

CERTIFIED COPY

STATE OF WYOMING)
) ss
COUNTY OF SHERIDAN)

IN THE DISTRICT COURT
FOURTH JUDICIAL DISTRICT

POWDER HORN HOMEOWNERS)
ASSOCIATION, INC., a Wyoming nonprofit)
corporation,)
)
Plaintiff,)
)
vs.)
)
RMSDAP, INC., a Wyoming corporation,)
)
Defendant.)

Civil Action No. CV-2022-147

No. _____
District Court Sheridan County Wyoming

FEB 02 2023

Glenda Brown Clerk
Glenda Brown Deputy

STIPULATED JUDGMENT

THIS MATTER came before the Court on a Motion for Entry of Stipulated Judgment; the Court having reviewed the pleadings, and being otherwise fully advised in the premises, FINDS as follows:

1. Venue is proper in this Court pursuant to W.S. § 1-5-101 and § 1-5-105.
2. Defendant was properly served in this matter and timely filed its answer.
3. Defendant owns Lot EE6 within the Powder Horn community located in Sheridan County, Wyoming, commonly known as 84 Club House Drive (referred to as the "Lot", "Property", or "Residence").
4. The Property is subject to the Declaration of Covenants, Conditions and Restrictions for the Powder Horn, as amended, executed September 26, 1995, and recorded September 27, 1995, as Document No. 209051, Book 375, Page 563, in the land records of Sheridan County, Wyoming ("Covenants") and the Residential Development Standards, dated

June 1, 2018, and recorded June 15, 2018, as Document No. 2018-743042, Book 574, Page 446, in the land records of Sheridan County Wyoming ("Design Standards").

4. Plaintiff filed an Amended Complaint alleging that Defendant violated the Covenants and Design Standards. Defendant answered the Amended Complaint detailing its various defenses to Plaintiff's allegations.

5. The parties reached a settlement agreement resolving the claims raised in this litigation, a copy of which is attached hereto as **Exhibit A** and incorporated by reference (the "Settlement Agreement").

6. Pursuant to the terms of the Settlement Agreement, the parties stipulate and agree that the amount due and owing from Defendant to the Plaintiff is \$30,500.00.

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that judgment be, and the same hereby is, entered in favor of Plaintiff and against Defendant RMSDAP, INC., a Wyoming corporation, on the claims stated in Plaintiff's Amended Complaint in the amount of **Thirty Thousand Five Hundred Dollars (\$30,500.00)**, through January 1, 2023. Post-judgment interest shall accrue at the rate of ten percent (10%) per year pursuant to W.S. § 1-16-102(a) from the date of entry of this judgment should Defendant not meet the terms provided for within the Settlement Agreement.

DONE IN OPEN COURT this 2nd day of February, 2023.

BY THE COURT:

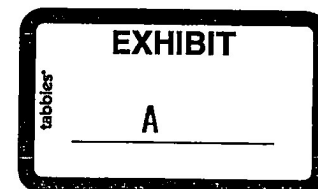
ORIGINAL SIGNED BY: BENJAMIN S. KIRVEN

DISTRICT COURT JUDGE

Copies to:
Amanda K. Roberts/Erin Thimmesch
Mike Lansing/Mikole Soto

Certificate of Clerk of the District Court: The above is a true and correct copy of the original instrument which is on file or of record in this court.

Done this 2nd day of February, 2023
By [Signature] Clerk
By [Signature] Deputy



SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This Settlement Agreement and Mutual Release ("Agreement") is made effective as of the last date set forth in the signature page below ("Effective Date") by and between Powder Horn Homeowners Association, Inc. ("Plaintiff") and RMSDAP, Inc., Neil Fancher, individually, and Tammy Klasinski, individually (collectively "Defendant").

RECITALS

WHEREAS, the parties hereto are Plaintiff and Defendant in the matter of Powder Horn Homeowners Association, Inc. a Wyoming nonprofit corporation v. RMSDAP, Inc., a Wyoming corporation, Civil No. 2022-147, Fourth Judicial District, Sheridan County, Wyoming (sometimes hereinafter referred to as the "Litigation").

WHEREAS, Plaintiff filed its *Complaint* on May 16, 2022 ("Complaint") as well as a *Motion for Preliminary Injunction* on or about May 23, 2022. The Complaint alleges, among other claims, that Defendant violated the Declaration of Covenants, Conditions and Restrictions for the Powder Horn, as amended, executed September 26, 1995, and recorded September 27, 1995, as Document No. 209051, Book 375, Page 563, in the land records of Sheridan County, Wyoming ("Covenants") and the Residential Development Standards, dated June 1, 2018, and recorded June 15, 2018, as Document No. 2018-743042, Book 574, Page 446, in the land records of Sheridan County Wyoming ("Design Standards") by constructing a home at 84 Club House Drive, Sheridan, WY (sometimes referred to as "84 Club House Drive," "Residence," "Property" or "Lot") that exceeded the height restriction contained in the Covenants, and failed to pay a previously assessed fine. On August 5, 2022, Plaintiff filed its *First Amended Complaint* ("Amended Complaint") which added a claim that Defendant built a structure that was not in conformity with the plans approved by Plaintiff. In addition, Plaintiff has repeatedly requested Defendant to clean up and maintain the Lot and alleges Defendant has not completed construction of the improvements within eighteen (18) months of the commencement of construction as required by the Design Standards.

WHEREAS, Defendant filed its *Answer to Complaint* on July 15, 2022 and filed its *Answer to the Amended Complaint* on September 12, 2022. In its defense, Defendant alleges, among other claims, that Plaintiff has not consistently enforced the Covenants and that there are other violations of the Covenants in the Powder Horn Homeowners Association. Defendant alleges that it has been singled out by Plaintiff and the Design Review Committee and the Covenants were being selectively enforced. Further, Defendant contends Plaintiff continues to single out Defendant and selectively enforce its covenants regarding the maintenance of the Lot and that Plaintiff's actions have unnecessarily slowed the time required for construction.

WHEREAS, Plaintiff disputes Defendant's allegations and maintains that it has consistently enforced the Covenants, that Plaintiff is not aware of any other unaddressed violations of the Covenants, and that Defendant has not been singled out for selective enforcement of the Covenants.

WHEREAS, on September 6, 2022, the Court denied Plaintiff's *Motion for Preliminary Injunction* because the Defendant asserted defenses that needed to be fleshed out and Plaintiff had the remedy of specific performance available to it to bring the home into compliance with height requirements, as acknowledged by the Defendant, and, therefore, no emergency existed to warrant a temporary injunction.

WHEREAS, Plaintiff and Defendant reached an agreement to settle any and all actions, claims, causes of action and demands, whether asserted or unasserted, known or unknown, foreseen or unforeseen, in any manner whatsoever related to the facts underlying the Litigation and to dismiss or waive all claims and counterclaims that were pled or could have been pled in the Litigation and to further enter into this Settlement Agreement and Mutual Release.

SETTLEMENT

NOW THEREFORE, in consideration of the bargained for and exchanged mutually binding terms, covenants, conditions set forth herein and other valuable consideration, receipt of which is hereby acknowledged, the parties agree as follows:

1. **Sale of 84 Club House Drive.** Defendant shall sell the Property located at 84 Club House Drive and close on the sale on or before August 31, 2023. Defendant shall not sell or otherwise transfer the Property to an entity related to or controlled by RMSDAP, Inc. or any owners thereof, including, but not limited to, Tammy Klasinski, Neil Fancher, and Rocky Mountain Sign Design and Print, LLC. Defendant shall list the Property for sale by February 1, 2023, at a price that is within the range suggested by the listing agent. Defendant shall provide Plaintiff with a copy of the listing agreement and any sales contract it enters for the sale of the Property. Defendant shall continuously and actively market the Property until sold.

In exchange for Defendant's agreement to sell the Property and for payment of the amounts listed in paragraphs 3 and 4 below, Plaintiff agrees that Defendant may sell the Property without making any adjustments to the roofline of the Residence. Plaintiff hereby provides assurances to any potential third-party buyer that the Residence, as is, will not be considered in violation of the Covenants as long as Defendant complies with the terms of this Agreement. Defendant further agrees not to rent or lease the Property during the pendency of this Agreement. Defendant may not reside on the Property until a certificate of occupancy is obtained.

If, despite diligent efforts to sell the Property, the Property is not sold by August 31, 2023, Defendant shall make payment to Plaintiff in the amounts listed in paragraphs 3 and 4 below on or before August 31, 2023. Further, Defendant shall continue to actively market the Property for sale with a realtor at a price that is within the range suggested by the listing agent and shall continue reviewing the sale price every thirty (30) days.

2. **Completion of the Residence.** The parties agree to extend the time for Defendant to complete construction of the Residence. Defendant shall obtain a certificate of occupancy of the Residence and shall complete construction of the exterior of the Residence in accordance with the approved construction plans (notwithstanding the existing roofline) no later than **March 31, 2023**. This shall not include the Toy Garage, which may remain unfinished until sold. The new

owner shall work with the DRC to complete construction of the Toy Garage following the sale of the Property. Further, Defendant may leave some items in the interior of the Residence unfinished to allow potential buyers the ability to choose finishing touches, if so desired.

3. Attorney Fees and Costs. Defendant shall be solely responsible for its attorney fees and costs and RMSDAP, Inc., Tammy Klasinski, and Neil Fancher, shall be jointly and severally liable for Plaintiff's attorney's fees and costs in the amount of \$20,000.00.
4. Fines. Defendant shall be assessed a \$10,000.00 fine as permitted by section 9.38 of the Covenants, along with the \$500.00 fine previously assessed and RMSDAP, Inc., Tammy Klasinski, and Neil Fancher shall be jointly and severally liable for payment of the fines.
5. Stipulated Judgment and Covenant Not to Execute. The parties shall stipulate to entry of a judgment in the amount of \$30,500.00 and dismiss the Litigation with prejudice. The parties shall execute the attached Ex. A and submit the same for approval by the Court in the Litigation ("Judgment"). So long as Defendant fulfills its obligations set forth in this Agreement, Plaintiff agrees not to execute on the Judgment.
6. Satisfaction of Judgment. Following payment of the Judgment, Plaintiff shall file a Satisfaction of Judgment in the Litigation.
7. Agreement to Maintain Lot. Until the Lot is sold, Defendant agrees to clean up the Lot and to maintain it in a clean, safe, and sanitary manner that is free from debris and otherwise conforms to the standards set forth in the Covenants and Design Standards. If Defendant fails to do so and fails to cure within ten (10) days after written notice by Plaintiff, Plaintiff in its sole discretion, may clean up the Lot to the standards set forth in the Covenants and Design Standards and assess all costs for doing so to the Defendant. Plaintiff will use the same standard for all lots under construction within the subdivision.
8. Agreement not to Rent Toy Garage. Defendant agrees that the Toy Garage shall not be utilized as a second residence on the Lot and shall not be rented separate from the Residence under any circumstances.
9. Plaintiff not Liable for Construction Defects, Approval of Plans, or Nonconformity with Codes or Regulations. Pursuant to Section 9.26 of the Covenants, any plans and specifications that were previously approved by the Design Review Committee were as to style, exterior design, appearance and location only. Plans and Specifications are not approved for engineering design or for compliance with zoning and building ordinances, and by approving such plans and specifications neither the Design Review Committee, the members thereof, the Association, any Member, the Board nor the Declarant assumes any liability or responsibility therefor, or for any defect in any structure constructed from such plans and specifications. Neither the Design Review Committee, any member thereof, the Association, the Board nor the Declarant shall be liable to any Owner or other Person for any damage, loss or prejudice suffered or claimed on account of (a) the approval or disapproval of any plans, drawings and specifications, whether or not defective, (b) the construction or performance of any work, whether or not pursuant to approved plans, drawings and specifications, (c) the development, or manner of development

of any property within the Project, or (d) the execution and filing of an estoppel certificate pursuant to the Development Standards, whether or not the facts therein are correct; provided, however, that such action, with the actual knowledge possessed by him, was taken in good faith. Approval of plans and specifications by the Design Review Committee is not, and shall not be deemed to be, a representation or warranty that said plans or specifications comply with applicable governmental ordinances or regulations including, but not limited to, zoning ordinances and building codes.

10. No Admission of Liability. The parties acknowledge that this Agreement has been entered into solely for the purpose of compromising and concluding the released claims among the parties, and eliminating possible involvement in any dispute based upon other unasserted claims, and that this Agreement and the actions taken pursuant thereto do not constitute an admission of liability or wrongdoing by any party.
11. Covenants Remain in Full Force and Effect. The Property remains subject to the terms and conditions of the Covenants and Design Standards. Nothing herein shall be deemed a waiver of Plaintiff's rights to enforce future violations of the Covenants and Design Standards for the Property.
12. Mutual Waiver and Release. Each party hereby waives and releases all claims and counterclaims that were pled or could have been pled in the Litigation against the other parties respectively.
13. Representations. The parties represent and warrant that they each have had an opportunity to consult with an attorney, and have carefully read and understand the scope and effect of the provisions of this Agreement. No party has relied upon any representations or statements made by any other party, which are not specifically set forth in this Agreement. Each of the parties warrant and represent that in executing this Agreement, such party has relied on legal advice from the attorney of its choice, that the terms of this Agreement and its consequences have been completely read and explained to such party by that attorney, and that such party fully understands the terms of this Agreement. The parties acknowledge that this Agreement is entered into freely and voluntarily without duress by the parties or by the agents of the parties.
14. Parties' Respective Legal Heirs, Successors and Assigns. This Agreement shall be binding on and inure to the benefit of the parties and their respective legal representatives, successors, and assigns and that all warranties, covenants, agreements, undertakings, and releases contained herein shall survive this Agreement and Stipulated Judgment.
15. Severability. In the event that any provision hereof becomes declared by a court of competent jurisdiction to be illegal, unenforceable or void, this Agreement shall continue in full force and effect without said illegal provision.
16. Entire Agreement. This Agreement represents the entire agreement and understanding between the parties, and represents the complete, final and exclusive embodiment of their agreement concerning the matters set forth herein. Further, this Agreement shall supersede and replace any

and all prior and contemporaneous agreements, representations and understandings regarding the subject of this Agreement.

17. Governing Law, Exclusive Jurisdiction. This Agreement shall be governed by the laws of the State of Wyoming, including all matters of construction, validity, performance, and enforcement and without giving effect to the principles of conflict of laws. By signing this Agreement, the parties hereby agree and submit to the exclusive jurisdiction of the circuit and district courts located in Sheridan County, Wyoming in connection with any dispute arising under the terms of this Agreement. Each Party agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.
18. Counterparts. This Agreement may be executed in counterparts and by facsimile or .pdf. Each counterpart shall have the same force and effect as an original and constitute an effective, binding agreement on the part of each of the undersigned.
19. No Construction Against the Drafter. This Agreement shall be deemed jointly drafted and written by all parties to it and shall not be construed or interpreted against any particular party, regardless of which party or counsel originated or drafted any portion of it.
20. Enforcement of Settlement. In the event of any litigation to enforce the terms of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees, as well as to such costs as may be awardable to the prevailing party by rule or statute in the court in which the action is brought.
21. Modifications. This Agreement may not be amended, canceled, revoked or otherwise modified except by written agreement subscribed by all of the parties to be charged with such modification.
22. No Implied Waiver. No action or failure to act shall constitute a waiver of any right or duty afforded under this Agreement, nor shall any action or failure to act constitute an approval of, or acquiescence in, any breach, except as may be specifically agreed in writing. Waiver of any one provision herein shall not be deemed to be a waiver of any other provision herein.

PLAINTIFF:

Powder Horn Homeowners Association, Inc.

Th H N, MD
By:

1/20/2023
Date

President HOA
Title:

DEFENDANT:

RMSDAP, Inc.

[Signature]
By: Neil Fancher
Title: President

1/20/23
Date

[Signature]
Neil Fancher, Individually

1/20/23
Date

[Signature]
Tammy Klasinski, Individually

1/20/23
Date

NO. 2023-783897 JUDGMENT - LEGAL
EDA SCHUNK THOMPSON, SHERIDAN COUNTY CLERK
LONABAUGH & RIGGS DRAWER 5059
SHERIDAN WY 82801