

CAUSE NO. C2007-00259

**PECAN PLANTATION
UNINCORPORATED ASSOCIATION
OF CONCERNED PROPERTY OWNERS,**
Plaintiff

versus

**PECAN PLANTATION OWNERS
ASSOCIATION, INC.**
Defendant.

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IN THE DISTRICT COURT

355th JUDICIAL DISTRICT

HOOD COUNTY, TEXAS

MEDIATED SETTLEMENT AGREEMENT

The parties hereto agree that this lawsuit and all related claims and controversies between them are hereby settled in accordance with the following terms:

1. The parties acknowledge that bona fide disputes and controversies exist between them, and they desire to compromise and settle all claims and causes of action of any kind whatsoever which the parties may have arising out of the transaction or occurrence which is the subject of this litigation. It is further understood and agreed that this is a compromise of a disputed claim, and nothing contained herein shall be construed as an admission of liability.
2. Each signatory warrants and represents that:
 - a. such person has authority to bind the party or parties for whom such person acts.
 - b. the claims, suits, rights, and/or interests which are the subject matter hereto are owned by the party asserting same, have not been assigned, transferred or sold, and are free of any encumbrance.
3. PPOA will draft a Motion for Final Summary Judgment in a form which is acceptable to the Plaintiffs which shall affirm the PPOA's interpretation of the Covenants and Restrictions and denies all claims brought by the remaining Plaintiffs. Once the form of the Motion is agreed upon, it may be filed, and upon filing, the Plaintiffs agree not to oppose the granting of the Motion, using a Form of Judgment which is to be likewise approved by Plaintiffs and their counsel. Each party shall bear his, her or its own attorney's fees and costs.
4. With regard to persons who were initially designated as Plaintiffs, but who no longer have claims for affirmative relief and / or have failed to pay their respective share of the combined Plaintiffs' legal fees, the law firm of Christopher J. Weber, LLC will prepare and file a Motion to Withdraw, and seek to have same heard at the Court's earliest opportunity. Subject to the trial court judge denying such a motion, said law firm will take no further action on such persons' behalf, however the judgment to be entered herein will still resolve all issues and claims which each such person brought (or could have brought) in these proceedings, and will also resolve any claims for Defendant's / Counter-claimant's attorney's fees, only, which have been brought against them. Each party will bear his, her or its own attorney's fees and costs, with the understanding that the issue of attorneys fees

may be revisited with regard to the persons not listed on Exhibit A, B, and C, in the event denies the Motion for Withdrawal, in whole or in part.

5. The parties further agree as follows:

- A. The PPOA agrees to the issuance of a variance, in recordable form, to each of the Plaintiffs who are identified on Exhibit "A"¹ to allow said Plaintiffs to maintain an RV on their lot, which such rights granted under the variance shall run with the land; and
- B. In the event a Plaintiff identified on Exhibit "A" who has an RV also wishes to bring a boat onto their property for the purpose of loading, unloading, cleaning, etc., the combination of the boat and the RV may remain on the property for no more than 72 contiguous hours, to be interpreted identically to the historic interpretation of Section 5.1.25 of the Pecan Plantation Rules and Regulations;
- C. Plaintiffs as shown on Exhibit "A", "B" and "C" agree to pay \$150.00 per year (to be based on a calendar year, and which is not inclusive of the security access tag fee) to the PPOA for each "RV Parking Permit" and/or "Boat or Trailer Parking Permit" to be issued as part of this settlement, which such fee shall not be increased until January 1, 2014, and then, shall only be increased on an annual basis in an amount which is not more than the increase in the previous year's Cost of Living Adjustment" (COLA), as published as the "Consumer Price Index for the Dallas / Fort Worth area" by the Department of Labor, except that the security access tag fee may be increased commensurate to such fee being charged to other, non-RV, boat/trailer combination or trailers (See PPOA Rules & Regulations, Section 5.1.1);
- D. Defendant PPOA agrees to continue to trim the trees lining major throughfares through Pecan Plantation (including, Monticello; Belchase; Westover; Wedgefield; Plantation Blvd.; Ravenswood) as well as the trees surrounding the traffic circles, in accordance with its existing policies and as required by the PPOA Fire & EMS, such that RV's can traverse said roadways without damaging paint or accessories.
- E. Defendant PPOA will issue a variance, in recordable form, to each of the Plaintiffs listed on Exhibits "B" who have maintained boat/trailer combinations, or on Exhibit "C", which lists those Plaintiffs who have maintained trailers, in order to allow such Plaintiffs to keep them on their property – which such rights granted under the variance shall run with the land.

6. Except for the agreements set forth herein, the parties hereby release, discharge, and forever hold the other harmless from any and all claims, counterclaims, demands, or suits, known or unknown, fixed or contingent, liquidated or unliquidated, whether or not asserted in the

¹ Which shall specifically include Fain & Lynda Little, who may transfer their rights under this Agreement from their present property to another property in which they may acquire an interest within PPOA units 1-18, provided such transfer is accomplished prior to December 31, 2010. It is the intent of this provision that only one property may benefit from the effect of the variance to be granted pursuant to this Agreement.

above case, as of this date, arising from or related to the events and transactions which are the subject matter of this cause. This mutual release runs to the benefit of all attorneys, agents, employees, officers, directors, shareholders, partners, heirs, assigns, and legal representatives of the parties hereto.

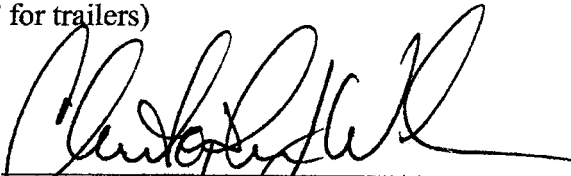
7. Counsel for Defendants shall deliver drafts of any further documents to be executed in connection with this settlement to counsel for the other parties hereto within 14 days from the date hereof. The parties and their counsel agree to cooperate with each other in the drafting and execution of such additional documents as are reasonably requested or required to implement the provisions and spirit of this Settlement Agreement, but notwithstanding such additional documents the parties confirm that this is a written settlement agreement as contemplated by Section 154.071 of the Texas Civil Practice and Remedies Code.
8. This Settlement Agreement is made and performable in Hood and/or Johnson Counties, in Texas, and shall be construed in accordance with the laws of the State of Texas.
9. If one or more disputes arise with regard to the interpretation and/or performance of this Agreement or any of its provisions, including the form of further documents to be executed, the parties agree to further mediation in an attempt to resolve same with Tom Clark, the Mediator, who facilitated this settlement.
10. Although the mediator has provided a basic outline of this Settlement Agreement to the parties' counsel as a courtesy to facilitate the final resolution of this dispute, the parties and their counsel have thoroughly reviewed such outline and have, where necessary, modified it to conform to the requirements of their agreement. All signatories to this Settlement Agreement hereby release the Mediator from any and all responsibility arising from the drafting of this Settlement Agreement, and by signing this Settlement Agreement acknowledge that they, or their attorneys, have been advised by the mediator in writing that this Settlement Agreement should be independently reviewed by counsel before executing the Agreement.
11. The parties represent and warrant that: (i) they have carefully reviewed this Settlement Agreement; (ii) they have consulted with their attorneys concerning this Settlement Agreement; (iii) any questions that they have pertaining to this Settlement Agreement have been answered and fully explained by their attorneys; (iv) their decision to execute this Settlement Agreement was not based on any statement or representation, either written or oral, made by any person or entity other than those statements contained in this Settlement Agreement, and specifically was not based on any statement or representation made by any opposing party or its counsel; (v) this Settlement Agreement constitutes the entire agreement and understanding between the parties; (vi) they have entered into this Settlement Agreement of their own free will; and (vii) all prior and contemporaneous agreements, understandings, representations and statements, whether written or oral, are merged herein.


Agreed, this 13th day of October, 2008.


SIGNATURES APPEAR ON NEXT PAGE

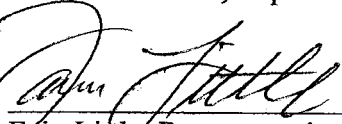
PLAINTIFFS:


(See the list of Plaintiffs as designated on Exhibit "A", for RV's, Exhibit "B" for Boats, and Exhibit "C" for trailers)

By: 
Name: Christopher J. Weber, Esq., of
the law firm of Christopher J. Weber, LLC
Title: Attorney for Plaintiffs


Lloyd Hinkle, Representative Plaintiff



Richard Parcels, Representative Plaintiff


Fain Little, Representative Plaintiff


Gary Chesnut, Representative Plaintiff


DEFENDANT:

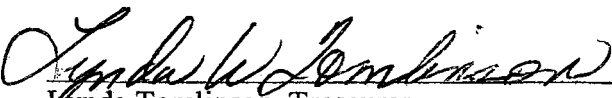
THE PECAN PLANTATION OWNER'S ASSOCIATION, INC.

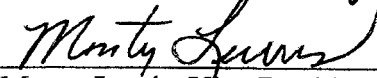
By: 
Name: Frank Sommerville, Esq., of
the law firm of Weycer, Kaplan, Pulaski & Zuber, P.C.
Title: Attorneys for Defendant

APPROVED:

Pecan Plantation Owner's Association, Inc., by:


Bob Lowry, President,


Lynda Tomlinson, Treasurer


Monty Lewis, Vice-President, Secretary



Ron Keeney, Director Vice President

EXHIBIT A

R.V.'s:

Bollier, Darrell and Karen
Cote, Robert
Fain, R. L. and Anette
Fisher, Sherry and the executor or representative of the estate of Ron Fisher
Fisher, William and Sharon
Frazier, Elmer
Gray, David
Henson, Joe
Hinkle, Lloyd
Hughes, Gary
Keisler, Ronnie and Doris
Little, Fain and Lynda
Martens, Jay and Marsha
Mann, John and Tracy
Martin, Russell and Sally
Martin, Stan and Leslie
Meybrunn, Dwayne and Nancy
Parcells, Richard and Jan
Plugge, George
Richmond, John
Roberson, Robert
Sharp, Larry and Dorothy
Shelton, Robert
Sheppard, Gary
Sigler, Howard and Ronda
Smith, Edward
Smith, Victor and Shannon
Smith, Willard and Faye
Stanley, Robert
Terrell, Melvin and Flora

Baker, John + Betty

EXHIBIT B

BOATS:

Colgin, Tom

Mann, John and Tracy

Hull, Ernest and Dorothy

Morgan, John and Lauri

Nowakowski, Gerald

Little, Fain and Lynda

Hinkle, Lloyd

Kissinger, Richard + May Jo

EXHIBIT C

TRAILERS:

Chesnut, Gary

Cross, Charles and Faye

FILED

FEB 23 2009

Anna Trumble Hill
Anna Trumble Hill
Clerk District Court, Hood County, Texas

CAUSE NO. C-2007-259

T. AVERY, ET AL,

Plaintiffs/Counter-Defendants

VS.

**PECAN PLANTATION OWNERS
ASSOCIATION, INC.**

Defendant/Counter-Plaintiff

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IN THE DISTRICT COURT

355TH JUDICIAL DISTRICT

HOOD COUNTY, TEXAS

**AGREED JUDGMENT AND
~~AGREED ORDER OF SEVERANCE OF ADJUDGED CLAIMS~~**

On February ²³ ~~24~~ 2009, the Court considered the joint request of certain of the

Plaintiffs/Counter-Defendants and Defendant/Counter-Plaintiff PECAN PLANTATION OWNERS ASSOCIATION, INC., for the entry of this Agreed Judgment ~~and Order of Severance.~~

The parties before the Court and to which these orders shall apply are as follows:

1. The Plaintiffs/Counter-Defendants are those individuals and/or their representatives identified on the attached Exhibits A, B, and C, which are the following:
Darrell Bollier, Karen Bollier, Robert Cote, R.L. Fain, Anette Fain, Sherry Fisher, Sherry Fisher as Representative of the Estate of Ron Fisher, Deceased, William Fisher, Sharon Fisher, Elmer Frazier, David Gray, Joe Henson, Lloyd Hinkle, Gary Hughes, Ronnie Keisler, Dorris Keisler, Fain Little, Lynda Little, Jay Martens, Marsha Martens, John Mann, Tracy Mann, Russell Martin, Sally Martin, Stan Martin, Leslie Martin, Dwayne Meybrunn, Nancy Meybrunn, Richard Parcels, Jan Parcels, George Plugge, John Richmond, Robert Roberson, Larry Sharp, Dorothy Sharp, Robert Shelton, Gary Sheppard, Howard Sigler, Ronda Sigler, Edward

Smith, Victor Smith, Shannon Smith, Willard Smith, Faye Smith, Robert Stanley, Melvin Terrell, Flora Terrell, Tom Colgin, John Mann, Tracy Mann, Ernest Hull, Dorothy Hull, John Morgan, Lauri Morgan, Gerald Nowakowski, Gary Chesnut, Charles Cross, and Faye Cross. *and Richard + Mary Jo Kissinger and John + Betty Baker* The individual Plaintiffs identified in this paragraph and on the attached Exhibits A, B, and C are hereinafter referred to as the "Severed Plaintiffs".

2. The Defendant/Counter-Plaintiff is Plantation Owners Association, Inc. (hereinafter referred to as "Defendant").

The Severed Plaintiffs appeared by their counsel of record who, on behalf of all Plaintiffs/Counter-Defendant parties in this lawsuit (including the Severed Plaintiffs and those not specifically identified herein as a Severed Plaintiff), waived any notice for a hearing for and have agreed to the entry of this Agreed Judgment ~~and Order of Severance~~. *CH 8*

Defendant appeared by its counsel of record who, on behalf of Defendant, waived any notice for a hearing for and has agreed to the entry of this Agreed Judgment ~~and Order of Severance~~. *CH 9*

Premises considered, the Court, having taken Judicial Notice and considered the contents of the Court's official file in this cause, and the agreements of and between the Severed Plaintiffs and Defendant, as represented by their attorneys present before the Court, is of the opinion that the following orders should be entered:

THEREFORE, IT IS ORDERED, ADJUDGED and DECREED, that recreational vehicles, boats, trailers and other such vehicles are not permitted to be stored in any manner outside the residences of homeowners in Pecan Plantation, Units 1-18, in

accordance with Article III, Section A, Subsections 3(A)(1), (2), and (3) of the Covenants and Restrictions governing Pecan Plantation Units 1 through 18 (hereinafter the “Restrictive Covenants”).

IT IS FURTHER ORDERED, ADJUDGED and DECREED that all of Severed Plaintiffs’ claims and causes of action for affirmative relief and affirmative defenses (including claims that Defendant waived the right to enforce the Restrictive Covenants, that Defendant is barred by estoppel and/or quasi-estoppel from enforcing the Restrictive Covenants and that Defendant’s enforcement of same is unreasonable) be and are hereby in all things denied.

IT IS FURTHER ORDERED, ADJUDGED and DECREED that these Orders shall not affect any Variance which has been (or will be) granted to the Severed Plaintiffs by the Defendant herein pursuant to a separate settlement agreement entered into by and between the Defendant and said Severed Plaintiffs. In addition, the Court recognizes that such Variances are intended to “run with the land”, and approves the settlement of the parties and hereby grants recognition of the Variances, and further acknowledges and approves that such variances will “run with the land” and inure to the benefit of successor owners of the properties which receive said Variances. Further, the Court hereby Orders that the Variances granted to the Severed Plaintiffs pursuant to the settlement by and between the Severed Plaintiffs and the Defendant, shall not be effective until and unless such Variance is filed of record in the Real Property Records of Johnson County and/or Hood County, Texas, and upon such filing, shall except each such property described therein from the rulings contained in this Judgment which are contrary to the terms contained in the respective Variances or in the Settlement Agreement.

IT IS FURTHER ORDERED, ADJUDGED and DECREED that all other claims and causes of action for affirmative relief filed of, by and/or between Severed Plaintiffs and Defendant be and are hereby in all things denied.

~~IT IS FURTHER ORDERED, ADJUDGED and DECREED that the claims and causes of action asserted by, of and between the Severed Plaintiffs and Defendant are hereby severed from this action and shall be made the subject of a separate action, styled as follows:~~

Darrell Bollier, Karen Bollier, Robert Cote, R.L. Fain, Anette Fain, Sherry Fisher, Representative of the Estate of Ron Fisher, Deceased, William Fisher, Sharon Fisher, Elmer Frazier, David Gray, Joe Henson, Lloyd Hinkle, Gary Hughes, Ronnie Keisler, Dorris Keisler, Fain Little, Lynda Little, Jay Martens, Marsha Martens, John Mann, Tracy Mann, Russell Martin, Sally Martin, Stan Martin, Leslie Martin, Dwayne Meybrunn, Nancy Meybrunn, Richard Parcels, Jan Parcels, George Pligge, John Richmond, Robert Roberson, Larry Sharp, Dorothy Sharp, Robert Shelton, Gary Sheppard, Howard Sigler, Ronda Sigler, Edward Smith, Victor Smith, Shannon Smith, Willard Smith, Faye Smith, Robert Stanley, Melvin Terrell, Flora Terrell, Tom Colgin, John Mann, Tracy Mann, Ernest Hull, Dorothy Hull, John Morgan, Lauri Morgan, Gerald Nowakowski, Gary Chesnut, Charles Cross, Faye Cross,

Plaintiffs/Counter-Defendants,

v.

Pecan Plantation Owners Association, Inc.,

Defendant/Counter-Plaintiff.

~~IT IS FURTHER ORDERED, ADJUDGED and DECREED that the Clerk of the Court shall assign said severed action docket number CAUSE NO. C-2007-00259-B, and the Clerk of the Court shall file a signed, conformed copy of this Agreed Judgment and Order of Severance in Cause No. C-2007-00259-B.~~

~~IT IS FURTHER ORDERED, ADJUDGED and DECREED that all filings~~

heretofore, but not hereafter, in Cause No. C-2007-00259 shall be deemed also filed of record in Cause No. C-2007-00259-B. CH 8

IT IS FURTHER ORDERED, ADJUDGED and DECREED that all costs of Court shall be taxed to and paid by whom incurred.

subject to the following paragraph

IT IS FURTHER ORDERED, ADJUDGED and DECREED that all relief not expressly provided herein be and is hereby in all things denied as between the Severed Plaintiffs and Defendant such that once a signed, ~~conformed copy of this Agreed Judgment and Order of Severance is filed in said severed Cause No. C-2007-00259-B~~ it shall constitute a Final Judgment of Cause No. C-2007-00259-B for purposes of appeal. CH 8

It is further ordered that all ~~part~~ parties ~~once~~ designated as party-Plaintiffs in this lawsuit and who are not part of the Severed Plaintiffs were omitted, if at all, ~~because~~ from the pleadings; if at all, because of a scrivener's error, and the court hereby deems all such ~~part~~ parties present and subject to the jurisdiction of the Court; and as to all such ~~part parties~~ party Plaintiffs their claims for affirmative relief are hereby DENIED, and all of Defendant's counterclaims for attorneys fees against them denied. The Court ~~to~~ enters a take nothing judgment as between such Plaintiffs and Defendant.

SO ORDERED.

SIGNED on February 23, 2009.

William Brigham
JUDGE PRESIDING

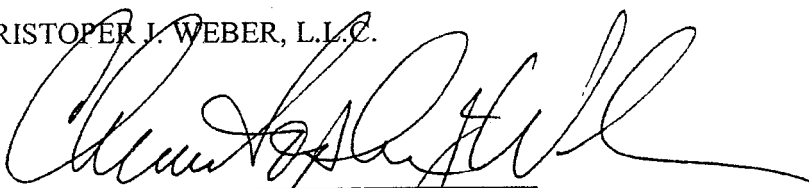
FILED

FEB 23 2009

Tonna Trumble Hitt
Tonna Trumble Hitt
Clerk District Court, Hood County, Texas

APPROVED AS TO FORM:

CHRISTOPHER J. WEBER, L.L.C.

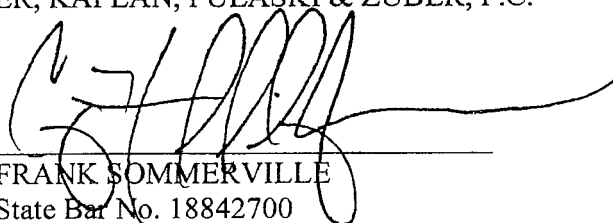
By: 

CHRISTOPHER J. WEBER, Esq.
State Bar No. 21042490
9901 West IH-10, Suite 165
San Antonio, Texas 78230-2252
Telephone (210) 477-1993
Telecopier (201) 477-1994

ATTORNEYS FOR PLAINTIFFS AND COUNTER-DEFENDANTS

APPROVED AS TO FORM:

WEYCER, KAPLAN, PULASKI & ZUBER, P.C.

By: 

FRANK SOMMERVILLE
State Bar No. 18842700
CORY HALLIBURTON
State Bar No. 24041044
3030 Matlock Rd., Suite 201
Arlington, TX 76015
(817) 795-5046
(866) 248-4297 (fax)

ATTORNEYS FOR DEFENDANT AND COUNTER-PLAINTIFF
PECAN PLANTATION OWNERS ASSOCIATION, INC.

EXHIBIT A

R.V.'s:

Bollier, Darrell and Karen
Cote, Robert
Fain, R. L. and Anette
Fisher, Sherry and the executor or representative of the estate of Ron Fisher
Fisher, William and Sharon
Frazier, Elmer
Gray, David
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Stanley, Robert
Terrell, Melvin and Flora

Baker, John + Betty



EXHIBIT B

BOATS:

Colgin, Tom

Mann, John and Tracy

Hull, Ernest and Dorothy

Morgan, John and Lauri

Nowakowski, Gerald

Little, Fain and Lynda

Hinkle, Lloyd

Kissinger, ~~John + Betty~~ (8)
Richard + Mary Jo JX

EXHIBIT C

TRAILERS:

Chesnut, Gary

Cross, Charles and Faye