

IN THE DISTRICT COURT OF JOHNSON COUNTY, KANSAS
CIVIL COURT DEPARTMENT

HUNTER'S RIDGE HOMES ASSOCIATION, INC.,)

Plaintiff,)

v.)

FOXBOROUGH HOMES ASSOCIATION, INC.,)

Defendant.)

) Case No. 96C6566

) Court No. 7

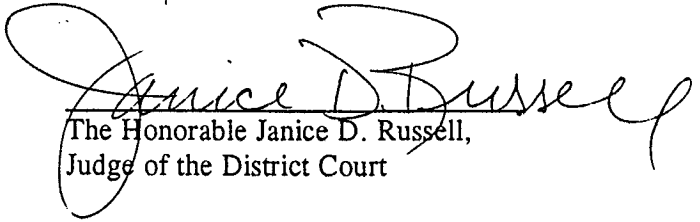
) Chapter 60

JOURNAL ENTRY

NOW on this 19th day of May, 1998, the above captioned matter comes on regularly for hearing. Plaintiff, Hunter's Ridge Homes Association, Inc., appears by and through counsel, G. Peter Bunn, III for the firm of Ferree, Bunn & O'Grady, Chartered. Defendant, Foxborough Homes Association, Inc., appears by and through counsel, Joy D. Hays for the firm of Holbrook, Heaven & Fay, P.A.

The Court, upon hearing statements of counsel, and being otherwise fully advised in the premises finds that the parties have entered into a Stipulated Agreement, which is filed contemporaneously herewith, settling and compromising the dispute existing between them, all as set forth in the petition and responsive pleadings filed in this action.

The parties' rights and responsibilities concerning the dispute set forth in Plaintiff's petition and responsive pleadings filed thereto shall be controlled by the Stipulated Agreement. The parties stipulate and agree that this action, however, shall be, and hereby is, dismissed with prejudice.

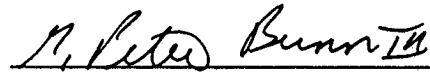

The Honorable Janice D. Russell,
Judge of the District Court

CLERK OF DISTRICT COURT
JOHNSON COUNTY, KS

98 MAY 20 AM 8:00

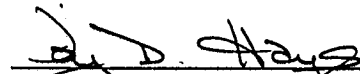
SUBMITTED AND APPROVED BY:

FERREE, BUNN & O'GRADY, CHARTERED



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STIPULATED AGREEMENT

THIS AGREEMENT is made and entered into this 13th day of November, 1997, by and between Hunter's Ridge Homes Association, Inc., (hereinafter referred to as "Hunter's Ridge"), and Foxborough Homes Association, Inc., (hereinafter referred to as "Foxborough").

WITNESSETH:

WHEREAS, the parties hereto are involved in a dispute relative to the use of a swimming pool located on Foxborough's property; and

WHEREAS, as a result of that dispute, Hunter's Ridge filed the above captioned lawsuit asking the Court to determine Hunter's Ridge rights in the use of the said swimming pool; and

WHEREAS, it is the desire of the parties, by execution of this Agreement, to settle and determine the rights of the parties, together with any and all other rights or claims the parties might have against each other arising out of the use of the swimming pool; and

WHEREAS, each party has counseled with their attorney, and have been advised by counsel relative to the matters set forth and agreed upon in this Agreement, having been fully advised of the facts and circumstances.

NOW, THEREFORE, each of the parties hereto, for, and in consideration of the mutual promises, covenants and agreements herein made and contained, and in further consideration of the acts to be performed hereunder, consent and agree with one another as follows:

1. Use of Pool. Hunter's Ridge and Foxborough residents shall each have the right to the use of the swimming pool designated as the Foxborough Swim Club tract (according to the recorded plat thereof), under the terms and conditions as set forth below.

2. Cost. Foxborough agrees to make capital improvements to the pool consisting of copping wading pool and resurfacing both pools, repair east wall of pumps house, repair and recondition furniture, improve landscaping, and tuck point the stone columns around the pool, with a cost of approximately Thirteen Thousand Nine Hundred Eighty and No/100 Dollars (\$13,980.00). Any additional capital, or maintenance costs, in excess of this amount, will be shared on a pro rata basis of thirty percent (30%) for Foxborough, and seventy percent (70%) for Hunter's Ridge. In addition to capital improvements, the expenses of running and maintaining the pool in the future shall also be shared on a pro rata basis of thirty percent (30%) for Foxborough, and seventy percent (70%) for Hunter's Ridge.

3. Lifeguard. It is agreed by the parties that a lifeguard will be necessary due to the increase in the use of the pool. The cost for a lifeguard will be added to the budget, and split by Foxborough and Hunter's Ridge in the same manner as provided in paragraph 2., above.

4. Maintenance of "Pool and Grounds". The area to be considered "pool grounds" and included in the pool operations budget will be the area north of the sidewalk, which runs generally east and west on the south side of the pool and parking lot. Where the sidewalk turns north, an imaginary extension to State Line Road will be used as the dividing point. Each year Foxborough and Hunter's Ridge will obtain bids for maintenance of the pool grounds, including mowing, lawn chemicals, tree maintenance, lawn sprinkler care, etc. These bids shall be from reputable companies, operating as full-time entities in this type of work. The bids shall include all items that are currently being maintained in the manner currently maintained in this area, in accordance with Foxborough specifications. If the two (2) bids are within five percent (5%) of each other, Foxborough may, in its discretion, choose either

bidding company. If the two (2) bids vary by more than five percent (5%), Foxborough and Hunter's Ridge will seek a bid from a mutually agreed upon third party. Foxborough may then choose any of the three (3) companies, provided, however, that if Foxborough chooses a bid higher than the average of the three (3) bids, Foxborough will pay the amount over and above the average bid of the three (3) companies, and the average bid will be the amount included in that year's budget for proration purposes between the parties. Arrangements will be made to meter the water used for the pool and pool grounds separately from the other Foxborough common areas. Only the cost for pool and pool grounds' water will be part of the pool operating expenses/budget and paid for on a pro rata basis, as outlined above. The initial cost for installation of separate meters will be shared, as well, on a pro rata basis, as outlined above. Final approval of the service contracts, and all cost expenditures for pool operations shall be in the discretion of Foxborough, subject to the terms of this agreement regarding pool grounds maintenance bids and costs.

5. Pool Operations Budget. Foxborough's treasurer shall prepare a reasonable and good faith budget for all pool operations, and shall submit same to the Hunter's Ridge Treasurer on or before October 1 of each calendar year. This reasonable and good faith budget shall be for purposes of allowing Hunter's Ridge to submit at its annual meeting the additional assessment necessary to meet the budget for all pool operations as related to Hunter's Ridge's obligations under the terms of this Agreement. By September 15 of each calendar year, both Foxborough and Hunter's Ridge shall obtain pool grounds' bids pursuant to paragraph 4 herein, for submission to Foxborough's treasurer to prepare an annual budget for the following year. If a third pool grounds' bid is needed, it shall be obtained by the parties no later than October 1 of that year. A final budget shall then be established by February 1 of each calendar year.

6. Hunter's Ridge Payment of Pro Rata Share. Hunter's Ridge shall pay its pro rata share of the final pool operations budget to Foxborough each calendar year in the following manner: One-half

(1/2) by March 15 and one-half (1/2) by April 1 of each calendar year, beginning in the calendar year 1998. If at the end of any calendar year there is a credit balance in the pool fund, those monies shall be credited against the next year's upcoming budget. Debit amounts would also be handled in the same fashion. In the event Hunter's Ridge notifies Foxborough in writing of its intent to cease using the pool, or fails to make either of the one-half (1/2) payments as required herein, then Foxborough shall be entitled to any overpayment of any annual budgeted amount from the prior year, and shall likewise be responsible for any underpayment of any annual budgeted amount from the prior year.

7. Forfeiture of Right to Use Pool for Non-payment. In the event Hunter's Ridge has failed to pay either or both of the one-half (1/2) payments comprising its pro rata share of the pool budget as set forth in paragraph 6., above, then Hunter's Ridge shall, and automatically does, forfeit its right for any of its residents to use the pool. Pursuant to paragraph 12, Foxborough agrees to give Hunter's Ridge written notice of Hunter's Ridge failure to pay its pro rata share when due, and Hunter's Ridge shall have ten (10) days from the date of such notice of non-payment in which to make said payment(s) current. Failure to make such payment(s) current shall work an automatic forfeiture of Hunter's Ridge right to use the pool, as described above. Upon such forfeiture, Hunter's Ridge shall be entitled to the return of any one-half (1/2) payment described in paragraph 6, if such was paid by Hunter's Ridge prior to the start of the then current pool season. Such repayment shall be made not later than May 15 of any calendar year. *sum ant*

8. Settlement Contingency. This Stipulated Agreement is contingent upon Hunter's Ridge successfully amending its Declaration of Restrictions to allow for assessment of its residents in order to pay the pro rata share of the pool budget, and to provide for forfeiture of rights to use the pool as set forth above. Failure of Hunter's Ridge to amend its Declaration of Restrictions shall cause this Agreement to be null and void.

9. Dismissal of Lawsuit. Hunter's Ridge agrees to dismiss with prejudice its pending lawsuit

as captioned above within thirty (30) days of satisfaction of the settlement contingency contained in paragraph 8 herein.

10. Pool Committee. A pool committee will be formed, consisting of two (2) residents from each subdivision. The pool committee will determine the pool rules, provided, however, that in no event shall the pool remain open after 9:00 o'clock p.m., Sunday through Thursday, and 10:00 o'clock p.m., Friday and Saturday without unanimous consent of the pool committee. If the pool committee cannot agree as to any rule, other than closing time, binding arbitration will take place to settle the issue, with the expense of arbitration to be shared equally between the parties.

11. Waiver of Breach. Any waiver of a breach of this Agreement shall not be deemed a waiver of any subsequent breach.

12. Notices. All notices pursuant to this Stipulated Agreement shall be deemed sufficient if sent by certified mail to the registered agent listed with the Kansas Secretary of State, and by hand delivery to the then current President of the parties.

13. Memorandum of Agreement. Either party may record a memorandum of this Stipulated Agreement with the Johnson County Register of Deeds to notify the public of this Agreement, and final resolution of claims regarding use of the Foxborough swimming pool and related real property and improvements.

14. Submission to Court. The parties agree to submit this Stipulated Agreement to the Court, and to request that the Court enter its Orders in accordance with the terms and provisions herein.

15. Authority of Signatory. Each party agrees that the person executing this document on behalf of each respective homes association has full and complete authority to enter into such Agreement, and to bind their Association accordingly.

16. Laws of Kansas. This Agreement, together with all of the provisions thereof, and including all exhibits, if any, shall be interpreted under the laws of the State of Kansas.

IN WITNESS WHEREOF, the parties have hereunto subscribe their names and executed this Agreement the date and year first above written.

FOXBOROUGH HOME ASSOCIATION, INC.

BY: Jack Irish 11/13/97
Jack Irish, President

HUNTER'S RIDGE HOMES ASSOCIATION, INC.

BY: James Hix 11/13/97
James Hix, President

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