

IN THE IOWA DISTRICT COURT FOR LINN COUNTY

VONDELL PRIME, ROCKY WICHER)
MICHELLE LUTENSKE, and JOYCE)
DAVIS, on behalf of themselves and) CASE NO. LACV091106
all persons similarly situated,)
Plaintiffs,)
v.) SETTLEMENT AGREEMENT
C.R. FIVE SEASONS, LLC, MHPI)
FINANCE, INC., C.R. FIVE SEASONS)
PROPERTY LLC, and UNIVERSAL)
UTILITIES)
Defendants.)

This settlement agreement (“Agreement”) memorializes in further detail the Memorandum of Understanding dated March 7, 2019, by and between Vondell Prime, Rocky Wicher, Michelle Lutenske and Joyce Davis, on behalf of themselves and all persons similarly situated (collectively “Plaintiffs”); C.R. Five Seasons, LLC, C.R. Five Seasons Property LLC d/b/a Five Seasons Mobile Home Community (collectively “Five Seasons”), MHPI Finance, Inc. (“MHPI”), and Universal Utilities, Inc. (“Universal”). Five Seasons, MHPI and Universal are collectively referred to herein as “Defendants.”

1. Background. The above-captioned Action alleges violations of IOWA CODE § 537.7101, Ch. 714H, Ch. 562A and Ch. 562B as more fully set forth in the Class Action Petition and Jury Demand filed herein on September 4, 2018 (“Petition”), which, along with the filed Answers thereto, are incorporated by reference for further background. Subsequent to the Petition, Plaintiffs also asserted that one or more Defendants violated § 562B.31 by unlawfully entering mobile home lots at Five Seasons. The Parties dispute facts, law and liability in this matter but desire to settle the disputes pursuant to the terms herein.

2. Settlement Class Certifications. Solely for the purposes of settlement, the Parties stipulate that the requirements for certification of the following three classes under I. R. CIV. P. 1.261 *et seq.* are satisfied and they should be certified:

- a. **Class A:** Residents who were a party to lease for a lot (by any name) at Five Seasons Manufactured Home Community between March 31, 2016, and April 1, 2019 (512 members).
- b. **Class B:** Residents at Five Seasons Manufactured Home Community who made one or more payments to Universal or Five Seasons for any sewer charges, and any other charges billed along with sewer charges between March 31, 2016 and April 1, 2019 (approximately 414 members).

- c. **Class C:** Residents at Five Seasons Manufactured Home Community who were Parties to a Lease with Option to Purchase Mobile Home with either MHPI or Five Seasons prior to April 1, 2019 (109 members).

3. Settlement Class Representatives. Solely for the purposes of settlement, the Parties stipulate to Vondell Prime, Rocky Wicher, Michelle Lutenske and Joyce Davis being appointed as settlement class representatives and that the requirements of I. R. CIV. P. 1.262(2)(c) are satisfied.

4. Settlement Class Counsel. Solely for the purposes of settlement, the Parties stipulate to the appointment of Brady Preston Gronlund PC as Settlement Class Counsel.

5. Settlement Fund. Five Seasons and MHPI shall collectively pay \$250,000 and Universal shall pay \$140,000 for a total amount of \$390,000 (“Settlement Fund”) into a discrete Distribution Account established and maintained by the Settlement Administrator within 60 days of preliminary Court approval of this Agreement and receipt of a W-9 for the Distribution Account. The funds will be held in the Distribution Account pending Court approval and distribution of the funds as described in this Agreement. If the Court denies final approval of this Agreement or a final approval is appealed, the Settlement Fund shall be returned to the Defendants pro-rata to contribution within 7 days of such event.

6. Settlement Administrator. The “Settlement Administrator” shall be Class-Settlement.com. All costs of the Settlement Administrator shall be paid by Five Seasons and Universal equally (50% each). All Notices, checks and other mailings by the Settlement Administrator to Class Members shall be by USPS first class mail. Individuals who are members of more than one class may be sent a single Notice and may be sent a single check for the total amount due provided that it can be done with accuracy and sufficient accounting, and without creating tax complications.

7. Notice.

a. Data. Within 10 days after the Court enters preliminary class certification and approval of this Agreement, Five Seasons and Universal shall jointly provide the Settlement Administrator the name and mailing address of all members in the three classes. The Settlement Administrator shall within 10 days of receipt of the name and mailing address of all members in the three classes, complete a search the National Change of Address Registry (NCAO) for a current address of the Class Member.

b. Round 1. Within 30 days after the Court enters preliminary class certification and approval of this Agreement, the Settlement Administrator shall mail all Class Member a notice that substantially conforms to Attachment A (“Notice”), which is incorporated by reference. The Settlement Administrator will promptly re-mail any notices returned by the postal service with a forwarding address and update its records accordingly. The deadline for postmark of any request for exclusion shall be 30 days before the Final Fairness Hearing. The mailings shall request return service for addresses that are no longer valid.

c. Round 2. If there are Class Members whose round 1 Notice are returned as undeliverable within 30 days after delivery attempt, the Settlement Administrator shall conduct an additional skip trace for a valid address; the settlement administrator will provide Five Seasons with a list of those Class Members for whom the skip trace did not yield an updated address within 35 days after the Round 1 delivery attempt; Five Season shall then manually review the tenant file for those members for additional written contact information such as an email, or alternative postal address and provide that information to the Settlement Administrator for use in a final attempt at delivering the Notice, which shall be sent no more than 75 days after the preliminary approval of this Agreement.

d. Misc. information. Throughout the above process, the Settlement Administrator will send the Notice to any Class Members whose address becomes known through other means such as a report from another Class Member.

e. Reporting. After each of the above notice rounds, the Settlement Administrator shall provide the Parties with a summary of Class Members whose Notices were and were not returned as un-deliverable, and who have chosen to be excluded from the settlement.

8. Payments.

a. Calculation. No less than 10 days before the Final Fairness Hearing, the Settlement Administrator shall provide the Parties a certified list, in a native Excel format, of:

i. Class Members in each class for whom the Settlement Administrator reasonably believes it has valid addresses for mailing checks and who have not made a valid request to be excluded from the class (“Payment Eligible Members”), and a calculation of the amount due to each using the below methodology; and

ii. Class Members in each class who made a request for exclusion along with a determination of whether each exclusion request was determined to be valid.

b. Member Payment. Within seven business days of the Effective Date, the Settlement Administrator will mail checks to the Class Members as follows.

i. Enhancement payments for their time and effort expended in connection with this Action: \$2,000 each to Vondell Prime, Rocky Wicher, Michelle Lutenske, and Joyce Davis for a total of \$8,000.

ii. Class A: \$60,000, divided equally among Payment Eligible Members. Payments made to this class are compensation for any alleged unlawful property entry to install water meters or otherwise (§562B.31 claims) and all other Released Claims (defined below) that are not expressly addressed by Class B and Class C claims.

iii. Class B: \$160,000, divided among each Payment Eligible Member prorated to amounts each actually paid for sewer and related charges. Payments made to this class are

intended to reimburse Class Members for any payments of charges associated with sewer billings that are alleged to be a violation of Ch. 714H, Ch. 562A or Ch. 562B.

iv. Class C: \$12,000, divided equally among the Payment Eligible Members. Payments made to this class are intended to compensate class members for Leases with Options to Purchase that are alleged to have a term prohibited by Ch. 562A.

c. Cy pres funding. The settlement checks issued will be valid for 90 days after issuance. One hundred and twenty days after issuance of the last check, funds for any checks that have not been cashed will be paid to HACAP in Linn County, Iowa with directions that the funds be applied to its homelessness initiative <http://www.hacap.org/what-we-do/homelessness/>.

d. Attorney Fees. The remaining \$150,000 of the Settlement Fund will be paid to Brady Preston Gronlund PC for all attorneys' fees, expenses and costs it incurred in connection with this Action subject to approval by the Court under such terms as the Court deems appropriate.

9. Prospective Relief. Solely for the purposes of settlement, the Parties stipulate to the following:

a. Meters will remain in use for sewer service billing at Five Seasons under the following terms:

i. Five Seasons and Universal shall charge no more than the actual CCF rate then being charged by the City of Cedar Rapids for sewer costs, which is \$2.02 as of the date of this agreement and which may vary from time to time;

ii. The daily charge, a flat fee billed to each tenant per month, shall remain at \$1.49 until at least January 1, 2022, and thereafter, the charge may change to the extent permitted by IOWA CODE § 562A.16(2) provided that advance full disclosure of the nature and purpose of the charges is made to tenants;

iii. United's service fee shall be reduced from \$5.01 to \$4.00 per month and shall remain at that amount until at least January 1, 2022; and

iv. Universal may continue to charge an account set up fee for new tenants in the amount of \$10.

v. Nothing herein affects Five Seasons' right to make adjustments to rent amounts in accordance with Iowa law.

b. Defendants retain all rights under the law, however, no Defendant shall retaliate in any way against any Class Member by taking action against a Class Member because of the Action. "Retaliate" means to take action that is substantially motivated by animus over the Action, as opposed to enforcement of Defendants' rights arising out other issues.

c. Five Seasons and Universal will forgive all outstanding and unpaid charges related to sewerage billings to Class Members incurred before the date of this Agreement. In addition, Five Seasons and Universal shall refrain from communicating to any third party, including but not limited to any creditor or entity seeking a reference for any tenant, that any Class Member had outstanding unpaid charges relating to sewerage billings once forgiven, and will upon request of any Class Member inform such third party that the Class Member's balance for sewerage related charges is \$0 as of the March 2019 billing cycle.

d. Simmons Perrine Moyer Bergman PLC, counsel for Five Seasons, has drafted a new lease for future use at Five Seasons Manufactured Home Community. Brady Preston Gronlund PC, as counsel for the Class Members, has reviewed and provided input on the new lease, but by doing so has not undertaken responsibility to ensure the lease conforms to Iowa law and that responsibility shall remain solely with Five Seasons. Claims for existing lot leases or leases with option to purchase mobile home that have terms asserted to be violation of Ch. 562A or 562B are fully, finally, and forever released through this Agreement; nevertheless, Five Seasons agrees to issue new rules and regulations confirming that lease terms regarding attorney fees and costs shifting, limitation of landlord's liability and responsibility for maintenance inconsistent with law, and other misc. terms are not part of the applicable leases.

e. Five Seasons and Universal may continue their existing contract per its terms.

f. Class Counsel shall notify the Consumer Protection Division of Iowa Attorney General's office that this matter is satisfactorily resolved in its entirety.

10. Release.

a. Upon the Effective Date of this settlement, the Releasing Parties: (i) shall be deemed to have, and by operation of the final judgment approving this Agreement, shall have, fully, finally, and forever waived, released, relinquished, and discharged all Released Claims against Released Defendants regardless of whether such Class Member receives or cashes an award check; (ii) shall forever be enjoined from prosecuting any Released Claim against any Released Defendant; and (iii) agree and covenant not to sue any Released Defendant on the basis of any Released Claims or to assist any third party in commencing or maintaining any lawsuit related to any Released Claims.

b. "Releasing Parties" means the Representative Plaintiffs and each and every member of Class A, Class B and Class C who has not expressly elected to be excluded from the settlement, as well each of their respective heirs, assigns, beneficiaries, and successors, and any other person claiming through or on behalf of them.

c. "Released Defendants" means C.R. Five Seasons, LLC, C.R. Five Seasons Property LLC, Five Seasons Mobile Home Community, MHPI Finance, Inc., Universal Utilities, Inc., as well as each of their present, former, and future corporate parents, subsidiaries, divisions, affiliates, predecessors, successors and assigns, and the present, former, and future directors, officers, employees, principals, investors, agents, insurers, shareholders, attorneys, advisors,

consultants, representatives, partners, joint venturers, independent contractors, wholesalers, resellers, distributors, retailers, predecessors, successors, and assigns of each of the forgoing.

d. “Released Claims” means all actions, claims, debts, demands, causes of action and rights and liability whatsoever, at law or in equity, matured or unmatured, foreseen or unforeseen, known or unknown, contingent or certain, suspected or unsuspected, direct, derivative, and consequential, whether class or individual in nature, that arise from or are related in any way to any factual or legal matter raised in the Petition or other pleadings in this Action and any claims of property entry in violation of § 562B.31 or that could have been included as a class claim in the Action based on any practice involving Universal or based on an alleged illegal term in any lease at Five Seasons or lease with option to purchase mobile home with Five Seasons or MHPI. This full and final release shall cover and shall include and does cover and does include any and all known or future damages not now known to any of the Parties hereto, but which may later develop or be discovered, including the effects and consequences thereof, including all causes of action that arise out of the same facts that were alleged in this Action, or that could have been included as a class claim in the Action, based on any practice involving Universal or based on an alleged illegal term in any lease at Five Seasons or lease with option to purchase mobile home with Five Seasons or MHPI or any claims of property entry in violation of § 562B.31.

e. “Effective Date” means the date when all of the following events have occurred: (i) the District Court enters an order of final approval and judgment approving this Agreement; (ii) the deadline has expired for the filing of any post-judgment motion to alter or amend the judgment or, if such motion is filed, the adjudication of the motion results in approval of this Agreement in entirety; and (iii) the deadline for filing an appeal has expired or, if an appeal is filed, the final adjudication of the appeal (include any further review) results in final affirmation of this Agreement.

11. Further District Court Proceedings.

a. Preliminary Hearing. Plaintiffs’ Counsel will file an unopposed motion to approve this Agreement, with the Agreement attached thereto.

b. Fairness Hearing. The Final Fairness Hearing should be scheduled at least 160 days after the entry of order preliminarily approving this Agreement and certifying the Settlement Classes to ensure that the notices can be thoughtfully administered. No later than 10 days before the Final Fairness Hearing, the Class Counsel will file: i) a Motion for the Entry of a Final Order and Judgment Approving this Agreement and a Proposed Order together with any necessary brief in support of the Motion; and ii) a separate Motion seeking the District Court’s approval of all reasonable attorneys’ fees, costs and expense incurred in connection with the Action in the total amount of \$150,000, to be paid out of the Settlement Funds, along with all necessary supporting documentation.

c. Stay. All docket deadlines and proceedings in this Action will be stayed pending a final order approving this Agreement, except as may be necessary to implement the settlement or comply with the terms of this Agreement. Pending final determination of whether this

Agreement should be finally approved, the Parties agree not to pursue any claims or defenses otherwise available to them.

12. Court Approval. This Agreement is contingent on the District Court's preliminary and final approval in entirety.

i. If the District Court fails to issue preliminary or final approval of this Agreement in entirety or a final approval is overturned on appeal, this entire Agreement is voidable by Defendants, and if voided: the Action will revert to its status as of the date and time immediately prior to the execution of this Agreement; Defendants expressly reserve the right to object to and contest all matters in this Action, including but not limited to class certification; and anything said or done pursuant to this Agreement, or as part of negotiations leading hereto, shall not be used in any other proceeding for any purpose.

ii. If, however, the Court approves all parts of this Agreement except the amount to be paid to the Representative Plaintiffs as enhancement or Class Counsel's attorneys' fees, costs, and expenses, the remaining provisions of this Agreement will remain in full force and effect, subject to adjustment made to the allocation of payments made out of the Settlement Fund, but Defendants will have no further liability to pay into the settlement fund beyond the above stated \$390,000.

13. Other Material Terms.

a. No admission. The Parties all acknowledge that this Agreement is a compromise of disputed claims, which are unique to Five Seasons Mobile Home Community. This Agreement does not constitute an admission by Defendants of any fact, liability, culpability, negligence, breach, or wrongdoing of any kind, all of which continue to be denied by Defendants. The Defendants enter into this Agreement solely to buy peace and avoid the further expenses of litigation, and it may not be used as evidence except to enforce the Agreement herein.

b. No further liability. Except as provided otherwise in this Agreement, Defendants shall have no role in, or responsibility for, the administration of the settlement and shall have no liability to Representative Plaintiffs, any Settlement Class Member, or any other person in connection with, as a result of, or arising out of such administration. Defendants shall have no responsibility for and no liability whatsoever with respect to any payment of attorneys' fees or expenses to Class Counsel or enhancement awards to Representative Plaintiffs beyond the above stated Settlement Fund. Defendants bear no responsibility for taxes or other assessment, if any, on amounts received pursuant to this Agreement by Representative Plaintiffs, Settlement Class Members, the Settlement Administrator, and Class Counsel.

c. No publication. Class Counsel agrees that it will not use any Released Defendant's name in any promotional or similar material addressing this Action or otherwise make any publication of a Released Defendant's name that is not necessary for purposes of completing administration of this Agreement. Notwithstanding anything in this subparagraph to the contrary, Class Counsel is entitled, until the Effective Date, to post on Class Counsel's

website, bpglegal.com, the Notice, this Agreement, all pleadings identified in paragraph 11 of this Agreement, and a link to all items related to this Action/Agreement that are contained on class-settlement.com.

d. Dismissal. Upon entry of the final order approving this Agreement, the Action will be dismissed with prejudice, subject to the continuing jurisdiction to oversee the settlement administration.

e. Iowa law. This Agreement will be construed, enforced, and administered in accordance with the laws of the State of Iowa.

f. Binding nature. This Agreement is binding upon and inures to the benefit of Releasing Parties and Released Defendants and their respective heirs, trustees, executors, administrators, successors, and assigns. Representative Plaintiffs acknowledge that Defendants cannot force a subsequent purchaser and/or manager of the property to comply with any obligations under this Agreement concerning leases used at Five Season, and that Defendants are not responsible under this Agreement for the leases used by any subsequent purchaser and/or manager of Five Seasons, and any subsequent purchaser and/or manager shall not be bound by the obligations under this Agreement.

g. Integration. This Agreement constitutes the entire agreement between the Parties with respect to the settlement of this Action. This Agreement supersedes all prior negotiations and agreements and no provision hereof may be modified, amended, terminated, or waived except by a document in writing signed by Representative Plaintiffs, Defendants, and their respective counsel.

h. Signatures. This Agreement may be executed in counterparts. A scanned, faxed or electronic copy of a signature shall have the same effect as an original signature.

i. Cooperation. The Parties agree to fully cooperate with each other to accomplish the terms and purposes of this Agreement, including but not limited to execution of such documents and taking such other action as reasonably may be necessary to implement the terms herein. The Parties shall use their best efforts to effectuate this Agreement.

j. Interpretation. This Agreement was reached through exchanges between counsel of factual and legal arguments and then a day long mediation presided over by Former Iowa Supreme Court Justice Michael Streit that occurred on March 7, 2019. The particular terms and conditions of this Agreement are the result of lengthy, intensive, arms-length negotiations between the Parties and that this Agreement shall not be construed in favor of or against any Party by reason of the extent to which any Party or his/her counsel participated in the drafting of this Agreement. Headings and shorthand references are for convenience only and shall not have independent legal meaning unless defined.

[Signatures on next page]

Agreed:

REPRESENTATIVE PLAINTIFFS	DEFENDANTS
<u>Vondell Prime</u> <u>4-18-19</u> Vondell Prime Date	C.R. FIVE SEASONS, LLC,
<u>Rocky Wicher</u> <u>4-18-19</u> Rocky Wicher Date	By: _____ Justin Pounder Date
<u>Michelle Lutenske</u> <u>4-18-19</u> Michelle Lutenske Date	C.R. FIVE SEASONS PROPERTY LLC d/b/a Five Seasons Mobile Home Community
<u>Joyce Davis</u> <u>4/19/19</u> Joyce Davis Date	By: _____ Justin Pounder Date
CLASS COUNSEL	MHPI FINANCE, INC.
BRADY PRESTON GRONLUND PC	By: _____ Justin Pounder Date
By: <u>Matthew Preston</u> <u>4-25-19</u> Matthew Preston Date	UNIVERSAL UTILITIES, INC.
	By: _____ Greg Popilek Date
	DEFENSE COUNSEL (Approval of form)
	_____ Philip A. Burian Date for Five Seasons and MHPI
	_____ James Nervig for Universal Date

Agreed:

REPRESENTATIVE PLAINTIFFS	DEFENDANTS
_____ Vondell Prime	C.R. FIVE SEASONS, LLC,
Date	By: <u>Justin S. Pounder</u> 4-16-19 Justin Pounder Date
_____ Rocky Wicher	C.R. FIVE SEASONS PROPERTY LLC d/b/a Five Seasons Mobile Home Community
Date	By: <u>Justin S. Pounder</u> 4-16-19 Justin Pounder Date
_____ Michelle Lutenske	MHPI FINANCE, INC.
Date	By: <u>Justin S. Pounder</u> 4-16-19 Justin Pounder Date
_____ Joyce Davis	UNIVERSAL UTILITIES, INC.
Date	By: <u>Greg Popilek</u> 4-25-19 Greg Popilek Date
CLASS COUNSEL	DEFENSE COUNSEL (Approval of form)
BRADY PRESTON GRONLUND PC	<u>Philip A. Burian</u> 4/16/19 Philip A. Burian Date for Five Seasons and MHPI
By: _____ Matthew Preston	<u>James Nervig</u> 4-25-19 James Nervig for Universal Date
Date	

Exhibit A