

CAUSE NO. 12-00921

WIMBERLY SPRINGS PARTNERS, LTD.	§	IN THE DISTRICT COURT OF
	§	
v.	§	HAYS COUNTY, TEXAS
	§	
WOODCREEK PROPERTY OWNERS ASSOCIATION OF HAYS COUNTY, INC., SALLY CALDWELL, SUE CSEJKA, JANELLE DELANEY, MERRY MERIAN, DIANE SUSAN PURCELL, GLYNN SCHANEN AND LIZ SUMTER	§	428th JUDICIAL DISTRICT
<i>Defendants</i>	§	

**RULE 11 AGREEMENT
BETWEEN WOODCREEK PROPERTY OWNERS ASSOCIATION OF HAYS
COUNTY, INC. AND WIMBERLY SPRINGS PARTNERS, LTD.**

Woodcreek Property Owners Association of Hays County, Inc. (“WPOA”) and Wimberley Springs Partners, Ltd. (“WSP”) hereby release each other from any obligation that may otherwise exist among them to maintain attached Exhibit A as privileged or confidential.

Exhibit A includes a document entitled “Memorandum Settlement Agreement between Wimberley Springs Partners (WSP), Wimberley Springs Community Association (WSCA) and Woodcreek Property Owners Association (WPOA)”. The settlement offer was proposed by the then WPOA board on or about May 30, 2013.

WPOA and WSP agree that each of them may disclose Exhibit A in whole or part to i) any other party or respondent to this litigation, ii) any party or respondent in other litigation in which WPOA or WSP are party, iii) any party or respondent in litigation in which WPOA or WSP may become party or respondent to in the future, and iv) any other person. Furthermore, WPOA and WSP are each free to disclose Exhibit A in whole or part without further consent from each other and without obligation to disclose to each other that such a disclosure is being contemplated, that such a disclosure has been made, or to whom such a disclosure is being contemplated or has been made. WPOA and WSP agree that consent to this Agreement is not intended: i) to waive any notice to each other otherwise imposed by law or the Texas Rules of Civil Procedure, nor ii) to preclude opposing parties from objecting to the admissibility of the document in legal proceedings under Tex. R. Evid. 408.

For Wimberley Springs Partners, Ltd.


Phillip Schmandt

Date

April 25 2014

McGINNIS, LOCHRIDGE & KILGORE, L.L.P.

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Attorney for Wimberley Springs Partners, Ltd.

For Woodcreek Property Owners Association of Hays County, Inc.



April 14, 2014

William D. Davis

Date

DAVIS & ASSOCIATES

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Attorney for Woodcreek Property Owners Association of Hays County, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served in accordance with Rules 21 and 21a of the Texas Rules of Civil Procedure on May 13, 2014 as follows:

Attorneys for Wimberley Springs Partners, Ltd.

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and Defendants Elizabeth Sumter, Merry Merian, Sue Csejka, Diane Susan Purcell,
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Csejka, Diane Purcell, and Janelle Delaney*

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William D. Davis

EXHIBIT A

HENSLEE SCHWARTZ^{LLP}

ATTORNEYS AT LAW

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FACSIMILE

May 30, 2013

TO: Phillip Schmandt FAX#: (512) 495-6093

PHONE #:

FROM: George J. Petras IV PHONE #: (512) 708-1804

C/M #: 08125-13 WPOA

COMMENTS/DESCRIPTION OF DOCUMENTS:

TOTAL NUMBER OF PAGES, INCLUDING THE COVER PAGE: 7

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HENSLEE SCHWARTZ_{LLP}

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George J. Petras IV
Partner
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May 30, 2013

**PRIVILEGED AND CONFIDENTIAL SETTLEMENT COMMUNICATION PURSUANT
TO TEX. R. EVID. 408**

VIA FACSIMILE: (512) 495-6093

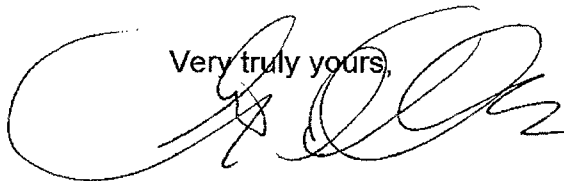
Phillip H. Schmandt
McGinnis, Lochridge & Kilgore, LLP
600 Congress Avenue, Suite 2100
Austin, Texas 78701

Re: Cause Number 12-0921; *Wimberley Springs Partners, Ltd. v. Woodcreek Property Owners Association of Hays County, Inc., Sally Caldwell, Sue Csejka, Janelle Delaney, Merry Merian, Susan Diane Purcell, Glynn Schanen, and Liz Sumter*; In the 428th Judicial District Court of Hays County, Texas.

Dear Phillip:

In furtherance of the April 17, 2013 mediation of these matters, enclosed please find the settlement proposal on behalf of the WPOA and the individual Defendants sued by WSP. May we please have your response? Thank you.

Very truly yours,



George J. Petras IV

GJP/lm
Enclosure
08125-13 Opc.ltr 053013.doc

Phillip Schmandt
May 30, 2013
Page 2

cc: **VIA E-MAIL: david@junkinlawoffice.com**
David Junkin
Attorney at Law
15401 RR 12, Suite 105
P.O. Box 2910
Wimberley, Texas 78676

Memorandum Settlement Agreement between Wimberley Springs Partners (WSP), Wimberley Springs Community Association (WSCA) and Woodcreek Property Owners Association (WPOA)

1. WSP shall pay the WPOA \$92,507.00 in full satisfaction of the 2011, 2012 and 2013 assessments for lots owned by WSP. Such payment will be made by June 14, 2013 and the WPOA will release all liens against WSP lots through December 31, 2013.
2. In 2014 and, each year going forward, WSP will pay its maintenance fees by January 31st of each year for all lots owned in accordance with the 2008 Settlement Agreement for lots that are listed in the 1987 Settlement Agreement and the amount specified in applicable deed restrictions, as amended, for all other lots owned by the WSP in the WPOA sections. Once a lot is sold or otherwise transferred, the maintenance fee shall be the amount specified in the applicable deed restrictions, as amended. If WSP fails to timely and fully pay the maintenance fees, WPOA may, at its discretion, bring suit using expedited foreclosure procedures and WSP waives any objection to that procedure.
3. Section 11 and 22 elections stand as long as the WSCA/WSP agree not to amend its deed restrictions to permit commercial uses on existing single family home lots. This does not apply to any land that is not currently subdivided or identified in the deed restrictions and/or plat as a single family lot (ie: green belt, golf course, etc.). This will not be construed to prohibit golf course, parks trails or similar recreational uses on such lots. A restaurant, club and golf pro shop are the only permissible commercial or uses on existing platted lots, but cannot be operated within 300 feet of the nearest WPOA section boundary.
4. The parties agree that prior approval of the Architectural Control Committee is required and that the elections can be conducted on a section by section basis. The WPOA appointed ACC Committee will grant approval within 30 of a written request for an election if the same restrictions under item 3 apply and the proposed restrictions are substantially similar to prior forms of supplemental declaration. Any dispute on this issue (substantial similarity) shall be submitted to the election administrator for determination.
5. If the WPOA appointed ACC Committee does not approve the amendment to the restrictions, then the WSCA may go to the Election Administrator for a final determination.

6. Any deed restriction changes going forward must be in accordance with the deed restrictions. The deed restriction amendment language in Sections 11 and 22 and sections with substantially similar language provide for one vote per lot.
7. WSCA and WPOA will share information about deed restriction violations that adversely affect property owners in adjoining WPOA sections and will enforce deed restrictions within their own jurisdictions. Disputes about the timeliness or lack of enforcement of the deed restrictions shall be submitted to arbitration by the person or entity selected under item 8 below and arbitrated in an expedited manner.
8. All future elections by the WPOA and WSC will be conducted as required by the deed restrictions and the Texas Property Code. For elections to adopt WSCA deed restrictions, a mutually agreed upon lawyer that conducts elections for Property Owners Associations or is experienced in HOA law will be chosen to conduct and serve as the "Election Administrator." At the request of either WPOA or WSP, a new Election Administrator shall be selected after each such election. The Election Administrator cannot be affiliated with either association. If the parties cannot agree on an Election Administrator, the Election Administrator shall be selected by a Hays County District Judge.
9. In any election to adopt the WSCA deed restrictions, owners of at least 50% of the lots must submit a written request (which may be in a format of a petition) for an election to be held to the Election Administrator with a cover/notification letter to the WPOA. The Election Administrator will send a letter to the WPOA certifying that the petition meets the 50% criteria as explained above and using the owner list in paragraph 10 below within 10 days of receipt of such list.
10. The WPOA within 30 days after notification of certification by the election administrator per paragraph 9, will submit a list of property owners in that section from the Hays County Appraisal District. If the WPOA fails to send the HCAD list within 30 days, then WSCA may submit the HCAD list and the Election Administrator may rely on it exclusively.
11. The Election Administrator shall distribute ballots per deed restrictions, which may include mailing by first class mail. The Election Administrator shall collect and count ballots pursuant to the deed restrictions and Texas Property Code and make final determination on all issues, with both parties waiving any right to object (except to the Election Administrator), sue or seek injunctive relief. Electronic of paper ballots shall be permitted, the choice being with the property owners.

12. WSP shall pay the fees of the Election Administrator.
13. Any future dispute involving one or more of WSP and WSCA, on the one side, and the WPOA, on the other side, or the interpretation of this agreement, shall be resolved by expedited arbitration proceedings of the AAA before a single arbitrator, with the arbitration taking place in San Marcos, Texas or other location agreed by the parties or determined by the arbitrator. There shall be no discovery unless otherwise determined by the arbitrator and the arbitrator shall make its determination solely on the basis of written submissions of the parties, unless the arbitrator determines that a hearing is necessary.
14. The WPOA and/or ACC waives objections to withdrawals and past actions of the WSP and/or WSCA for Sections 11, 12, 13, 14, 16, 17, 19, 22, 23, and 25. However, this waiver is not an admission by the WPOA that the removal elections were conducted properly or in accordance with the Texas Property Code and the applicable deed restrictions.
15. The WSP, WSCA will be paid \$90,000.00 on or before June 14, 2013. Any money paid to WSP, WSCA in connection with this settlement must be used on main roads shared by WPOA, WSP, and WSCA property owners.
16. The lawsuits filed against individual WPOA board of directors will be resolved by way of take nothing judgments. In addition, Fred Merian, Merry Merian, Sally Caldwell, Glynn Schanen, Sue Csjecka, Diane Purcell, and Liz Sumter will receive a transferrable lifetime fully paid membership to the golf course and neither they or their family members will ever be banned for political or retaliatory reasons from playing golf on the course. Any dispute about the nature of any ban from use of the golf course shall be submitted to the Election Administrator.
17. The lawsuit filed against Janelle Delaney will also be resolved by way of a take nothing judgment. WSP and WSCA shall cease and desist efforts to have Janelle Delaney fired and will receive a transferrable lifetime fully paid membership to the golf course and will never be banned for political or retaliatory reasons from playing golf on the course. Any dispute about the nature of any ban from use of the golf course shall be submitted to the Election Administrator.
18. All pending lawsuits shall be dismissed with prejudice.
19. A mutually agreed upon press release will be crafted by the parties. Both sides agree to speak positively about each other, not claim victory for one association or another

and confirm that the agreement is a good thing for both sides and that in the future a mechanism is being put in place for cooperation and resolving disputes among the two associations. Further, disparaging comments or harassment of board members or employees will stop immediately among both associations.

20. The Rule 11 Agreement dated December 11, 2008, to the extent inconsistent with this agreement, is replaced by this agreement. Specifically, the second and third sentences of paragraph 1, the first sentence of paragraph 7, and paragraph 9 of the December 11, 2008 Rule 11 Settlement Agreement are replaced by this agreement.