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ELLEN U.S. DISTRICT COURT
NORTHERN DISTRICT OF OHIO
AKRON

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO-EASTERN DIVISION

AURORA SHORES HOMEOWNERS
ASSOCIATION

Plaintiff

v.

THE FEDERAL DEPOSIT INSURANCE
CORPORATION AS RECEIVER FOR
BROADVIEW SAVINGS BANK

Defendant

and

HAWTHORN OF AURORA LTD.
PARTNERSHIP

Plaintiff

v.

AURORA SHORES HOMEOWNERS
ASSOCIATION

Defendant

) Case Number: 1:97CV778

) Judge: James S. Gwin

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) Case Number: 5:97CV1964

) Judge: James S. Gwin

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JOURNAL ENTRY

This matter came on for hearing on the 22nd day of April, 1998 before the Honorable James S. Gwin, Judge of the United States District Court for the Northern District of Ohio Eastern Division upon the Com-

plaint of Hawthorn Limited Partnership (hereinafter "Hawthorn") which was originally filed in the Portage County Court of Common Pleas against the Aurora Shores Homeowners Association (hereinafter "ASHA") and upon the Complaint of ASHA versus the Federal Deposit Insurance Corporation (hereinafter "FDIC") in consolidated case numbers 1:97CV778 and 5:97CV1964. The Court finds that the parties have settled their differences and hereby stipulate to the terms and conditions contained herein.

The Court finds that a dispute has arisen over ownership of the subaqueous soil under the waters of Aurora Lake and that plaintiff, Hawthorn's, Complaint in Declaratory Judgment seeks to determine the rights and responsibilities, as well as ownership, of said lands and waters.

The Court finds that the parties have entered into this Agreement to forever settle these issues and to quiet title.

The Court finds and the parties agree that Aurora Lake is a private body of water which has historically been passed from owner to owner and is therefore, capable of private ownership.

The Court finds that the property in dispute was originally owned by Philip H. English and was deeded to P.H.E., Inc. P.H.E., Inc. thereafter deeded properties in Summit County including a portion of the subaqueous soil to ASHA and ASHA has retained ownership of this property which has been known as the common property of ASHA together with the dam located in the southwest portion of the property.

The Court finds and the parties agree that the dam is vital to the continued viability of Aurora Lake.

The Court further finds that P.H.E., Inc. retained certain property which came to be known as the Hawthorn Subdivision which included approximately 90% of the subaqueous soil of Aurora Lake, excluding channels and that this property was acquired by Broadview Savings and Loan and thereafter, the Broadview Service Corporation which entered into an agreement to sell said property to Constan Development which was the predecessor in interest to the Hawthorn Limited Partnership.

The Court further finds that Hawthorn received a warranty deed to said property including the subaqueous soil of approximately 290 acres of Aurora Lake and that Hawthorn did receive fee title to said property.

The Court further finds that certain defects were raised in the transfer of said title by FDIC and that the FDIC has waived any defects in the transfer of this property to Hawthorne so that the warranty deed delivered to Hawthorne in February, 1987, did transfer clear title to Hawthorn.

The Court further finds that ASHA has continually used Aurora Lake by permission and that the parties have agreed to allow continued use of this lake by ASHA and Hawthorn subject to the terms and conditions ordered herein.

The Court further finds that issues of previous unrecorded documents were raised and addressed in Motions for Summary judgment and that the Court has ruled that the obligations created were not met so that Broadview Savings and Loan and Broadview Service Corp. had the right to enter into the contract for sale with Constan Development and Hawthorn of Aurora Limited partnership and to issue a warranty deed for the transfer of said property.

IT IS ORDERED, ADJUDGED AND DECREED that in accordance with the terms and conditions of the Hawthorne of Aurora Planned Unit Development Covenants and Restrictions, that a non-profit corporation shall be created for the purpose of maintaining, operating and administering to the body of water known as Aurora Lake and that said organization shall be designated as the Aurora Lake Association (hereinafter "ALA") and that pursuant to the terms and conditions of the Covenants and Restrictions, Hawthorne and ASHA shall convey title to the subaqueous soil of Aurora Lake to ALA. ALA shall maintain Aurora Lake for the use and enjoyment of the members in good standing of Hawthorn and ASHA consistent with this Journal Entry and the terms and conditions agreed upon in by-laws which shall be adopted by ALA by a vote of its Trustees. The conveyances shall include all of the subaqueous soils, excluding channels but shall specifically exclude the dam located at the

southwest portion of Aurora Lake and that ownership of said dam and the common areas of ASHA shall remain with ASHA. The common areas of Hawthorne shall remain with Hawthorne for the use of their homeowners' association. Maintenance of the dam shall be in the best interests of ALA, Hawthorn and ASHA and that all maintenance of the dam shall be the sole responsibility of ASHA. Water levels shall be maintained for the preservation of Aurora Lake and shall be maintained with the goal of preventing erosion for both Hawthorn and ASHA while preserving Aurora Lake with the goal of maximizing and preserving Aurora Lake for safe recreational use. ASHA shall notify ALA of changes in lake levels initiated by ASHA reasonably in advance.

ALA shall be governed by a Board of Trustees consisting of five (5) individuals. Three (3) of the Trustees shall be appointed by Hawthorn under the terms and conditions of its voting regulations contained in its Covenants and Restrictions and ASHA shall appoint the remaining two (2) Trustees subject to the terms and conditions of its Covenants and Restrictions together with any by-laws adopted by either organization. Hawthorn shall be entitled to three (3) Trustees upon the ALA Board until such time as the Hawthorn of Aurora Limited Partnership has sold, conveyed or assigned 855 of the 1139 housing units (which includes condominiums and clusters) in the Hawthorn of Aurora Subdivision. Once Hawthorn of Aurora Limited Partnership has sold, conveyed or assigned 855 of said 1139 housing units, the Trustees of ALA shall be elected by a vote of the homeowners' associations of both Hawthorne and ASHA by a majority of the vote of both homeowners' associations. It is agreed, however, that neither Hawthorn nor ASHA shall have less than two (2) Trustees elected to the ALA Board and that no rules or regulations may be adopted excluding members of either association from Aurora lake.

The Board of Trustees of ALA shall meet periodically at a place designated by the Board of Trustees of ALA and said meetings shall be open to the Hawthorn and ASHA, except that ALA shall have the authority to adjourn into executive session to discuss any of the items designated in the "Governing Document" attached hereto as Exhibit "A".

Each Trustee of ALA shall serve for an initial term of two (2) years, but may be re-appointed or re-elected for additional terms without limitation. If a Trustee quits, resigns or is otherwise unable to carry out the terms and conditions of his or her duties as a Trustee, then said Trustee may be replaced for the balance of the unexpired term. However, said Trustee shall be replaced in accordance with aforementioned division in that Hawthorn shall maintain three (3) Trustees and ASHA shall maintain two (2) Trustees until said time as Hawthorn of Aurora Limited Partnership has sold, conveyed or assigned 855 of the 1139 housing units platted in the Hawthorn of Aurora Subdivision.

The initial dues to be paid to ALA shall be Thirty-Five Dollars (\$35) per house or condominium unit, per year for each home or condominium in each subdivision and shall be due and owing by May 1st of each year. It shall be the responsibility of each homeowners' association to collect the dues from its members and to pay said funds into ALA not later than May 1st. Each homeowners' association shall be responsible for the total amount of funds collected and there shall be a late charge of 1-1/2% per month. Said dues cannot be raised by more than 10% per annum, without a unanimous vote of the ALA board members as outlined in Exhibit "A".

However, should it be determined by a unanimous vote of the Board of Trustees of ALA that special assessments are necessary for emergency repairs, maintenance, or other appropriate expenditures of ALA, then ALA may assess the appropriate charges associated with said expenditures to the respective homeowners' associations, who in turn shall be responsible for collecting said funds from their respective members.

ALA shall be responsible for all matters as outlined in Exhibit "A".

The Board of Trustees of ALA shall adopt uniform rules and regulations governing the use of Aurora Lake as outlined in Exhibit "A".

ALA shall adopt herein by reference and incorporate the covenants and restrictions of both Hawthorn and ASHA which shall become a part hereof and incorporated herein by reference as if fully rewritten. ALA, from time to time, may adopt rules and regulations governing the speed of watercraft upon Aurora Lake and may

adopt rules and regulations revoking the use of Aurora Lake by any members not in compliance with the rules and regulations promulgated by ALA. ALA may surcharge owners of boats additional fees for the use of Aurora Lake for boats that exceed 50 horsepower, in any amount determined by the Trustees to be appropriate. The initial surcharge shall be maintained for the first two (2) boating seasons which shall be the 1999 and 2000 calendar years and shall be as follows: 50 - 100 horsepower, \$100.00; 100 - 200 horsepower, \$150.00; 200 - 300 horsepower, \$200.00; and over 300 horsepower, \$250.00. However, the current homeowners listed in Exhibits "B" and "C" together with the first homeowners of HOA not yet constructed shall be exempted and shall not be surcharged, as long as they are homeowners in as listed in said Exhibits. Said exemptions shall not be assignable or transferable.

ALA shall at all times carry or cause to be carried by its sub-contractors where applicable, sufficient insurance with an insurance carrier or carriers licensed to do business in the State of Ohio and acceptable to the Board of Trustees of ALA in limits approved by the Board of Trustees.

It is further agreed and ordered that Aurora Lake has been used as a retention basin for storm water management for the Hawthorn Subdivision in accordance with the approval of those subdivisions and shall continue to be used for said purposes, and further, Hawthorn of Aurora shall be entitled to use Aurora Lake as retention for future developments

It is further agreed and ordered that ASHA shall pay to Hawthorn Limited Partnership Fifty Thousand Dollars (\$50,000) in full and final settlement of the claims set forth by Hawthorn of Aurora Limited Partnership in the within litigation and shall be in full and final settlement of Hawthorn's claims for back taxes, insurance, expenses and other expenditures claimed by Hawthorn. Said payment shall be Twenty-Five Thousand Dollars (\$25,000) due and owing within 30 days after the execution of this entry and Twenty-Five Thousand Dollars (\$25,000) due and owing by July 15, 1999. Failure of ASHA to pay said sums on the above-mentioned dates shall carry a penalty of 1-1/2% per month on any unpaid balances and Hawthorne shall be permitted to collect and enforce said sums for which judgment is entered and execution may issue.

It is further agreed and ordered that both parties shall pay their own attorneys' fees and that ASHA shall pay the costs of this action for which judgment is entered and execution may issue.

IT IS SO ORDERED

JAMES S. GWIN

Approved:

Dale F. Pelsozy, Attorney for Hawthorn

Harvey Snider, Attorney for Hawthorn

Rinaldo Constantino, General Partner
Hawthorne Limited Partnership

Robert Andrews, Attorney for ASHA

William Donahoe, President of ASHA

WILLARD DONAHOE

David Tryon, Attorney for FDIC

GOVERNING DOCUMENT

This document is made in settlement of the issues by and between Hawthorn of Aurora Homeowners Association, Inc., an Ohio non-profit corporation ("HOA") and Aurora Shores Homeowners Association, Inc., an Ohio non-profit corporation ("ASHA") and Hawthorn of Aurora Limited Partnership, an Ohio limited partnership ("LP"). It is intended to be incorporated into the Journal Entry in United States District Court Case Numbers 1:97CV778 and 5:97CV1964.

The parties hereto consent to incorporate this document into the Journal Entry whereby the mutual use and enjoyment of Aurora Lake, is preserved. The parties hereto desire to equitably divide the costs, obligations and responsibilities of Aurora Lake to resolve all disputes between them regarding the use and enjoyment of Aurora Lake in accordance with the terms, covenants and conditions hereinafter set forth, and set forth in said Journal Entry.

In consideration of the mutual covenants and agreements herein contained, the parties hereto do hereby covenant and agree as follows:

1. Formation of ALA. HOA, ASHA and LP shall form an Ohio corporation pursuant to Chapter 1702 of the Ohio Revised Code named Aurora Lake Association, Inc. (hereinafter referred to as "ALA").
2. Conveyance of Aurora Lake. ASHA, HOA and LP shall convey to ALA their respective rights, titles, and interests in and to the subaqueous soil of Aurora Lake excluding channels. The conveyances will be conditioned upon ALA maintaining Aurora Lake for the use and enjoyment of the members in good standing of HOA and ASHA consistent with

EXHIBIT A

this agreement. Except that ASHA shall retain title to the dam, spillway and associated property. ASHA shall be responsible for the maintenance and costs with respect to the dam..

3. Board of Trustees. ALA shall have a Board of Trustees consisting of five (5) individuals. HOA shall appoint three (3) Trustees and ASHA shall appoint two (2) Trustees ("Appointed Trustees"). All actions of the Board of Trustees require an affirmative vote of three (3) members of the Board, except as otherwise noted herein.

- a) Each Trustee shall have only one vote;
- b) The Board of Trustees for ALA shall meet a minimum at the discretion of the Board as needed. The place of said meetings shall be open to the Members of HOA and ASHA unless issues of litigation, potential or threatened, personnel, land acquisition or contract negotiations are being discussed. The meetings shall be conducted pursuant to Robert's Rules of Order. It shall be the responsibility of HOA and ASHA to notify its residents of said meetings.
- c) If a Trustee quits, resigns or is otherwise unable to participate in any particular meeting, the appointing Board of the homeowner's association who originally appointed said Trustee shall have the right to immediately appoint an interim Trustee who shall have all the rights, powers and responsibilities of the originally appointed Trustee. The majority in favor of HOA shall be maintained as called for in the Judgment Entry in that HOA shall have the right to appoint three (3) Trustees until such time as Hawthorne of Aurora Limited Partnership has sold, conveyed or assigned 855 of the 1139 housing units (including condominiums and clusters) platted in the Hawthorn of Aurora subdivision.

4. Responsibilities of ALA. ALA shall be responsible for all matters necessary to manage, supervise, preserve, improve and maintain Aurora Lake, including, but not limited to, the payment of taxes and insurance thereon, aquatic and environmental studies, control

for eutrophication and pollution, stocking of fish, dredging, repair, erosion control, including the cost of labor, materials, equipment, management and supervision thereof.

5. Uniform Rules and Regulations. The Board of Trustees of ALA shall adopt uniform rules and regulations governing the use of Aurora Lake. The Board of Trustees of ALA shall review the rules currently promulgated by HOA and ASHA and may amend, modify, revoke in whole or in part, the rules and regulations promulgated for the use and enjoyment of Aurora Lake. However, in no event will the Board of Trustees of ALA permit boats on the lake that exceed twenty (20) feet or sail boats that exceed twenty-three (23) feet. When promulgating rules, the Board of Trustees of ALA shall first consider the health and safety of the members, tenants or lessees of HOA and ASHA who use Aurora Lake. HOA and ASHA shall be responsible for notifying and distributing the rules and regulations that are promulgated by the Board of Trustees of ALA, to its respective members, tenants or lessees.

- a) The rules and regulations for use of Aurora Lake by members of HOA and ASHA, shall include, but shall not be limited to, to facilitate and sponsor seminars for lake safety, registration of boats by the Ohio Department of Boat Registration, wind surfing, display of decals, number of boats permitted to be registered by respective members, speed limits, horse power under restrictions contained herein, marking of buoyed areas, time and parameters of water skiing, direction of boats on the lake, requirements regarding observers in the boat, age of observers, number of water skiers, water skiing safety, liability of homeowners for violations, the use of jet skis, the use of life jackets, the use of parasails, the size limit on fish.
- b) The Board of Trustees of ALA shall determine a registration procedure that shall be used by HOA and ASHA for the registration of watercraft. However, HOA and ASHA shall not permit any watercraft to be licensed for use on Aurora Lake without first showing proof of insurance, in an amount to be determined by the Board of Trustees of ALA. HOA and/or ASHA

and ALA shall be listed as additional insureds under the policies of insurance. All registered owners/operators of a watercraft shall be required to indemnify and agree to hold harmless and defend ALA, HOA and ASHA from liabilities, claims and demands for personal injury or property damage arising out of or caused by any act or omission of the ALA, its sub-contractors, agents or employees, or arising in or about Aurora Lake at any time during the term of this Agreement.

6. Annual Lake Budget. ALA shall prepare an annual lake operating budget. The ALA budget shall take into consideration all matters necessary to supervise, preserve, improve and maintain Aurora Lake, including, but not limited to, the payment of taxes and insurance thereon, aquatic and environmental studies, control of eutrophication and pollution, stocking of fish, repair, erosion control, including the cost of labor, materials, equipment, management and supervision thereof.

7. Funding Sources.

- a) HOA and ASHA shall pay thirty-five Dollars (\$35.00) annually for each living unit in their respective associations. This payment may be made on May 1st of each year. It is anticipated, however, that the first payment shall be within thirty (30) days from the signing of this Journal Entry. A late payment charge of one and one-half percent (1 1/2%) per month shall be imposed on any payment or portion thereof not received by May 1.
- b) Annual fees may be raised not more than ten percent (10%) per annum unless there is unanimous approval of the Board of Trustees.
- c) HOA and ASHA reserve the right to improve their shoreline and may do so without approval from ALA. It shall be the responsibility of ALA, HOA and ASHA to prevent erosion of the shoreline. For the purpose of this agreement, a shoreline shall be defined as that area where the water meets the shore at its summer pool level and extended for a distance of twenty-five (25) feet into the lake. In order to preserve the shoreline, the parties hereto agree that the speed limit within twenty-five (25) yards of the shoreline shall be

five (5) miles per hour. ALA reserves the right to establish additional no wake zones.

- d) ALA shall be permitted to surcharge owners of boats with horsepower in excess of fifty horsepower (50HP) in an amount to be determined by vote of the trustees. The initial surcharge shall be maintained for the first two(2) boating seasons which shall be the 1999 and 2000 calendar years and shall be as follows: 50 -100 horsepower, \$100.00; 100 - 200 horsepower, \$150.00; 200 -300 horsepower, \$200.00; and over 300 horsepower, \$250.00. However, current homeowners listed in Exhibits "B" and "C" together with first time homeowners of HOA not yet constructed shall be exempted so long as they are homeowners. Said exemption shall not be assignable or transferable.

8. Privilege to use Aurora Lake. HOA and ASHA shall determine who are members in good standing pursuant to their governing documents and HOA and ASHA shall independently have the exclusive authority to determine who among its members have privilege to use Aurora Lake. HOA and ASHA shall notify ALA which of their respective members are eligible to be registered by ALA to use Aurora Lake. All boats and watercraft thereafter registered by ALA shall have full access to the lake, inlets and channels in accordance with the rules and regulations promulgated by the Board of Trustees of ALA.

9. Homeowners Defined. Notwithstanding the provisions of Paragraph 8, the privilege to operate a boat on Aurora Lake shall be limited to eligible condominium unit owners, cluster unit owners or homeowners in residence in HOA or ASHA. A lessee of a condominium unit owner, cluster unit owner or homeowner in residence in HOA or ASHA may assume the owners' rights to operate a boat on Aurora Lake if the lessee applies for a decal with prior written approval from their homeowner or unit owner and otherwise

complying with all registration, title, and insurance requirements. The title of the boat may be in the name of the lessee. The owners of Hawthorn Ltd. Partnership shall not be limited to horsepower boats or be charged a fee.

10. **Insurance.** ALA shall at all times commencing with the date upon which the Agreement begins, carry or cause to be carried and by its sub-contractors where applicable, sufficient insurance with an insurance carrier or carriers licensed to do business in Ohio and acceptable to HOA and ASHA and in limits approved by both. ALA shall furnish HOA and ASHA duplicate policies of insurance as set forth above, together with certificates and receipts showing that such insurance is in full force and fully paid. Each of such policies shall contain a provision to the effect that they may not be canceled except upon ten (10) days prior written notice to HOA and ASHA. HOA and ASHA shall be included as an additional insured on all insurance policies.

11. **Indemnification.** ALA hereby indemnifies and agrees to hold harmless and defend HOA and ASHA against all liabilities, claims and demands for personal injury or property damage arising out of or caused by any act or omission of the ALA, its sub-contractors, agents or employees, or arising in or about Aurora Lake at any time during the term of this Agreement.

12. **Binding Arbitration.** Any controversy relating to this Agreement shall be settled by mediation with mutual agreement of the parties. If mediation is not successful, then the parties with mutual agreement, shall submit this matter to arbitration in accordance with the then existing rules of the American Arbitration Association and judgment upon the award rendered may be entered in any court or record having jurisdiction.

13. Binding Agreement. The terms, provisions, covenants and conditions contained in this Agreement shall apply to, inure to the benefit of, and be binding upon the parties hereto and upon their respective legal representatives, and assigns except as otherwise herein expressly provided. This document is incorporated into the Journal Entry of the United States District Court for the Northern District of Ohio, consolidated Case Numbers 1:97CV778 and 5:97CV1964.

14. Modification of Agreement. This Agreement may not be altered, changed or amended except by an affirmative vote of the Board of Trustees of ALA and ratified by the governing boards of HOA and ASHA.

15. Assignability. It is expressly agreed that ALA may not assign its interest without the written consent of the governing boards of HOA, Hawthorne Ltd. Partnership and ASHA. ASHA shall not assign its interest in the dam or spillways without the written consent of HOA, Hawthorn Ltd. Partnership and ALA.

16. Governing Law. This Agreement is intended to be performed in accordance with, and only to the extent permitted by all applicable laws of the State of Ohio.

17. Merger. This document supersedes any and all other agreements, either oral or in writing, between the parties hereto prior to the date of journalization, with respect to the subject matter of this contract and contains all of the covenants, agreements, and other obligations between the parties hereto with respect to the subject matter of this contract. No waiver, alteration or modification of this Agreement or any agreement in connection therewith shall be valid unless in writing and duly executed by all parties hereto.

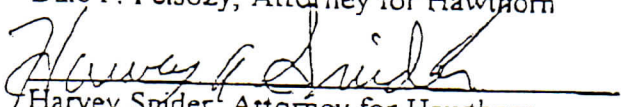
18. Severability. If any provision of this Agreement is held to be invalid, illegal or unenforceable, that shall not affect or impair, in any way, the validity, legality, or enforceability of the remainder of this Agreement.

19. Construction of Terms. The section headings contained herein are for convenience only and do not define, limit or construe the contents of such sections.

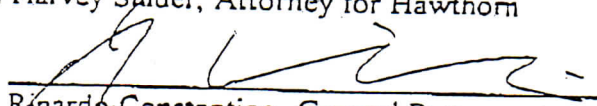
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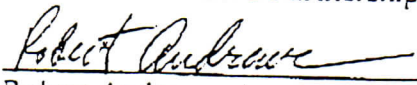
Dale F. Pelsozy, Attorney for Hawthorn



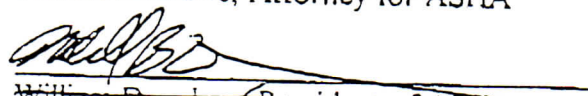
Harvey Spider, Attorney for Hawthorn



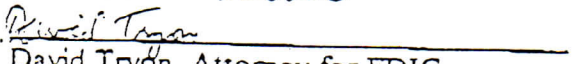
Rinaldo Constantino, General Partner
Hawthorne Limited Partnership



Robert Andrews, Attorney for ASHA



William Donahoe, President of ASHA
WILLIAM B. DONAHOE



David Tryon, Attorney for FDIC