

REC'D MAY 21 2009

COMMONWEALTH OF KENTUCKY  
OWEN CIRCUIT COURT  
CASE NO. 99-CI-00064

RECEIVED AND ENTERED  
5/19/09  
OWEN DISTRICT/CIRCUIT COURT  
LEIGH NEW, CLERK, L.N.  
PLAINTIFF, D.C.

PAR-TEE, LLC

vs.

PERRY PARK RESORT OWNERS ASSOCIATION, INC.

DEFENDANTS

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AGREED ORDER

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The parties having reached an agreement to resolve outstanding issues with respect to claims and counterclaims raised by the parties in the above-referenced matter and assert this as the full and final settlement; the Court being in all ways duly and sufficiently advised;

**IT IS HEREBY ORDERED as follows:**

**1. Duration of Agreement**

This agreement has been reached by the parties for the purpose of resolving their differences and the transfer of certain properties and maintenance authorities at Perry Park Resort from Par-Tee, LLC ("Par-Tee") and its successors to Perry Park Resort Owner's Association, Inc. ("PPROA"). This agreement will be in effect starting from the date of entry by the Court.

**2. Management of Perry Park Resort**

PPROA shall perform the primary management functions to maintain the grounds and provide security at Perry Park Resort as set forth below:

- A. The PPROA shall establish an annual budget to meet the maintenance and security needs of Perry Park Resort. The annual budget shall be constructed within the guidelines established in this agreement.

- B. An Oversight Committee is established for the purpose of maintaining the paved roadways, certain lakes, dams, and areas in this order. Furthermore, the Oversight Committee shall manage the guard house and security personnel. The Oversight Committee shall be empowered to make day-to-day decisions relative to maintenance and security of Perry Park as specified in this paragraph. However, the Oversight Committee shall also have authority to recommend an annual assessment fee, the annual budget, and expenditure of funds for capital improvements. The recommendations of the Oversight Committee shall be forwarded to the PPROA Board for approval.

The Oversight Committee shall consist of four (4) committee members. The Committee members shall be Jim Berling, Steve Berling, Paul Minch, and Don Wright until any and all resign from the Oversight Committee. The PPROA will have the authority to replace Paul Minch and Don Wright after three (3) years from the approval of this document and will review and designate their two (2) members every two years thereafter for possible changes. Par-Tee will be notified by the president of the PPROA of member changes. Par-Tee shall have the right to name a replacement should Jim Berling or Steve Berling be unable to serve or refuse to serve. The PPROA shall have the right to name a replacement should Don Wright or Paul Minch be unable to serve or refuse to serve, or for just cause.

- C. The PPROA shall ensure the guard house is maintained and kept in good repair and that security is provided twenty-four (24) hours a day, seven days a week by uniformed guards. Upon presentation of standard identification and verbal statement of their purpose for entry, Par-Tee's guests, patrons of the restaurant, golf course, or hotel will not be denied entry at the guard house. Non-resident golfers, restaurant patrons, and hotel guests are not permitted in residential areas after daylight hours. The requirements for entry are subject to modification by the Oversight Committee.

- D. The PPROA shall ensure that the entryway and all areas extending eight feet (8') of both sides from any paved roads are mowed on a regular basis. PPROA shall maintain at the entry the landscaping, the stone columns, entry sign, lights, and white board fence at entrance.
- E. The PPROA shall ensure, through the Oversight Committee, that there shall be snow and ice removal in a timely manner to ensure the safety of the paved roads serving the lot owners.
- F. The PPROA shall ensure that all paved roads serving the lot owners are properly maintained and shall not be permitted to fall into disrepair.
- G. The PPROA shall maintain Inverness Lake, Lake Holiday, Big Bass Lake, and their dams at Perry Park Resort.
- H. Par-Tee shall have the right to use Lake Holiday for irrigation purposes to insure proper irrigation of the golf course(s). The level of the lake shall be maintained to insure lakefront property does not devalue as a result of the lake level being lowered due to pumping water for irrigation purposes. Par-Tee agrees to limit the draw down on Lake Holiday to a maximum of 24 inches below the normal level of the water flowing over the spillway except in an emergency condition where the golf course(s) are in danger and there is no other source of water. Par-Tee agrees to make every effort to acquire the proper permits and pump water from the Kentucky River into Lake Holiday once the water level has been drawn down twelve (12) inches. The pumps will then run until the lake has reached six (6) inches below the normal spillway elevation.

- I. Par-Tee & PPROA agree that PPROA will maintain all paved and (2) gravel roads (Tanglewood Lane and Fairbourne Lane), all areas within eight (8) feet along both sides of paved and gravel roads, Lake Inverness, Holiday Lake, Big Bass Lake, guardhouse and the entryway as described in paragraph D. These areas, although owned by Par-Tee, shall be for the common use of the property owners in good standing and James W. Berling and his family. These areas must be maintained equal to or better than their current conditions. Par-Tee will have unrestricted access to its lots and un-platted property in the Resort as well as contiguous to Perry Park Resort, except as otherwise provided in this Agreement and subject to paragraph C above. Furthermore, all vehicles must identify themselves at the guard house. Par-Tee and its guests shall continue to have access to the lakes at Perry Park resort, excluding Inverness Lake, Lake Holiday, and Big Bass Lake. Said use of the specifically identified lakes shall be exclusive to the PPROA members, but shall include James W. Berling and his family.
- J. Because PPROA requires direct access to Inverness Lake and Lake Holiday, Par-Tee agrees to convey title to Lot No. 36 of Unit 2 to PPROA in exchange for PPROA conveying title to Lot No. 41 of Unit 2 to Par-Tee, and Par-Tee agrees to convey title to Lot No. 12 of Unit 1-D to PPROA in exchange for PPROA conveying title to Lot No. 4 of Unit 1-A to Par-Tee.
- K. The PPROA and its members shall hold Par-Tee and its members harmless and indemnify Par-Tee and its members with regard to any claims made against Par-Tee or its members as a result of the PPROA's failure to properly maintain the paved roadways serving the lot owners, lakes, and/or dams at Perry Park Resort. The PPROA shall procure liability insurance with a minimum coverage amount of One Million Dollars (\$1,000,000.00) to insure against the items referenced above and shall include Par-Tee and its members as insured thereon. Said coverage shall include the provision of a defense and the payment of legal fees and expenses related thereof to properly defend the action.

### **3. Assessment Fees**

The PPROA has determined that starting 2005 each member shall pay (1) fee. A member shall include one or more individuals who own a private lot, townhouse or condominium. A member shall pay the same Assessment Fee regardless of the number of lots which he/she owns or where said lot is located in Perry Park Resort.

Starting January 2009 Par-Tee shall pay a flat fee of One Thousand Fifty Dollars (\$1,050.00) on the first day of each month to PPROA as its contribution to the maintenance program. Each and every year following the year 2009 this amount will increase \$600.00 (\$50.00 per month) from the previous year amount.

### **4. PPROA Board**

Prior to the Annual Meeting, the Oversight Committee shall agree on the language to be included in any notice to PPROA members requiring a vote by the members, if different then the normal election of Directors as specified by the Articles of Incorporation. The language and timing of notices and proxies will be as specified by the Articles of Incorporation.

Par-Tee shall have one (1) one vote for each vacant position being voted upon for any election, and (1) one vote for special issues. Cumulative voting is not permitted. Mr. James Berling and/or his successor may participate in the meeting without any voting authority, but shall be excluded from any executive sessions.

### **5. Past Due Maintenance/Assessment Fees**

Par-Tee shall be entitled to retain all maintenance fees collected prior to April 1, 2005. PPROA shall make no claim to any lots which are currently deeded to Par-Tee. After April 1, 2005 PPROA shall be entitled to collect all Maintenance/Assessment Fees and shall be entitled to place a lien on lots in an effort to collect unpaid Maintenance/Assessment Fees. The PPROA shall be entitled to foreclose on any liens and place any lots which it forecloses in its

name. However, Par-Tee shall have the right of first refusal to purchase any lots which the PPROA obtains through foreclosure and wishes to sell.

#### **6. Accounts Receivables**

Par-Tee shall have the right to collect any accounts receivable as a result of unpaid Maintenance Fees which accrued through the date of the closing to purchase Perry Park Resort which occurred on July 31, 1998. The PPROA shall have the right to collect all accounts receivable as a result of unpaid Maintenance Fees from the date of the closing. Par-Tee and the PPROA each has the authority to place liens on lots owned by members who have failed to pay Maintenance/Assessment Fees as stated in this paragraph and shall have the authority to foreclose on said liens.

#### **7. Maintenance Fee Credit**

All PPROA members who have paid Maintenance Fees beginning in 2001 through April 2005 shall be entitled to a credit for said payments. PPROA members who have failed to pay Maintenance Fees for any year through April, 2005 shall be required to pay a pro-rata share of expenses for the years in which they failed to pay Maintenance Fees. Delinquent members shall be determined by the PPROA and their pro-rata share shall be determined by the PPROA.

PPROA members who have paid Maintenance Fees from 2001 through 2004 shall receive credit against future Assessment Fees (over a five-year period, starting with 2005/2006 Assessment Fee) based on the total amount of back-fees actually collected. Par-Tee shall have the right to inspect the financial records of the PPROA to ensure that the members who paid maintenance Fees from 2001 through 2004 receive proper credit as set forth above.

## **8. PPROA Yearly Budget**

The PPROA Annual Budget will be constructed and approved by the PPROA Board. The Assessment Fee paid by all property owners may not exceed 5% increase from the previous year's budget. The budget must include the following items and the amounts shown cannot be less than the previous year's amount. Additional expenses will also be necessary but the items listed below must be included as stated within this paragraph. Road re-pavement and repair funds must be spent in the year they are collected. The following items cannot decrease from the previous years budgeted amount when calculating the Annual Assessment Fee in any year.

Community Center Maintenance Expense

Lake & Dam Accrual Fund

Maintenance Expense

Road Re-pavement & Repair Fund

The expense for grass cutting and snow removal will increase \$200.00 from the previous year expense. The contract will include grass cutting of 8' along both sides of all paved and gravel roadways, front entryway, and Community Center. Services also include snow removal of all residential paved roads. Services also include removal of dead deer on property owner's property when notified and debris along sides of and in roadways such as tree and tree limbs and trash bags, etc. The appearances of the residential area and front entry must be maintained at the same professional appearance.

PPROA agrees to use Par-Tee as their provider for the services as described in the above paragraph provided the service continues to the expectations of the PPROA Board and is competitive (to other providers quotations secured by the PPROA Board) in cost. The PPROA Board will review the cost of these services no sooner than January, 2012.

## **9. Architectural Review**

Any construction of residences on any recorded lots shall be consistent with the general tenor of the subdivision, i.e. single family residences, condominiums, townhouses, similar

square footage, and in accordance with the Deeds of Restrictions on file for that unit with the Owen County Clerks Office. All building permits must be approved by the Oversight Committee.

## **10. Un-platted Property**

Par-Tee owns a vast amount of unplatted property which is within or adjacent to Perry Park resort. The unplatted property shall not be subject to any restrictions, except as imposed by municipal, county, state, or federal government. However, Par-Tee agrees not to pursue any industrial uses on said property.

## **11. Recreation**

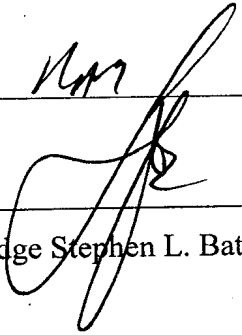
Par-Tee owns the existing Community Center Building and the 2.90 acres on which it is located. The parcel is bounded on the north side by Springport Ferry Road, on the west side by Waterford Road on the south side by Lot No. 1227 located in Unit 12, and on the east side by Big Bass Lake. Par-Tee agrees to convey the 2.90 acres and the building to PPROA by deed in fee simple for a total consideration of one-dollar (\$1), under the following conditions:

- A. Central Bank must release the parcels from their mortgage without a payoff.
- B. The property will be used for the benefit of the PPROA members-In-Good-Standing. The building and parking area may also be used for outside events such as receptions, meetings etc. to generate income for PPROA.
- C. The building must be maintained in a clean and workmanlike manner.
- D. The grounds must be mowed and kept clean with no outside storage of cars, trucks, boats, or rubbish of any kind.
- E. The property cannot be sold to any other entity without written approval of Par-Tee and a member of the James W. Berling immediate family.

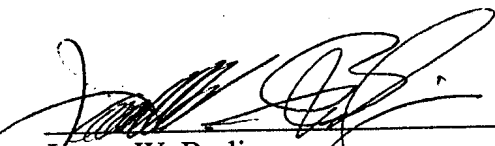
The PPROA and its members shall hold Par-Tee and its members harmless and indemnify Par-Tee and its members with regard to any claims made against Par-Tee or its members as a result of the PPROA failure to maintain the Community Center and Ball Field or to keep them in good repair. The PPROA shall procure liability insurance with a minimum coverage amount of One Million Dollars (\$1,000,000.00) to insure against the items referred above and shall include Par-Tee and its members as insured therein. Said coverage shall include the provision of a defense and the payment of legal fees and expenses related thereto to properly defend the action.

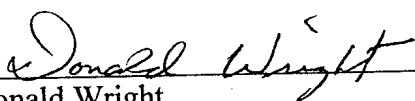
All PPROA members in good standing who own a lot shall be entitled to purchase a swimming pool membership at fifty percent (50%) of the normal membership fee. In addition, all PPROA members in good standing are entitled to play golf and rent a golf cart for a fee twenty-five percent (25%) less than the normal green fee and cart fee for that date and time of day.

**IT IS SO ORDERED** this 19 day of Nov, 2009.

  
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Honorable Judge Stephen L. Bates

**Have Seen and Agreed:**

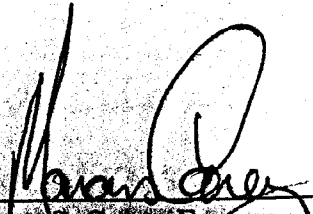
  
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James W. Berling  
Managing Member, Par-Tee, LLC

  
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Donald Wright  
Chairman of the Board of Perry Park  
Resort Owners Association, Inc. Legal  
Committee



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