

SM

45D10-0802-PL-24

SETTLEMENT AGREEMENT, GENERAL RELEASE, AND WAIVER

FILED IN
CLERK LAKESUPERIOR COURT

This Settlement Agreement, General Release, and Waiver (hereinafter referred to as "Agreement") is made by and between Miller Beach Investments, LLC (hereinafter referred to as "MBI"), and Harvey H. and Maria Gibbs (hereinafter referred to as "Gibbs").

CLERK LAKESUPERIOR COURT

Recitals

WHEREAS, on February 20, 2007, MBI commenced a quiet title action against Gibbs in the Lake Superior Court under Cause No. 45D10-0802-PL-00024 (hereinafter referred to as the "Action") regarding a parcel described as:

A parcel of land in Section 31, Township 34, Range 7, formerly owned by US Railroad Vest Corporation, beginning on the North line of the Northwest quarter of Section 31, Township 34, Range 7 then running in a Southeasterly direction to the East line of said section. Being approximately 100 feet wide.

Filed in Open Court

Key No.: 11-10-0028-0003
CAUSE NO. 45D10-0802-PL-0024

AUG 26 2010

copy of the highlighted Sidwell for this parcel is attached hereto, made a part hereof and marked as Exhibit "A" and inserted herein by reference); and

STATE OF INDIANA
LAKE COUNTY
FILED
2010 DECEMBER 5 PM 1:06
CLERK LAKESUPERIOR COURT

WHEREAS, to terminate litigation of the Action and to set at rest any and all claims which have been made, or which could now be made, by MBI against Gibbs, all attorneys, and their successors, heirs, administrators and assigns, and all persons acting by, through, under or in concert with any of them that may have arisen or may arise under federal, state, or local law on or before the date MBI and Gibbs execute this Agreement; and

WHEREAS, MBI, after consultation with Counsel, now seeks to waive, compromise and settle all such claims against Gibbs and is prepared to dismiss the Action without prejudice, to fully release and discharge Gibbs from all claims and liability, and to enter into the agreements set forth below; and

WHEREAS, Gibbs, after consultation with Counsel, now seeks to waive, compromise and settle all such claims against MBI, and is prepared to fully release and discharge MBI from all claims and liability, and to enter into the agreements set forth below.

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AUG 27 2010

CLERK LAKESUPERIOR COURT

AW MBI GIBBS
219 CK# 003272
C.A.

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NON COME

Agreement

In consideration of the mutual promises and release set forth herein and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, MBI and Gibbs (hereinafter collectively referred to as "Parties") agree as follows:

a) If MBI fails to sign, acknowledge, and/or deliver such instruments and/or other writings and/or take such actions as may be reasonably necessary by MBI to accomplish and effectuate the provisions and purposes of this Agreement it will be considered a default of this Agreement whereby Gibbs shall have the right to pursue all remedies available at law, including attorney fees.

b) If Gibbs fails to sign, acknowledge, and/or deliver such instruments and/or other writings and/or take such actions as may be reasonably necessary by Gibbs to accomplish and effectuate the provisions and purposes of this Agreement it will be considered a default of this Agreement whereby MBI shall have the right to pursue all remedies available at law, including attorney fees.

c) The parties agree that the width each of the above parcels is 100 feet across, perpendicular to the parallel lines of the total properties previously owned by Erie Lackwana RR company, as shown on Exhibit "A."

d) The parties agree that the Gibbs will receive whatever interest MBI has as follows: from the shared boundary of the property currently owned by Gibbs and the parcel described herein to the center line of the railroad parcel previously described.

e) The Gibbs attest that they held the fee simple ownership interest in certain parcels immediately to the North of the Railroad section herein contemplated at the time of the original sale to the Railroad.

f) In consideration of the property provided above and other considerations set forth herein, Gibbs collectively and individually, hereby **irrevocably and unconditionally releases and forever discharges and covenants not to sue** MBI as to all charges, complaints, claims, demands, liabilities, obligations, and actions of any kind or nature (including for attorneys' fees, interest and costs actually incurred) that have accrued as of the date MBI executes this Agreement, which are related to or arising from facts alleged in the Action, whether known or unknown, including claims under any federal, state, or local law, and whether or not any such matter or claim was asserted or could have been asserted in any forum, whether judicial or administrative. The Parties intend that the claims released be construed as broadly as possible.

g) In consideration of the payments provided above and other considerations set forth herein, MBI hereby **irrevocably and unconditionally releases and forever discharges**

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MBI GIBBS

and covenants not to sue Gibbs, collectively and individually, as to all charges, complaints, claims, demands, liabilities, obligations, and actions of any kind or nature (including for attorneys' fees, interest and costs actually incurred) that have accrued as of the date Gibbs, collectively and individually, executes this Agreement, which are related to or arising from facts alleged in the Action, whether known or unknown, including claims under any federal, state, or local law, and whether or not any such matter or claim was asserted or could have been asserted in any forum, whether judicial or administrative. The Parties intend that the claims released be construed as broadly as possible.

h) The Parties acknowledge that, in agreeing to this compromise and settlement of claims and in executing this Agreement, none of them relies and has not relied upon any representation or statement made by the other or by either party's agent, representatives, or Counsel, other than those specifically stated in this written Agreement.

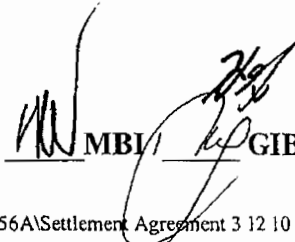
i) This Agreement reflects and contains the entire agreement between the Parties and no statements, promises or inducements made by or on behalf of any party or its counsel that are not contained herein shall be binding. No amendment or modification to this Agreement shall be effective unless and until agreed to in writing and signed by all parties. A waiver of any right under this Agreement must be in writing and signed by the waiving party to be effective.

j) This Agreement shall be binding upon MBI and Gibbs, and upon their heirs, administrators, personal representatives, executors, successors, and assigns, and shall accrue to the benefit of MBI and Gibbs, and to their heirs, administrators, personal representatives, executors, successors, and assigns.

k) The Parties agree that if any provision of this Agreement or any construction or application of any provision of this Agreement is held to be unenforceable or invalid for any reason, then the validity of all the remaining provisions shall not be affected, and the validity of any remaining construction or application of the provisions shall not be affected, and the rights or obligations of each of the parties shall be construed and enforced as if the Agreement did not contain such invalid provision or, as the case may be, invalid construction or application of such provision; provided, however, that the economic and legal substance of this Agreement is not affected in any manner materially adverse to any Party.

l) Each of the Parties acknowledges that he or she has read this Agreement, has consulted with Counsel concerning this Agreement, knows and understands its terms and contents, and is voluntarily entering into it. In view of such reading, counseling and understanding and because each Party has also had the opportunity to negotiate fully the terms of this Agreement, its terms shall be interpreted and construed without any presumption or inference based upon or against the Party causing this Agreement to be drafted.

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MBI GIBBS

m) Each person signing this Agreement represents and warrants to the other Party hereto that he or she is duly and fully authorized to enter into and execute this Agreement and all of its terms as binding commitments on behalf of the party for whom he or she purports to act.

n) Except to the extent that a Court of competent jurisdiction orders that this Agreement be disclosed, this is a **Confidential Settlement**. From the date of this Agreement, MBI and Gibbs and their employees, heirs, executors, administrators, assigns, and legal advisors agree not to publicize, disclose or communicate any information concerning any matters relating to the underlying dispute, the communications between the parties, and the terms of this Agreement, to any person or organization other than that party's spouse, blood relative, partner, attorney or accountant and further agree to retain in confidence all such matters.

o) The Parties acknowledge that if either party defaults concerning the terms of this Agreement, the non-breaching party shall have the right to pursue any and all remedies available at law, including but not limited to Attorney Fees.

p) This Agreement shall be construed in accordance with the laws of the State of Indiana.

IN WITNESS WHEREOF, this Settlement Agreement, General Release, and Waiver is executed as of the date stated below.

MILLER BEACH INVESTMENTS, LLC

By: [Signature]
Date: 7/26/10

By: [Signature]
Date: Harvey H. Gibbs 07-17-2010

By: [Signature]
Date: Maria Gibbs 07/18/2010

APPROVED AS TO FORM:

By: [Signature]
John R. Craig, Esq.
CRAIG & WARD, LLC
Counsel for Miller Beach Investments, LLC
Date: 8/18/2010

APPROVED AS TO FORM:

By: [Signature]
Joseph C. Svetanoff, Esq.
AUSTGEN KUIPER & ASSOC., P.C.
Counsel for Harvey H. & Maria Gibbs
Date: 07/19/2010

SO ORDERED this _____ day of _____, 2010.

Filed in Open Court
AUG 28 2010
RECEIVED
AUG 27 2010

[Signature] 8/26/10
Hon. John R. Pera, Lake Superior Court-Civil Division

[Signature] MBI / [Signature] GIBBS

Lake County, IN

