State of Wisconsin
My Commission expires: _____

