

13. **CITY ATTORNEY'S REPORT**

- a. **RESOLUTION NO. 08-045 APPROVING AND AUTHORIZING THE EXECUTION OF THE SETTLEMENT AGREEMENT IN THE CASE OF ADRIEN ROTHSCHILD AND JORDAN FAIRMAN VS. KENNETH E. PFALZER, INDIVIDUALLY, AND THE CITY OF SANIBEL, DAVID GOMBERG AND FRANCINE GOMBERG, CASE NO. 2:06-CV-446-FTM-29DNF, FILED IN THE UNITED STATES DISTRICT COURT, MIDDLE DISTRICT OF FLORIDA, FORT MYERS DIVISION; AND PROVIDING AN EFFECTIVE DATE**

CITY OF SANIBEL

RESOLUTION NO. 08-045

A RESOLUTION APPROVING AND AUTHORIZING THE EXECUTION OF THE SETTLEMENT AGREEMENT IN THE CASE OF ADRIEN ROTHSCHILD AND JORDAN FAIRMAN VS. KENNETH E. PFALZER, INDIVIDUALLY, AND THE CITY OF SANIBEL, DAVID GOMBERG AND FRANCINE GOMBERG, CASE NO. 2:06-CV-446-FTM-29DNF, FILED IN THE UNITED STATES DISTRICT COURT, MIDDLE DISTRICT OF FLORIDA, FORT MYERS DIVISION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, both Plaintiffs and Defendants in the above-named lawsuit filed in the United States District Court, Middle District of Florida, Fort Myers Division, agreed upon a mutually acceptable Settlement Agreement and mutual Release to settle any and all claims, counterclaims, cross-claims or any other claims of any nature whatsoever at the Court ordered Mediation held on December 6, 2007 by and between the parties;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Sanibel, Florida, that:

SECTION 1. The City Council hereby approves and authorizes the settlement of the case of Adrien Rothschild and Jordan Fairman vs. Kenneth E. Pfalzer, individually, and the City of Sanibel, David Gomberg and Francine Gomberg, Case No. 2:06-cv-446-FtM-29DNF, by means of a Settlement Agreement and mutual Release attached hereto and incorporated herein as Exhibit "A". The Mayor is hereby authorized to execute such Settlement Agreement and mutual Release on behalf of the City Council.

SECTION 2. Effective date.

This resolution shall take effect immediately upon adoption.

DULY PASSED AND ENACTED by the Council of the City of Sanibel, Florida, this 18th day of March, 2008.

AUTHENTICATION:

Mick Denham, Mayor

Pamela Smith, City Clerk

APPROVED AS TO FORM:

Kenneth B. Cuyler 3/11/08
Kenneth B. Cuyler, City Attorney Date

Vote of Council Members:

Denham _____
Johnston _____
Jennings _____
Pappas _____
Ruane _____

Date filed with City Clerk: _____

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

ADRIEN ROTHSCHILD and JORDAN
FAIRMAN,
Plaintiffs

vs.

CASE NO. 2:06-cv-446-FtM-29DNF

KENNETH E. PFALZER, individually
and THE CITY OF SANIBEL, DAVID
GOMBERG and FRANCINE GOMBERG,

Defendants

SETTLEMENT AGREEMENT

PART I

This is a Settlement Agreement among ADRIEN ROTHSCHILD (ROTHSCHILD), JORDAN FAIRMAN (FAIRMAN), KENNETH PFALZER (PFALZER) and THE CITY OF SANIBEL, FLORIDA (CITY), reached following a mediation of this case conducted on December 6, 2007; the purpose and intent of which is to settle any and all claims, counterclaims, cross-claims or any other claims of any nature whatsoever among and between ROTHSCHILD, FAIRMAN, PFALZER and CITY, which either have been asserted in, or which could have been asserted in this or any other action and arising from the following events:

- The review by Kenneth Pfalzer of Development Permit No. 01-100 (GOMBERG – 421 Raintree Place) and the report of such review contained in his memorandum of August 9, 2002.

EXHIBIT "A"

- The Request for a Variance to LDC Section 126-394 (Uplands Wetlands Zone) submitted by David and Francine Gomberg (identified as Application No. 02-1429-V) and the subsequent construction of a residence by the Gombergs pursuant to the variance and permits issued by the City of Sanibel.
- The review of application No. 02-1429-V by staff of the CITY, the preparation of the Planning Department Staff Report and the presentation made in testimony given by staff of the CITY before the City's Planning and Zoning Commission.
- The action of the CITY'S Planning and Zoning Commission in hearing Application No. 02-1429-V, making findings of fact thereon and approving said application through adoption of Resolution 02-22 on October 8, 2002.
- The action of the City Council in hearing the appeal of Application No. 02-1429-V and denying the appeal, through adoption of Resolution 02-124 on November 19, 2002.
- The filing in the Circuit Court of the Twentieth Judicial Circuit in and for Lee County of that certain action styled FAYE MATTHEWS, STEVEN MAXWELL, JORDAN FAIRMAN and ADRIEN ROTHSCHILD, plaintiffs versus CITY OF SANIBEL, PLANNING COMMISSION, CITY COUNCIL, CITY ATTORNEY KEN CUYLER, PLANNING DIRECTOR, BRUCE RODGERS, ASSISTANT PLANNING DIRECTOR KEN PFALZER, DAVID and FRANCINE GOMBERG, Attorney for applicant, BEVERLY GRADY, Surveyor WALT FRASIER, defendants, Case No. 02-13281-CA JSC and any appeals therefrom.
- The filing in the Circuit Court of the Twentieth Judicial Circuit in and for Lee County of that certain action styled STEVEN MAXWELL, KATHRYN T.

MAXWELL, husband and wife, JORDAN FAIRMAN and ADRIEN ROTHSCHILD, husband and wife, ROXANE OLEVSKY and PAUL DIBENEDETTO, husband and wife, and FAYE MATTHEWS, plaintiffs versus THE CITY OF SANIBEL, Case No. 03-CA 3506 and any appeals therefrom.

- The investigation conducted by the Office of the State Attorney of the Twentieth Judicial Circuit of Florida and identified as File ECU02-695.
- The investigation conducted by the Lee County Sheriff's Office in response to a call for service in reference to Incident/Offense Report No. 03-186341 (a/k/a LCSO CR#03-186341) and SAO Warrant Request #813196, including any documentation involving, and/or any statements or testimony by, any of the parties to this Settlement Agreement.
- The filing in the Circuit Court of the Twentieth Judicial Circuit in and for Lee County of that certain action styled ADRIEN ROTHSCHILD and JORDAN FAIRMAN, plaintiffs versus KENNETH E. PFALZER, individually and THE CITY OF SANIBEL, DAVID GOMBERG AND FRANCINE GOMBERG, defendants, Case No. 06 CA 3310 (subsequently removed to United States District Court for the Middle District of Florida (Fort Myers Division)).

PART II

ADRIEN ROTHSCHILD and JORDAN FAIRMAN agree, acknowledge and admit that, following extensive investigation by the Office of the State Attorney of the Twentieth Judicial Circuit and by the Lee County Sheriff's office, and discovery conducted in the civil actions identified above:

- There is no evidence that KENNETH PFALZER or any other City personnel committed, attempted to commit or aided or abetted the commission of, or attempt to commit, the offenses of perjury when not in an official proceeding (§837.012 *Fla. Stat.*); perjury in an official proceeding (§837.02 *Fla. Stat.*); making a false official statement (§837.06 *Fla. Stat.*); or official misconduct (§838.022 *Fla. Stat.*), as described in that certain Affidavit of Det. Thomas A. Kontinos dated June 4, 2004;
- There is no evidence that KENNETH PFALZER or any other City personnel engaged in any wrongdoing whatsoever, including but not limited to, tampering with, inserting, removing or altering in any way any City documents or records, in connection with the events described more fully in Section 1 above;
- There is no evidence that the ingress/egress easement leading northerly from Raintree Place, as more fully identified at O.R. Book 3083, Page 0044-0045 and O.R. Book 3590, Page 1668-1669 (hereafter "the ingress/egress easement") was ever intended to be a road, was ever used as a road or was ever regarded by the property owners (GOMBERGS, FAIRMAN and ROTHSCHILD) as a road;

- KENNETH PFALZER and all CITY staff members acted in good faith with respect to the events identified in Part I above and did not violate any constitutional, statutory or common law rights enjoyed by ADRIEN ROTHSCHILD and JORDAN FAIRMAN or any duties which may have been owed to them:

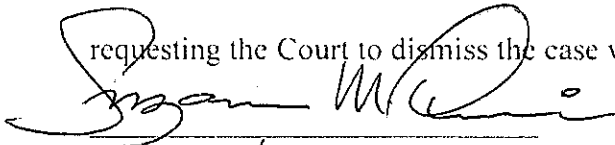
PART III

ROTHSCHILD, FAIRMAN, PFALZER and CITY shall execute and exchange a Release in the form attached hereto as Exhibit A.

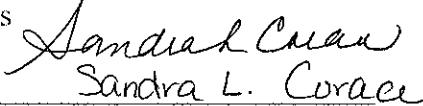
PART IV

Upon completion of all other Parts of this settlement agreement, a Joint Stipulation for Dismissal with Prejudice, executed by the attorneys of record will be filed with the Court, indicating that all parties will bear their own attorney's fees and costs and

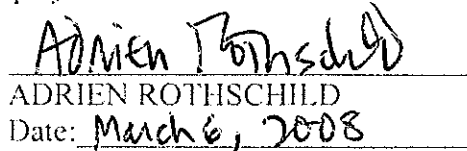
requesting the Court to dismiss the case with prejudice.

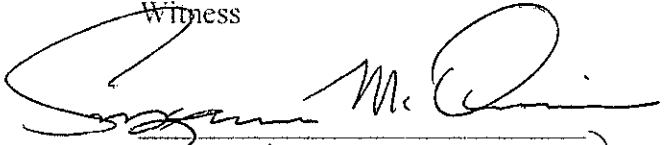


Witness

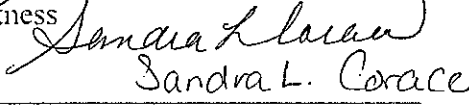

Sandra L. Corace

Witness


ADRIEN ROTHSCHILD
Date: March 6, 2008

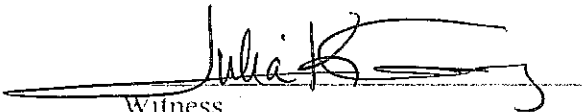


Witness

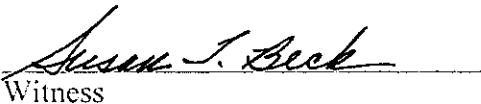

Sandra L. Corace

Witness

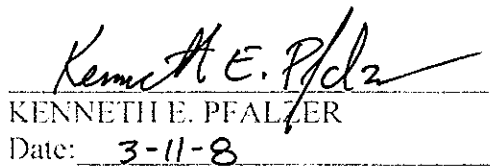

JORDAN FAIRMAN
Date: 3/6/08



Witness


Susan J. Beck

Witness


KENNETH E. PFALZER
Date: 3-11-8

THE CITY OF SANIBEL

By: _____

Date: _____

Witness

Witness

RELEASE

The parties hereto, for and in consideration of the mutual covenants and agreements described in that certain Settlement Agreement of even date herewith, same being incorporated herein by reference, for themselves and for their respective successors and assigns, hereby remise, release, acquit, waive, satisfy and forever discharge one another and one another's respective officers, directors, shareholders, members, employees, agents, servants, representatives and insurers, and the respective personal representatives, heirs, successors and assigns of all of them, of and from all, and all manner of action and actions, cause and causes of action, suits, debts, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, guarantees, warranties (whether express or implied, and whether based on statute, common law or otherwise), third-party claims, variances, trespasses, damages, judgments, executions, claims and demands whatsoever, which either has or may have against the other, whether arising in tort, by contract, by virtue of statute, or otherwise, and whether in law or in equity (hereinafter referred to collectively as "Claims"), regardless of whether the same are known or unknown, accrued or not yet accrued, matured or not yet matured, to include all claims of future injuries, losses or damages not now known or anticipated but which may later develop or be discovered, including all of the effects and consequences thereof, provided the Claims arise out of or relate in any way to:

- The review by Kenneth Pfalzer of Development Permit No. 01-100 (GOMBERG – 421 Raintree Place) and the report of such review contained in his memorandum

EXHIBIT A

of August 9, 2002.

- The Request for a Variance to LDC Section 126-394 (Uplands Wetlands Zone) submitted by David and Francine Gomberg (identified as Application No. 02-1429-V).
- The review of application No. 02-1429-V by staff of the CITY, the preparation of the Planning Department Staff Report and the presentation made in testimony given by staff of the CITY before the City's Planning and Zoning Commission.
- The action of the CITY'S Planning and Zoning Commission in hearing Application No. 02-1429-V, making findings of fact thereon and approving said application through adoption of Resolution 02-22 on October 8, 2002.
- The action of the City Council in hearing the appeal of Application No. 02-1429-V and denying the appeal, through adoption of Resolution 02-124 on November 19, 2002.
- The filing in the Circuit Court of the Twentieth Judicial Circuit in and for Lee County of that certain action styled FAYE MATTHEWS, STEVEN MAXWELL, JORDAN FAIRMAN and ADRIEN ROTHSCHILD, plaintiffs versus CITY OF SANIBEL, PLANNING COMMISSION, CITY COUNCIL, CITY ATTORNEY KEN CUYLER, PLANNING DIRECTOR, BRUCE RODGERS, ASSISTANT PLANNING DIRECTOR KEN PFALZER, DAVID and FRANCINE GOMBERG, Attorney for applicant, BEVERLY GRADY, Surveyor WALT FRASIER, defendants, Case No. 02-13281-CA JSC and any appeals therefrom.

- The filing in the Circuit Court of the Twentieth Judicial Circuit in and for Lee County of that certain action styled STEVEN MAXWELL, KATHRYN T. MAXWELL, husband and wife, JORDAN FAIRMAN and ADRIEN ROTHSCHILD, husband and wife, ROXANE OLEVSKY and PAUL DIBENEDETTO, husband and wife, and FAYE MATTHEWS, plaintiffs versus THE CITY OF SANIBEL, Case No. 03-CA 3506 and any appeals therefrom.
- The investigation conducted by the Office of the State Attorney of the Twentieth Judicial Circuit of Florida and identified as File ECU02-695.
- The investigation conducted by the Lee County Sheriff's Office in response to a call for service in reference to Incident/Offense Report No. 03-186341 (a/k/a LCSO CR#03-186341) and SAO Warrant Request #813196, including any documentation involving, and/or any statements or testimony by, any of the parties to this Settlement Agreement.
- The filing in the Circuit Court of the Twentieth Judicial Circuit in and for Lee County of that certain action styled ADRIEN ROTHSCHILD and JORDAN FAIRMAN, plaintiffs versus KENNETH E. PFALZER, individually and THE CITY OF SANIBEL, DAVID GOMBERG AND FRANCINE GOMBERG, defendants, Case No. 06 CA 3310 (subsequently removed to United States District Court for the Middle District of Florida (Fort Myers Division)).

ROTHSCHILD and FAIRMAN understand and acknowledge that the CITY and PFALZER deny any liability, fault or wrongdoing whatsoever in connection with the matters alleged in the complaint and any amended complaints filed by ROTHSCHILD and FAIRMAN in this action; that the CITY and PFALZER have

entered into this release upon the advice of their counsel in the sole interest of avoiding the expense and inconvenience of litigation and not out of any fear or apprehension of an unfavorable result at trial; that the settlement of this action by the CITY and PFALZER is not an admission of liability; and that the sole purpose of the CITY and PFALZER in settling this case is to resolve and compromise a disputed claim which ROTHSCHILD and FAIRMAN have against the CITY and PFALZER and for which the CITY and PFALZER have denied and still deny liability.

ROTHSCHILD and FAIRMAN represent that they have not filed any additional complaints or charges against the CITY or PFALZER in any local, state or federal court or agency arising out of or based upon the events described in their complaint and any amended complaints which they have filed in this action. Alternatively, they agree that if they have filed such a complaint or charges against the CITY or PFALZER, or if any person or entity has brought such a complaint, charge, claim or action on their behalf, they hereby waive and forfeit any right they have to recover damages, benefits, compensation, costs or fees under such complaint, charge, claim or action, and they will cooperate fully and in good faith with the CITY or PFALZER or the representatives or insurers of the CITY or PFALZER to have any such complaint, charge, claim or action dismissed.

ROTHSCHILD and FAIRMAN acknowledge that they have not been influenced or coerced in any manner or to any extent to execute this release by any representations or statements of the CITY or PFALZER or the representatives of or attorneys for the CITY or PFALZER regarding the damages which ROTHSCHILD and FAIRMAN may have sustained or regarding any other matters in connection with this lawsuit.

ROTHSCHILD and FAIRMAN acknowledge that they have voluntarily executed this release.

ROTHSCHILD and FAIRMAN acknowledge that they have had the benefit and advice of legal counsel which they retained in deciding to settle this matter and execute this agreement. ROTHSCCHILD and FAIRMAN fully understand the terms of this release, and they understand that this release will establish and create a full and final settlement of all claims of every nature and character against the CITY and PFALZER.

ROTHSCHILD and FAIRMAN affirmatively represent that they are eighteen years of age or older or otherwise legally emancipated, and they suffer from no legal disabilities or mental or physical disability which would affect, disable or prevent the valid and legally binding execution of this release. ROTHSCCHILD and FAIRMAN affirmatively represent that they have not taken any drug or medication prior to executing this release which would prevent them from understanding the terms of this release.

This agreement fully and completely expresses the entire agreement and understandings and agreements between the parties with respect to the subject matter of this agreement are merged into this agreement. This agreement may not be orally amended, modified or changed. Any amendment, modification or change of this agreement must be by written instrument executed by the parties hereto.

ROTHSCHILD and FAIRMAN agree to direct their attorneys of record to dismiss with prejudice the civil action now pending in the United States District Court for the Middle District of Florida, entitled Adrien Rothschild, et al. vs. Kenneth Pfalzer, et al., Case No. 2:06-cv-446-FtM-29DNF, it being the intent of this Release to forever acquit, release and discharge the CITY and PFALZER in that certain action of and from

all claims and demands of every kind and nature set forth in the Complaint and any Amended Complaints filed in the cause. Furthermore, ROTHSCHILD and FAIRMAN agree that they will be responsible for their own costs and attorney's fees in such action. All contracts, agreements and/or understandings between or among the parties are hereby cancelled, released, terminated, and of no further force or effect. This Release excludes the obligations arising out of the Settlement Agreement.

Suzanne M. Quinn

Witness

Sandra L. Corace
Sandra L. Corace

Adrien Rothschild

ADRIEN ROTHSCCHILD

Date: March 6, 2008

Suzanne M. Quinn

Witness

Sandra L. Corace
Sandra L. Corace

Jordan Fairman

JORDAN FAIRMAN

Date: 3/6/08

Julia K...

Witness

Kenneth E. Pfalter

KENNETH E. PFALTER

Date: 3-11-8

Susan J. Beck

Witness

THE CITY OF SANIBEL

By: _____

Date: _____

Witness

Witness