

SETTLEMENT AGREEMENT

This Agreement is between Carisch Brothers LP ("Plaintiff"), a limited partnership organized and existing under the laws of the State of Minnesota and registered and authorized to conduct business in the State of Wisconsin, and the City of Waukesha, Wisconsin (the "City"), a municipal corporation organized and existing under the laws of the State of Wisconsin.

1. Definitions. In this Agreement:

(a) The "Property" means the land and improvements located at 2330 E. Moreland Road, Tax Parcel No. WAKC1130116, within the City.

(b) "Case" means the action pending in the circuit court for Waukesha County, Wisconsin titled *Carisch Brothers LP v. City of Waukesha*, Case No. 16-CV-1294.

(c) "Court" means the Circuit Court for Waukesha County.

(d) A "tax year" means a year in which an assessment is made as of January 1, with taxes based on the assessment payable in the year following the tax year.

2. Refund of Taxes. The total assessed value of the Property for the tax year 2015 shall be \$840,000, including land and improvements. The City shall issue a refund payable to Reinhart Boerner Van Deuren S.C. Trust Account, or to another account designated by Plaintiff in writing, pursuant to Wis. Stat. § 74.37, in the amount of \$556.01 for 2015 as a refund of property taxes previously paid by or billed to Plaintiff based on the property tax assessments of the Property for the tax year 2015. The parties agree that no portion of this amount constitutes interest.

3. 2016 Assessment. The parties agree that the 2016 assessment of the Property will reflect an assessed value not to exceed \$840,000. In the event the 2016 assessment exceeds this amount, then Plaintiff shall have the right to file a claim for refund for any taxes paid with respect to the 2016 assessment of the Property in excess of \$840,000 and the City shall grant any such claim for refund.

4. Waiver of Costs. Each party waives all claims for costs.

5. Time of Payments. The City shall pay the refund of taxes for the 2015 tax year in full, as provided in Section 2 of this Agreement, within 30 days of the date this Agreement is signed by both parties.

6. Stipulation for Dismissal. No later than ten days after Plaintiff receives payment in full of the refund of taxes provided in section 2 of this Agreement, the parties shall (a) enter into a stipulation, attached hereto as Exhibit A, signed by their respective attorneys, for the dismissal of the Case (including, but not limited to, all claims asserted in the Complaint in the Case) on the merits, with prejudice, and without costs to either party; and (b) file the stipulation with the Court.

7. Responsibility for Fees and Expenses of Attorneys and Experts. Each party shall be solely responsible for the fees of its attorneys and experts.

8. No Representations. Each party acknowledges and agrees that no representation or promise not expressly contained in this Agreement has been made by the opposing party or any of its employees, attorneys, agents, or representatives. Each party acknowledges that it is not entering into this Agreement on the basis of any such representation or promise, express or implied.

9. Binding on Successors. This Agreement shall be binding upon and inure to the benefit of each of the parties and their respective heirs, successors, and assigns.

10. Governing Law. This Agreement shall be governed and interpreted by the laws of the State of Wisconsin.

11. Interpretation of Agreement. The parties acknowledge that this Agreement is the product of joint negotiations. If any dispute arises concerning the interpretation of this Agreement: (a) neither party shall be deemed the drafter of this Agreement for purposes of its interpretation; and (b) the parties shall attempt in good faith to resolve the dispute. The parties agree that the Court retains jurisdiction to enforce this Agreement and that a party may ask the Court to enforce this Agreement by filing a motion in the Case and serving the same on the other party.

12. Representation By Counsel; Reliance. Each party acknowledges that it has been represented throughout all negotiations leading up to this Agreement by attorneys of its choice and that its attorneys have approved this Agreement. Each party represents that in entering into this Agreement, the party has relied on its own judgment and on the advice of its attorneys, and that no statements or representations made by the other party or any of its agents, except statements or representations expressly made in this Agreement, have influenced or induced the party to sign this Agreement.

13. No Assignment or Transfer. Plaintiff represents and warrants that it has not assigned or transferred to anyone and will not assign or transfer to anyone any of the claims in the Case.

14. Entire Agreement. This Agreement states and constitutes the entire agreement of the parties concerning its subject matter and supersedes all prior or contemporaneous agreements (written or oral), representations, negotiations, and discussions concerning its subject matter, including but not limited to, all agreements (written or oral), representations, negotiations, and discussions made in the course of mediation of the Case.

15. Use of this Agreement. This Agreement shall not be filed with the Court in this Case or in any other case or proceeding, except for the purpose of enforcing this Agreement. This Agreement and any part of this Agreement shall not be admissible in the lawsuit or in any future judicial or administrative proceeding and shall not be offered as evidence or presented by any Party in the Lawsuit or any future judicial or administrative proceeding, except for the purpose of enforcing this Agreement.

16. No Admissions of Liability or Concerning Assessments or Fair Market Value. This Agreement is the settlement of disputed claims. By entering into this Agreement, the City does not admit any liability to Plaintiff for any of the claims asserted in the Case or Plaintiff objections to the assessments, and the payments made under this Agreement shall not be construed as an admission of any such liability. Except as explicitly provided herein, neither Party makes an admission about the assessments or the fair market value of the Property as of January 1, 2015 or any other date nor any other admission concerning the assessment of Plaintiff property. In addition, none of the agreed upon values or assessments as of January 1, 2015 shall be admissible in any proceeding or assessment challenge in any subsequent year.

17. Waiver. No waiver of any breach of this Agreement shall be deemed a continuing waiver of that breach or a waiver of any other breach of this Agreement.

18. Amendments or Modifications. This Agreement may not be amended, modified or altered in any manner whatsoever, except by a further written agreement duly authorized and signed by the parties.

19. Authorization to Sign Agreement. Each person signing this Agreement on behalf of either party represents and warrants that the person holds the position indicated beneath the person's signature and that the person has the requisite corporate or other authority to sign this Agreement on behalf of the party. Each party represents that entry into this Agreement is not in contravention of any agreement or undertaking to which the party is bound.

20. Reading of Agreement. Each person signing this Agreement on behalf of either party acknowledges that the person has read this Agreement, that the person understands the terms and conditions of this Agreement, that the person (if other than an attorney for the party) has been advised by legal counsel concerning this Agreement, and that the person freely and voluntarily signs this Agreement.

Dated: _____, 2016.

CARISCH BROTHERS LP

BY: Reinhart Boerner Van Deuren s.c.
22 East Mifflin Street, Suite 600
Madison, WI 53703

Don M. Millis
State Bar ID 1015755
Jessica Hutson Polakowski
State Bar ID 1061368

Dated: _____, 2016.

APPROVED AS TO FORM

BY: Schober Schober & Mitchell, S.C.
2835 S. Moorland Rd.
New Berlin, WI 53151

John M. Bruce
State Bar ID No. 1005232

Dated: _____, 2016.

CITY OF WAUKESHA

By:

EXHIBIT A

STATE OF WISCONSIN

CIRCUIT COURT
CIVIL DIVISION, BRANCH 12

WAUKESHA COUNTY

CARISCH BROTHERS LP,

Plaintiff,

v.

Case No. 16-CV-1294
Money Judgment - 30301

CITY OF WAUKESHA,

Defendant.

STIPULATION AND ORDER FOR DISMISSAL

IT IS STIPULATED by the parties, through their respective counsel, as follows:

1. This action involves Carisch Brothers LP ("Plaintiff") and the City of Waukesha's (the "City's") assessment of the land and improvements located at 2330 E. Moreland Road, within the City and are identified in the City's records as Tax Parcel No. WAKC1130116 (the "Property").

2. This action shall be dismissed with prejudice and without costs and fees to any party.

3. The parties have entered into a separate Settlement Agreement resolving, among other things, the claims raised in this action. The Court shall retain jurisdiction and competency over this matter in order to enforce this Stipulation or the Settlement Agreement. Any party may reopen this matter by motion to this Court in the event of a violation or alleged violation of this Stipulation or of the Settlement Agreement.

IT IS FURTHER STIPULATED that an Order to this effect may be entered without further notice to either party.

Dated: _____, 2016.

CARISCH BROTHERS LP

BY: Reinhart Boerner Van Deuren s.c
22 East Mifflin Street, Suite 600
Madison, WI 53703

Don M. Millis
State Bar ID No. 1015755
Jessica Hutson Polakowski
State Bar ID 1061368

Dated: _____, 2016.

CITY OF WAUKESHA

BY: Schober Schober & Mitchell, S.C.
2835 S. Moorland Rd.
New Berlin, WI 53151

John M. Bruce
State Bar ID No. 1005232

ORDER

Based upon the foregoing Stipulation and upon the pleadings on file with the Court,

IT IS HEREBY ORDERED that the above-entitled action, including all claims that were asserted or that could have been asserted, is hereby dismissed in its entirety upon its merits, with prejudice and without costs to any party.

Dated this ____ day of _____, 2016.

BY THE COURT:

Honorable Kathryn W. Foster
Circuit Court Judge
Branch 12

35191380