

SADDLE RIDGE ASSOCIATION, LTD, et. al, )  
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 )  
 Plaintiffs, )  
 )  
 -v- )  
 )  
 WAJBAC AND TADWILL, LIMITED, et. al. )  
 )  
 Defendants, )

95CV124

STIPULATION FOR THE CONDITIONAL DISMISSAL OF THE LAWSUIT  
 AND LIS PENDENS

FILED  
APR - 2 1995

The parties have agreed to the following:

I. Water System Upgrade and Management

A. Within two weeks of this agreement, SRE and SRA will set up an interest bearing account for the specific purpose of managing the water system improvement project. The accruing interest on the money deposited by WT will be credited to WT. The account shall be debited for the water system improvements on a pro rata basis between the 50% deposited by WT and the 50% contributed by SRE, SRA, SLV and FSW. Upon completion of the project, the parties shall either be refunded funds remaining or billed for additional amounts as the case may be, on a pro rata basis. WT may audit expenditures.

B. WT to pay \$112,500 into the account within two weeks of the date of this agreement.

C. SRE, SRA, SLV\* and FSW shall pay 50% of estimated project cost (projected to be \$112,500). This sum will be raised by assessment. \*(or WT acting on its behalf, as they may determine)

D. Alternate C will be implemented unless all parties agree that a better alternative is in the best interest of both parties.

E. WT will turn over to Pharis Horton all records regarding construction and maintenance of the water system within two weeks of this agreement including any information regarding governmental approval of any part of the system. *this has been done*

F. Responsibility for implementing water system upgrade is

the sole responsibility of SRE and SRA and is to be accomplished in a reasonably expeditious manner, the goal being to implement the system as early in the 1996 construction season as feasible.

- G. The engineers retained by SRE and SRA shall re-certify that the system, upon completion of upgrades, is capable of serving the equivalent of 100 additional units.
- H. WT will provide to SRE and SRA, in advance of any hook ups to the water system, a notice of intent to hook up which shall include a certification by WT's engineer that the planned hook up meets appropriate engineering standards, a copy of the plan showing the exact location of the planned hook up and all associated piping and any governmental approvals of the extension as required by law.
- I. SRE and SRA to provide a proposed redrafted water agreement to WT within two weeks of this agreement.
- J. WT agrees to pay one half of SRE's and SRA's actual out of pocket expenses for overseeing implementation of the water system improvement project.

## II. Roads Upgrade and Maintenance

- A. For the purpose of this agreement, roads are defined as the main roads in the development and exclude cul de sacs. WT and SRE and SRA agree that the main roads total approximately 11,600 linear feet.
- B. SRE and SRA (and the other association, depending upon the creation of a road management agreement) will set up an account for the specific purpose of managing the road improvement project. WT will pay \$95,000 into the fund pursuant to the terms at Section XIII.
- C. Responsibility for implementation of the road improvements shall be the sole responsibility of SRE and SRA (and the other associations, depending upon the creation of a road management agreement).
- D. After completion of all road improvements, or at an earlier time to be mutually agreed upon by the parties, WT shall deed the roads to the associations managing the roads by quit claim deed and without further consideration.
- E. Any party responsible for damage to the roads shall pay to the associations with responsibility for road management the costs for all repairs to the road.

necessitated by such damage.

- F. **Golf course** contribution to road maintenance shall be **\$500 per annum** to be paid on each October 1 for that year to the associations with responsibility for managing the roads,

### III. Sewer Extension

- A. **Costs** of building the sewer extension shall be allocated **based upon Residential Equivalency Units ("REUs")** which shall include participating associations, authorized, but **uncompleted units totalling (111 or 112) units and the golf course club house.**
- B. General Engineering will be designated as the engineer of preference for the sewer project. General Engineering will produce a detailed construction cost estimate and the cost of doing so shall be considered project costs.
- C. **WT shall have the right to have its own engineer review the construction cost report at WT's expense.**
- D. After review of the construction cost report, WT and the participating associations will mutually agree upon a method and time frame for implementing the project.\*
- E. Upon reasonable notice WT may audit sewer expenditures.

~~F. A flow meter to be installed at sewer intersection below the lift station.~~

\* which shall include appropriate means for measuring and isolating flow discrepancies.

### IV. City Hook Up Fee Negotiation

- A. WT and the participating associations shall cooperate in negotiating a **hook up fee with the City of Portage.**

### V. Hook Up Fee Negotiation With Saddle Ridge Estates

- A. The following shall be recommended to SRE for approval by the SRE Association members: Hook up fees to participating associations and the authorized but unbuilt units shall be **\$1,900** per hook up. Simple interest at the rate of eight percent shall be added to this figure commencing upon June 1, 1996. SRE shall be under no duty to share any proceeds obtained from hook ups to the four mile section of the sewer line located outside the boundaries of the development.

### VI. Sewer Laterals

- A. ~~Each~~ **unit owners shall each bear the cost** of installing

and hooking up their own necessary laterals and related improvements.

VII. Fees On Declared But Unbuilt Units

- A. All past fees are released and satisfied. No future assessments will be levied except upon built units as provided in the declarations.

VIII. Land Transfers Related to Septic Fields

- A. WT will, in good faith, seek to accommodate the needs of SRA for replacement septic fields via temporary easements such as that entered into for parcel P, bearing in mind the projected availability of sewer service.
- B. WT and the associations will, in good faith, negotiate toward the selection of a site for a community center to be built and maintained by the associations.

IX. Septic Removal

- A. Removal or abandonment is the responsibility of the owner of the land upon which the tank is located.

X. Mechanism For Additional Units

- A. Nothing in this agreement is intended to prohibit WT from developing any units originally declared. However, construction of any units beyond those presently declared or authorized requires approval from the board of the entity(s) charged with management of the affected systems or facilities. Such approval may be made under certain conditions such as 1) that the proposed construction will not adversely impact the water system, sewer system or roads, or 2) to the extent that the proposed construction does negatively impact either the water system, sewer system or the roads, the developing party has the duty of negating the negative impact at its cost and to the reasonable satisfaction of the managing entity(s).

*means beyond 100*

- B. The party seeking approval of such development shall supply preconstruction notice including appropriate and detailed plans of the proposed development to the entity(s) managing potentially affected systems or facilities. A response shall be made within forty-five days of receipt of notice. In the event the proposed construction is not approved, the managing entity(s) shall provide detailed objections. Approval of the proposed development will not be unreasonably withheld. In the event that the proposing party receives no response within forty-five days, the proposed

construction shall be deemed approved.

- C. The Associations or any other entity is similarly required to provide notice to the managing entity(s) and the developer of proposed construction, and shall obtain approval by the procedure set forth in X(B).

XI. Encroachments/Easements

- A. Pharis Horton to review quit claim deeds easements and approve same.

XII. Necessary Amendments to Condo Documents

- A. Water Agreement: see item I(I) above.

\* what is this?

B. SRE and SRA agree to cooperate in modifying the condominium documents to alter unit configuration within SRE and SRA provided square footage and percent of ownership remain as originally declared, and to require assessments to fund the payments required of SRE and SRA in the agreement.

- C. Consider formation of a master association.

- D. Consider structure for entities responsible for operation of water, sewer and road systems.

where are these to be?

- E. SRE and SRA agrees, respectively, that WT may construct residential housing on the 21 declared but unbuilt units in SRE, and on the 4 declared but unbuilt units in SRA.

XIII. Additional Settlement Terms

- A. WT will make a contribution of \$1,000 per year for five years for operation of the community center once it is constructed.

- B. In the event WT receives a refund for real estate taxes improperly paid, which claim has been made in the amount of \$32,000, any amount recovered will be applied towards its obligations under this agreement.

- C. WT will secure its obligations under this settlement with a first mortgage on the 25 declared but unbuilt units within SRE and SRA. WT will pay to the appropriate funds created under the agreement, \$10,000 from the proceeds of the sale of any unit within the four associations. If the unit is one of the 25 declared and unbuilt, it will be released upon payment of the \$10,000. Upon payment of \$20,000 from the sale of other units, one of the 25 will be released from the mortgage, but WT will still pay

sounds like this could go to roads or sewer

\$10,000 from the proceeds from the sale of the released unit to be applied against WT's obligations hereunder at the time of sale. Beginning the second year of this agreement, at a minimum, WT will apply at least \$25,000 each year against its obligations hereunder, with all amounts due and owing, payable no later than December 31, 2001.

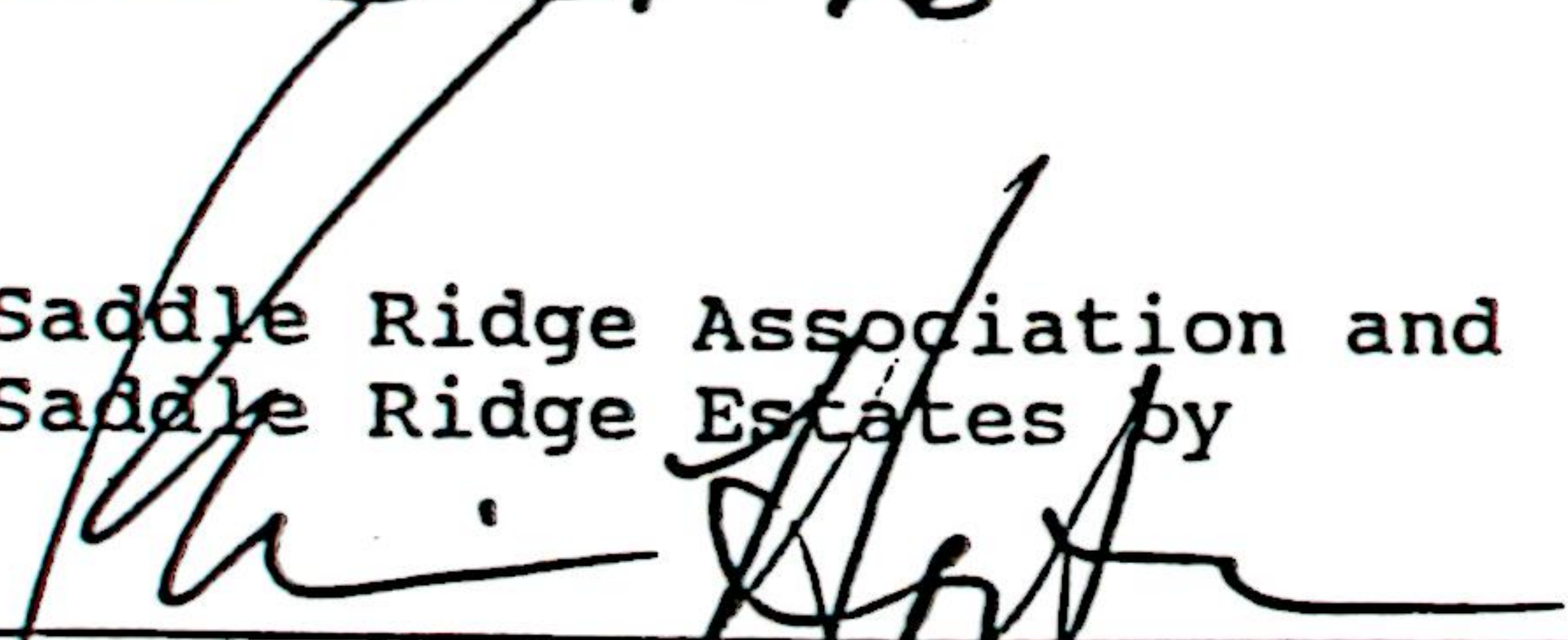
- D. WT's obligation will be further secured by a second mortgage on the Swan Lake Village Golf Course, which mortgage will be automatically subordinated to first mortgage financing in favor of the First National Bank of Portage or a substitute lender to an amount to be established by the bank not to exceed the fair market value of the collateral. The giving of this mortgage is subject to the bank's approval.

Wabac & Tadwill  
by its Vice President  
Elmer L. Gosda

  
Elmer L. Gosda

Date: 3-21-96

Saddle Ridge Association and  
Saddle Ridge Estates by

  
Pharis Horton  
Counsel for Saddle Ridge Association and  
Saddle Ridge Estates

Date: 3-21-96