


TO: Trailer Estates Trustees
FROM: John C. Vander Molen 
SUBJECT: McNeil Fence Case of 6626 New Jersey, Mediated Settlement Agreement
DATE: June 4, 2007

Attached find a copy of the results of the confidential and privileged court ordered mediation session conducted by Mr. Edwin L. Ford, P.A. an Attorney at Law and a Certified Mediator on May 24, 2007. I was in attendance along with Mr. Gaskill our attorney, and Mr. and Mrs. McNeil and their attorney.

In my own terms this is what I understand the agreement contains.

1. This agreement is subject to approval by Board of Trustee Agreement which is anticipated by June 4, 2007 or as soon thereafter as possible and the parties will stipulate to the dismissal of this action, with prejudice (usually considered an adjudication upon the merits and will act as a bar to future action).
2. Mr. McNeil must move the fence in question on the south side of his property outside the four-foot setback no later than September 30, 2007.
3. Each party will bear its own costs and fees.
4. This is a court enforceable agreement.
5. If Mr. McNeil fails to move the fence as stated he would be subject to payments of all of our fees and costs to enforce the above action plus pay to us the sum of \$10,000 in attorney fees and costs that we have already incurred.
6. The agreement becomes a valid and binding agreement under the laws of the State of Florida.
7. If this agreement is not accepted by the Board the agreement will be null and void *ab initio*. (We go back to square one and none of this agreement can be or will be used in the future action).
8. We would then anticipate going to trial on or about September 19, 2007.
9. Our attorney estimated that our legal fees could approach \$25,000 if we go to trial.

Based on the agreement, I was assured that this settlement reconfirms the fact that the Board had the power to enforce deed restrictions and must continue to enforce the restrictions as written without exception. It was said that failure to do so could result in the Board being accused of "selective enforcement" and perhaps lose the ability to enforce restrictions. It was noted that Homeowner Associations and Governing Boards rarely if ever succeed in collection of attorney fees, as it is "just the cost of doing business". However, as written in this agreement is would be "court ordered" that we collect fees and costs if Mr. McNeil fails to move the fence as stipulated. I believe this agreement will achieve our major goal of:

MOVING THE FENCE.

Therefore, I strongly recommend that the Board of Trustees vote to accept this agreement.

Enclosure: McNeil Mediated Settlement Agreement

IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT OF FLORIDA
IN AND FOR MANATEE COUNTY, FLORIDA, CIVIL DIVISION

TRAILER ESTATES PARK &
RECREATION DISTRICT,

Plaintiff,

vs.

CASE NO.: 2006-CA-1678

ROBERT W. McNEIL and
BARBARA M. McNEIL,

Defendants.

MEDIATED SETTLEMENT AGREEMENT

May 24, 2007

Having engaged in a confidential and privileged mediation conference on the above-referenced date, the parties hereto agree as follows:

1. **TERMS OF SETTLEMENT.** As consideration for this Mediated Settlement Agreement and conditioned upon approval of this Mediated Settlement Agreement by the Board of Trustees of Plaintiff, Defendants will, by no later than September 30, 2007, move the fence presently situated on the south side of Defendants' property so that it is situated outside the four foot setback. The parties stipulate that, as of the date of this Mediated Settlement Agreement, the only known encroachment into the applicable setbacks on the Defendants' property is the fence on the south side of Defendants' property.

Within ten (10) days of the date of approval of this Mediated Settlement Agreement by the Board of Trustees of Plaintiff which said approval is anticipated by June 4, 2007 or as soon thereafter as possible, the parties will stipulate to the dismissal of this action, with prejudice, each

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party to bear its own costs and fees and the court will be requested to retain jurisdiction of this matter solely for the purpose of enforcing the terms of this Mediated Settlement Agreement.

In the event that the Board of Trustees declines to approve this Mediated Settlement Agreement, then this Mediated Settlement Agreement will be null and void *ab initio*.

2. ENFORCEMENT/PREVAILING PARTY FEES. In the event that any party hereto seeks to enforce this Mediated Settlement Agreement in a court of law or equity, the prevailing party shall be entitled to recover from the non-prevailing party its reasonable attorneys' fees and court costs, including paralegal fees, incurred in enforcing this Mediated Settlement Agreement through all appeals. If, in any such enforcement action, Plaintiff is deemed to be the prevailing party, then Plaintiff will also be entitled to collect from Defendants the sum of \$10,000.00 in attorneys fees and costs which Plaintiff has expended as of the date of this Mediated Settlement Agreement in addition to any award of attorneys fees and costs for enforcing this Mediated Settlement Agreement.

3. COMPLETE AGREEMENT. This Mediated Settlement Agreement represents the full and complete agreement of the parties hereto relative to the matters addressed herein and may not be modified or altered except by an instrument in writing signed by all parties hereto.

4. FURTHER ACTION/COOPERATION. The parties hereto and their legal counsel agree to cooperate with one another and to assist one another to effectuate the intention of this Mediated Settlement Agreement particularly with regard to the prompt preparation of all reasonably necessary instruments and documents.

5. BINDING AGREEMENT. This Mediated Settlement Agreement is

intended to be a valid and binding agreement under the laws of the State of Florida, effective upon its execution despite the need for any further documentation. By executing this Mediated Settlement Agreement, each party hereto acknowledges that they have read and understand this Mediated Settlement Agreement; that they have freely and voluntarily entered into this Mediated Settlement Agreement; and, that they have been represented in this matter by legal counsel of their own selection or have voluntarily declined said representation.

6. **NO ADMISSIONS.** By executing this Mediated Settlement Agreement, the parties hereto expressly deny liability and acknowledge that this Mediated Settlement Agreement constitutes a good faith compromise of disputed claims and termination of the controversies which have given rise to this Mediated Settlement Agreement.

7. **MISCELLANEOUS.** This Mediated Settlement Agreement shall be interpreted and governed by Florida law. No provision of this Mediated Settlement Agreement shall be construed against a party because of draftsmanship of such provision. Headings herein are for convenience of reference only and shall not effect the interpretation hereof. Genders shall be interchangeable as the context so requires.

8. **COUNTERPARTS/FACSIMILE SIGNATURES .** This Mediated Settlement Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute a single instrument. Facsimile signatures shall suffice to bind the parties.

9. **MEDIATION FEE.** Mediation fees shall be divided equally between Plaintiff (50%) and Defendant (50%).

TRAILER ESTATES PARK &
RECREATION DISTRICT

By: John Vander Molen
John Vander Molen, authorized
representative of the Board of
Trustees

Jason T. Gaskill
Jason T. Gaskill, Esquire
Attorney for Plaintiff

Robert W. McNeil
Robert W. McNeil

Barbara M. McNeil
Barbara M. McNeil

James J. Spanolios
James J. Spanolios, Esquire
Attorney for Defendants

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