

SETTLEMENT AND RELEASE AGREEMENT

THIS AGREEMENT is entered into by and among McCLAIN ENTERPRISES, INC., a Missouri corporation (hereinafter "Developer"), and JACKSON COUNTY, MISSOURI (hereinafter "County") this 17th day of April, 2009.

Recitals

- A. During the development of the Saddle Ridge Villas, northeast of 39th Street and R.D. Mize Road in Eastern Jackson County, a "borrow pit" was created to provide fill dirt for the project.
- B. A substantial portion of the borrow pit was located on County parkland known as the Little Blue Trace Park.
- C. The fill dirt was removed from the County's parkland by Bill House Excavating Co. without permission.
- D. There is a dispute as to the liability of the parties and the amount of the damages as alleged by the County.
- E. The parties have attempted to mediate the dispute without success and have agreed to arbitrate the dispute.
- F. The parties hereto now desire to fully and completely resolve the issues in dispute prior to arbitration.

Agreement

1. The land that the County alleges Developer encroached upon and appropriated was part of the Little Blue Trace Park. The land was obtained by the County through the assistance of a grant through Land and Water Conservation funding. The grant is managed by the Missouri Department of Natural Resources as part of a U.S. Department of the Interior program. There exists a requirement of the U.S. Department of the Interior that all land transfers of property acquired through this program be subject to the 6(f) conversion process as required by the LWCF Act of 1965 (Section 6, Land and Water Conservation Fund Act of 1965, as amended; Public Law 88-578; 16 U.S.C.4601-4 et seq.)

2. Developer has proposed to provide to the County replacement property (hereinafter "the Parcel") for the land allegedly encroached upon. The legal description of the land to be granted to the County is as follows:

FILED
APR 27 2009
MARY JO SPINO
COUNTY CLERK

The North five acres of a part of the Northwest Quarter of Section 15, Township 49, Range 31 in Independence, Jackson County, Missouri, more particularly described as follows: Beginning at the Southwest corner of Said Northwest Quarter; thence North 2 degrees 28 minutes 41 seconds East on the West line of said Northwest Quarter, a distance of 1742.84 feet; thence North 61 degrees 53 minutes 33 seconds East, a distance of 469.14 feet; thence South 2 degrees 28 minutes 41 seconds West, a distance of 1980.40 feet to a point on the South line of said Northwest Quarter; thence North 87 degrees 41 minutes 07 seconds West on the said South line, a distance of 403.87 feet to the point of beginning, except that part in roads.

3. Developer will provide, at its sole cost and risk that the settlement herein is not consummated, an owner's title report acceptable to the County demonstrating fee simple title and insuring fee simple to the Parcel when it is transferred to the County.

4. Developer will provide, at its sole cost and risk that the settlement herein is not consummated, an environmental assessment of the Parcel demonstrating that that it is suitable as parkland in that there are not any extraordinary environmental hazards associated with the Parcel.

5. Developer will pay, at its sole cost and risk that the settlement herein is not consummated, all necessary fees, including appraisal fees for both parcels, consultant expenses, and costs to prepare the conversion documents necessary to obtain approvals from both the State of Missouri and the U.S. Department of the Interior and all of their subordinate units of government at any level, to allow the County to accept the Parcel as part of the Little Blue Trace Park.

6. The County will plant native grasses on the Parcel for which Developer will remit to the County the sum of One Thousand, Five Hundred Dollars U.S.(\$1,500.00.).

7. Developer shall, at its sole cost and risk that the settlement herein is not consummated, take efforts to secure the "borrow pit" area to restrict public access thereto until such time as it becomes suitable for recreational pursuits.

8. The County shall at such time as the 6(f)conversion application is finally approved, transfer its interest in the "borrow pit" to SADDLERIDGE VILLAS, INC., a Missouri corporation, free and clear of all liens and encumbrances.

9. Developer agrees to indemnify and hold the County harmless from any and all claims for property damage and/or personal injury, including wrongful death, whether known or unknown, contingent or liquidated which any third party may have, which occurred on or in "borrow pit" area, from the time of the initial encroachment to the date the County ordered Developer to vacate the borrow pit. Developer's obligation in this paragraph 9 shall survive the releases referred to in paragraph 10 below.

10. At such time the parties completed the terms of this Agreement, including the successful completion of the 6(f) conversion process, each of the parties hereto does hereby release and forever discharge each other, and other's employees, officers, agents, insurance carriers, and representatives thereof, predecessors, successors, heirs, assigns, and all persons acting by, through or under them, or any of them, from any manner of action or actions, causes of action, actions in equity, suits debts, liens, contracts, agreements, promises, liabilities, claims, demands, damages, loss, costs or expenses of any nature whatsoever, known or unknown, fixed or contingent, which any party may have, or may hereafter have, against any other party by reason of any happening, matter, cause, or thing occurring prior to the date hereof, including, without restricting the generality of the foregoing, any and all claims, demands, controversies, actions, causes of action obligations and liabilities of any nature whatsoever which the parties shall have, or may have, by reason of any act, cause, matter or thing whatsoever stated, claimed or alleged as set out above.

The following persons and entities are joining this Settlement and Release Agreement for the sole purpose of joining in the mutual release for the matters referred to above:

Kenneth B. McClain
Saddleridge Villas, Inc.
Saddleridge Development, Inc.
Saddleridge Community Association

11. This release constitutes the entire agreement of the parties with regard to the matters set forth herein, and it shall be binding upon and inure to the benefit of the personal representatives, heirs, successors and assigns of each of the parties hereto. No modification or amendment to this Agreement shall be binding on the parties unless it is in writing and signed by the person sought to be charged.

12. Except as otherwise provided herein, this Agreement may be pleaded as a full and complete defense to any subsequent action or other proceeding arising out of, or relating to, or having anything to do with, any and all of the claims, counterclaims, cross-claims, issues, defenses or other matters alleged or specifically released and discharged by this Agreement. This Agreement may also be used to abate any such action or other proceedings and as the basis of a counterclaim for damages.

13. It is expressly understood and agreed by the parties hereto that the acceptance of the parties of the provisions of this Agreement does not constitute an admission or concession of liability on the part of any of the parties, each of whom expressly denies any liability whatsoever.

14. Each party agrees to perform any necessary acts and execute any documents which may be reasonably necessary to carry out the provisions of this Agreement.

15. Each party warrants and represents that the person executing this Agreement on its behalf is authorized to do so. Each of the parties acknowledges that it has not assigned, nor does any

other person have any interest in, the claims, issues, causes of action or other matters alleged or specifically released and discharged by this Agreement.

16. This Agreement may be executed by the parties in counterparts which, taken together, are deemed one and the same instrument which may not be altered or amended except in the manner provided herein.

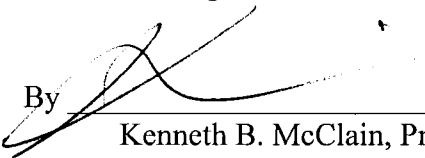
17. It is understood and agreed that this Settlement and Release Agreement is expressly contingent upon the approval by the State of Missouri and the U.S. Department of the Interior of the Conversion application as required by the LWCF Act of 1965 (Section 6, Land and Water Conservation Fund Act of 1965, as amended; Public Law 88-578; 16 U.S.C.4601-4 et seq.) In the event that the Conversion application is denied this agreement shall be null and void and the matter shall proceed to arbitration. The parties hereto understand and acknowledge that the Conversion process may take up to a year to complete from the date of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year below set forth.

I/We have read this Settlement and Release Agreement and have had the terms therein and the consequences thereof explained to me/us by my/our attorney, and I/we understand the Agreement and agree to its terms.

“Developer”


McCLAIN ENTERPRISES, INC.,
a Missouri corporation

By 
Kenneth B. McClain, President

“County”

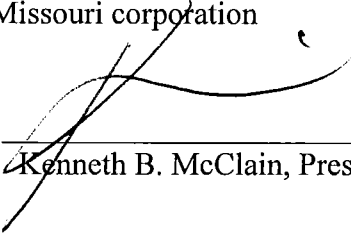
JACKSON COUNTY, MISSOURI

By 
Mark S. Jones
JACKSON COUNTY COUNSELOR

ATTEST:

CLERK OF COUNTY LEGISLATURE

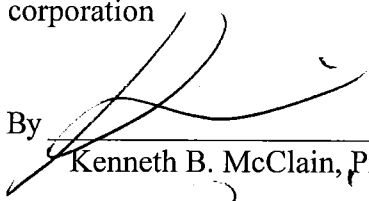
The undersigned hereby join in this Agreement for the limited purpose of releasing and being released by the provisions set out in paragraph 10 above.

SADDLERIDGE VILLAS, INC.,
a Missouri corporation

By 

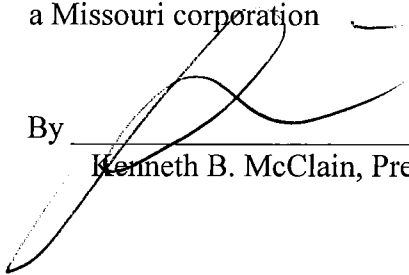
Kenneth B. McClain, President

SADDLERIDGE COMMUNITY
ASSOCIATION, a Missouri non-profit
corporation

By 

Kenneth B. McClain, President

SADDLERIDGE DEVELOPMENT, INC.,
a Missouri corporation

By 

Kenneth B. McClain, President



KENNETH B. McCLAIN