

05-106-CD  
Treasure Lake etal vs. M Kane etal  
vs. MARK A. KANF, etal.

P.O.A v. Mark Kane et al  
2005-106-CD

## COMMONWEALTH OF PENNSYLVANIA

## COURT OF COMMON PLEAS

Judicial District, County Of Clearfield

46

## NOTICE OF APPEAL

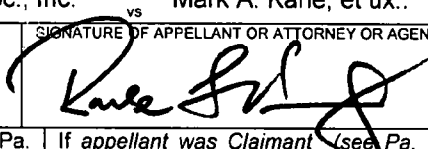
FROM

## DISTRICT JUSTICE JUDGMENT

COMMON PLEAS No. 05-106-CD

## NOTICE OF APPEAL

Notice is given that the appellant has filed in the above Court of Common Pleas an appeal from the judgment rendered by the District Justice on the date and in the case referenced below.

NAME OF APPELLANT Mark A. Kane and Annette M. Kane		MAG. DIST. NO. 46-3-01	NAME OF D.J. Patrick N. Ford	
ADDRESS OF APPELLANT 571 Treasure Lake		CITY Dubois	STATE PA	ZIP CODE 15801
DATE OF JUDGMENT 1/3/05	IN THE CASE OF (Plaintiff) Treasure Lake Prop. Owners Assoc., Inc.		vs. (Defendant) Mark A. Kane, et ux..	
DOCKET No. CV-0000670-04		SIGNATURE OF APPELLANT OR ATTORNEY OR AGENT 		

This block will be signed ONLY when this notation is required under Pa. R.C.P.D.J. No. 1008B.

This Notice of Appeal, when received by the District Justice, will operate as a SUPERSEDEAS to the judgment for possession in this case.

If appellant was Claimant (see Pa. R.C.P.D.J. No. 1001(6) in action before a District Justice, A COMPLAINT MUST BE FILED within twenty (20) days after filing the NOTICE of APPEAL.

\_\_\_\_\_  
Signature of Prothonotary or Deputy

## PRAECIPE TO ENTER RULE TO FILE COMPLAINT AND RULE TO FILE

(This section of form to be used ONLY when appellant was DEFENDANT (see Pa.R.C.P.D.J. No. 1001(7) in action before District Justice. IF NOT USED, detach from copy of notice of appeal to be served upon appellee.

## PRAECIPE: To Prothonotary

Enter rule upon Treasure Lake Property Owners Association, Inc. appellee(s), to file a complaint in this appeal

\_\_\_\_\_  
Name of appellee(s)

(Common Pleas No. 05-106-CD ) within twenty (20) days after service of rule or suffer entry of judgment of non pros.

\_\_\_\_\_  
Signature of appellant or attorney or agent

RULE: To Treasure Lake Prop Owners Assoc. c , appellee(s)

\_\_\_\_\_  
Name of appellee(s)

(1) You are notified that a rule is hereby entered upon you to file a complaint in this appeal within twenty (20) days after the date of service of this rule upon you by personal service or by certified or registered mail.

(2) If you do not file a complaint within this time, a JUDGMENT OF NON PROS MAY BE ENTERED AGAINST YOU.

(3) The date of service of this rule if service was by mail is the date of the mailing.

Date: 1-26-2005

**FILED**  
in 10:42 AM on 1-26-05  
400 to atty  
JAN 26 2005

\_\_\_\_\_  
Signature of Prothonotary or Deputy

YOU MUST INCLUDE A COPY OF THE NOTICE OF JUDGMENT/TRANSCRIPT FORM WITH THIS NOTICE OF APPEAL.

William A. Shaw  
Prothonotary

COMMONWEALTH OF PENNSYLVANIA  
COUNTY OF: **CLEARFIELD**

Mag. Dist. No.: **46-3-01**  
CJ Name: Hon.  
**PATRICK N. FORD**  
Address: **309 MAPLE AVENUE**  
**PO BOX 452**  
**DUBOIS, PA**  
Telephone: **(814) 371-5321** **15801**

**MARK A. KANE**  
**571 TREASURE LAKE**  
**DUBOIS, PA 15801**

**NOTICE OF JUDGMENT/TRANSCRIPT**  
**CIVIL CASE**

PLAINTIFF: NAME AND ADDRESS  
**TREASURE LAKE PROP OWNERS ASSOC INC**  
**13 TREASURE LAKE**  
**DUBOIS, PA 15801**

VS.  
DEFENDANT: NAME AND ADDRESS  
**KANE, MARK A, ET AL.**  
**571 TREASURE LAKE**  
**DUBOIS, PA 15801**

Docket No.: **CV-0000670-04**  
Date Filed: **11/15/04**



**THIS IS TO NOTIFY YOU THAT:**  
Judgment:

**FOR PLAINTIFF**

☒ Judgment was entered for: (Name) **TREASURE LAKE PROP OWNERS ASSO**

☒ Judgment was entered against: (Name) **KANE, MARK A**

In the amount of \$ **2,136.20** on: (Date of Judgment) **1/03/05**

☐ Defendants are jointly and severally liable. (Date & Time) \_\_\_\_\_

☐ Damages will be assessed on:

☐ This case dismissed without prejudice.

☐ Amount of Judgment Subject to  
Attachment/42 Pa.C.S. § 8127 \$ \_\_\_\_\_

☐ Portion of Judgment for physical  
damages arising out of residential  
lease \$ \_\_\_\_\_

Amount of Judgment	\$ <u><b>2,040.20</b></u>
Judgment Costs	\$ <u><b>96.00</b></u>
Interest on Judgment	\$ <u><b>.00</b></u>
Attorney Fees	\$ <u><b>.00</b></u>
Total	\$ <u><b>2,136.20</b></u>
Post Judgment Credits	\$ _____
Post Judgment Costs	\$ _____
Certified Judgment Total	\$ _____

ANY PARTY HAS THE RIGHT TO APPEAL WITHIN 30 DAYS AFTER THE ENTRY OF JUDGMENT BY FILING A NOTICE OF APPEAL WITH THE PROTHONOTARY/CLERK OF THE COURT OF COMMON PLEAS, CIVIL DIVISION. YOU MUST INCLUDE A COPY OF THIS NOTICE OF JUDGMENT/TRANSCRIPT FORM WITH YOUR NOTICE OF APPEAL.

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**1-305** Date **Patrick N. Ford - PNF**, District Justice

I certify that this is a true and correct copy of the record of the proceedings containing the judgment.  
\_\_\_\_\_, Date \_\_\_\_\_, District Justice

My commission expires first Monday of January, 2006.

SEAL

AOPG 315-03

DATE PRINTED: **1/03/05 12:15:20 PM**

COMMONWEALTH OF PENNSYLVANIA  
COUNTY OF: **CLEARFIELD**

Mag. Dist. No.: **46-3-01**  
Plaintiff: **PATRICK N. FORD**  
Address: **309 MAPLE AVENUE**  
**PO BOX 452**  
**DUBOIS, PA**  
Telephone: **(814) 371-5321** **15801**

**ANNETTE M. KANE**  
**571 TREASURE LAKE**  
**DUBOIS, PA 15801**

**NOTICE OF JUDGMENT/TRANSCRIPT**  
**CIVIL CASE**

PLAINTIFF: **TREASURE LAKE PROP OWNERS ASSOC INC**  
**13 TREASURE LAKE**  
**DUBOIS, PA 15801**

VS.  
DEFENDANT: **KANE, MARK A, ET AL.**  
**571 TREASURE LAKE**  
**DUBOIS, PA 15801**

Docket No.: **CV-0000670-04**  
Date Filed: **11/15/04**



THIS IS TO NOTIFY YOU THAT:  
Judgment:

**FOR PLAINTIFF**

☒ Judgment was entered for: (Name) **TREASURE LAKE PROP OWNERS ASSO**  
☒ Judgment was entered against: (Name) **KANE, MARK A**  
in the amount of \$ **2,136.20** on: (Date of Judgment) **1/03/05**

☐ Defendants are jointly and severally liable.

(Date & Time) \_\_\_\_\_

☐ Damages will be assessed on:

☐ This case dismissed without prejudice.

☐ Amount of Judgment Subject to  
Attachment/42 Pa.C.S. § 8127 \$ \_\_\_\_\_

☐ Portion of Judgment for physical  
damages arising out of residential  
lease \$ \_\_\_\_\_

Amount of Judgment	\$ <b>2,040.20</b>
Judgment Costs	\$ <b>96.00</b>
Interest on Judgment	\$ <b>.00</b>
Attorney Fees	\$ <b>.00</b>
Total	\$ <b>2,136.20</b>

Post Judgment Credits \$ \_\_\_\_\_  
Post Judgment Costs \$ \_\_\_\_\_

Certified Judgment Total \$ \_\_\_\_\_

ANY PARTY HAS THE RIGHT TO APPEAL WITHIN 30 DAYS AFTER THE ENTRY OF JUDGMENT BY FILING A NOTICE OF APPEAL WITH THE PROTHONOTARY/CLERK OF THE COURT OF COMMON PLEAS, CIVIL DIVISION. YOU MUST INCLUDE A COPY OF THIS NOTICE OF JUDGMENT/TRANSCRIPT FORM WITH YOUR NOTICE OF APPEAL.

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**1-305** Date **Patrick N. Ford - PNF**, District Justice

I certify that this is a true and correct copy of the record of the proceedings containing the judgment.  
\_\_\_\_\_, Date \_\_\_\_\_, District Justice

My commission expires first Monday of January, 2006.

SEAL

AOPC 316-03

DATE PRINTED: **1/03/05 12:15:20 PM**



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

MARK A. KANE and ANNETTE M. KANE, CIVIL DIVISION

Appellants,

No. 05-106-CD

v.

**PROOF OF SERVICE OF NOTICE OF  
APPEAL AND RULE TO FILE  
COMPLAINT**

TREASURE LAKE PROPERTY OWNERS  
ASSOCIATION, INC.,

Appellee.

Filed on Behalf of : Appellants, Mark A. Kane  
and Annette M. Kane

Counsel of Record for this  
Party:

Ronald L. Hicks, Esquire  
Pa. Id. No. 43952

Joshua R. Lorenz, Esquire  
Pa. Id. No. 84397

MEYER, UNKOVIC & SCOTT LLP  
Firm # 199  
1300 Oliver Building  
Pittsburgh, PA 15222

(412) 456-2800

**FILED**

*M 10:59 AM 1/28/05*

JAN 28 2005

*ASD*  
William A. Shaw  
Prothonotary

**PROOF OF SERVICE OF NOTICE OF APPEAL AND RULE TO FILE COMPLAINT**

(This proof of service MUST BE FILED WITHIN TEN (10) DAYS AFTER filing of the notice of appeal. Check applicable boxes.)

COMMONWEALTH OF PENNSYLVANIA

COUNTY OF Clearfield ; ss

**AFFIDAVIT:** I hereby (swear) (affirm) that I served

☒ a copy of the Notice of Appeal, Common Pleas No. 05-106-CD, upon the District Justice designated therein on  
(date of service) January 27, 2005, ☐ by personal service ☒ by (certified) (registered) mail,  
sender's receipt attached hereto, and upon the appellee, (name) *Treasure Lake Property Owners Association, Inc.*

, on

January 27, 2005 ☐ by personal service ☒ by  
(certified) (registered) mail,  
sender's receipt attached hereto.

(SWORN) (AFFIRMED) AND SUBSCRIBED BEFORE ME  
THIS 27th DAY OF JANUARY, 2005.

Elizabeth J. Gally  
Signature of official before whom affidavit was made

[Signature]  
Signature of affiant

Title of official

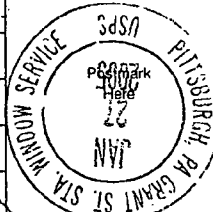
My commission expires on 4-15, 2007.

Notarial Seal  
Elizabeth J. Gally, Notary Public  
City Of Pittsburgh, Allegheny County  
My Commission Expires Apr. 15, 2007  
Member, Pennsylvania Association Of Notaries

**U.S. Postal Service**  
**CERTIFIED MAIL RECEIPT**  
*(Domestic Mail Only; No Insurance Coverage Provided)*

7000 1670 000A 7171 9659

Postage		\$ 2.37
Certified Fee		2.30
Return Receipt Fee (Endorsement Required)		1.75
Restricted Delivery Fee (Endorsement Required)		
<b>Total Postage &amp; Fees</b>		<b>\$ 4.42</b>



Sent To	
TREASURE LAKE PROPERTY OWNERS ASSOCIA.	
Street, Apt. No., or PO Box No.	
INC.	
13 TREASURE LAKE	
City, State, Zip	
DUBOIS PA 15801	

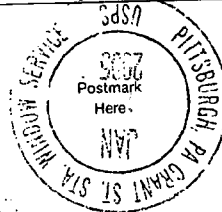
PS Form 3800, May 2000 See Reverse for Instructions

**U.S. Postal Service**  
**CERTIFIED MAIL RECEIPT**  
*(Domestic Mail Only; No Insurance Coverage Provided)*

9996 6666 7171 0000 0000 0000 0000 0000

0751022 USA

Postage	\$ .37
Certified Fee	2.30
Return Receipt Fee (Endorsement Required)	1.75
Restricted Delivery Fee (Endorsement Required)	
<b>Total Postage &amp; Fees</b>	<b>\$ 4.42</b>



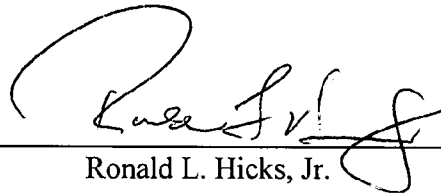
Sent To  
**PATRICK N. FORD DISTRICT JUSTICE**  
 Street Apt. No. or PO Box No.  
**309 MAPLE AVENUE PO BOX 452**  
**CHICAGO IL 60612-1580**

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing Proof of Service of Notice of Appeal and Rule to File Complaint was served upon parties of record by United States mail, first-class, postage prepaid, this 27<sup>th</sup> day of January, 2005, to the following addresses:

Treasure Lake Property Owners Association, Inc.  
13 Treasure Lake  
Dubois, PA 15801

Patrick N. Ford  
District Justice  
309 Maple Avenue  
P.O. Box 452  
Dubois, PA 15801

A handwritten signature in black ink, appearing to read "Ronald L. Hicks, Jr.", is written over a horizontal line.

Ronald L. Hicks, Jr.

ATTORNEYS FOR APPELLANTS MARK  
A. KANE AND ANNETTE M. KANE

COMMONWEALTH OF PENNSYLVANIA  
COUNTY OF: **CLEARFIELD**

Mag. Dist. No.: **46-3-01**  
DJ Name: Hon. **PATRICK N. FORD**  
Address: **309 MAPLE AVENUE**  
**PO BOX 452**  
**DUBOIS, PA**  
Telephone: **(814) 371-5321** **15801**

**PATRICK N. FORD**  
**309 MAPLE AVENUE**  
**PO BOX 452**  
**DUBOIS, PA 15801**

**NOTICE OF JUDGMENT/TRANSCRIPT**  
**CIVIL CASE**

PLAINTIFF: **TREASURE LAKE PROP OWNERS ASSOC INC**  
**13 TREASURE LAKE**  
**DUBOIS, PA 15801**

VS.  
DEFENDANT: **KANE, MARK A, ET AL.**  
**571 TREASURE LAKE**  
**DUBOIS, PA 15801**

Docket No.: **CV-0000670-04**  
Date Filed: **11/15/04**



**THIS IS TO NOTIFY YOU THAT:**  
Judgment:

**FOR PLAINTIFF**

☒ Judgment was entered for: (Name) **TREASURE LAKE PROP OWNERS ASSO**

☒ Judgment was entered against: (Name) **KANE, ANNETTE M**

in the amount of \$ **2,136.20** on: (Date of Judgment) **1/03/05**

☐ Defendants are jointly and severally liable. (Date & Time)

☐ Damages will be assessed on:

☐ This case dismissed without prejudice.

☐ Amount of Judgment Subject to  
Attachment/42 Pa.C.S. § 8127 \$

☐ Portion of Judgment for physical  
damages arising out of residential  
lease \$

**FILED**  
**m/11/30/05**  
**FEB 02 2005**

William A. Shaw  
Prothonotary/Clerk of Court

Amount of Judgment	\$ <b>2,040.20</b>
Judgment Costs	\$ <b>96.00</b>
Interest on Judgment	\$ <b>.00</b>
Attorney Fees	\$ <b>.00</b>
<b>Total</b>	<b>\$ 2,136.20</b>

Post Judgment Credits	\$
Post Judgment Costs	\$
<b>Certified Judgment Total</b>	<b>\$</b>

ANY PARTY HAS THE RIGHT TO APPEAL WITHIN 30 DAYS AFTER THE ENTRY OF JUDGMENT BY FILING A NOTICE OF APPEAL WITH THE PROTHONOTARY/CLERK OF THE COURT OF COMMON PLEAS, CIVIL DIVISION. YOU MUST INCLUDE A COPY OF THIS NOTICE OF JUDGMENT/TRANSCRIPT FORM WITH YOUR NOTICE OF APPEAL.

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**1-305** Date **Patrick N. Ford - PNF**, District Justice

I certify that this is a true and correct copy of the record of the proceedings containing the judgment.  
Date \_\_\_\_\_, District Justice

My commission expires first Monday of January, **2006**.

SEAL

COMMONWEALTH OF PENNSYLVANIA  
COUNTY OF: **CLEARFIELD**

Mag. Dist. No.:	<b>46-3-01</b>
DJ Name: Hon.	<b>PATRICK N. FORD</b>
Address:	<b>309 MAPLE AVENUE PO BOX 452 DUBOIS, PA</b>
Telephone: (814 )	<b>371-5321 15801</b>

**PATRICK N. FORD  
309 MAPLE AVENUE  
PO BOX 452  
DUBOIS, PA 15801**

**NOTICE OF JUDGMENT/TRANSCRIPT  
CIVIL CASE**

PLAINTIFF: **TREASURE LAKE PROP OWNERS ASSOC INC**  
13 TREASURE LAKE  
DUBOIS, PA 15801

VS.  
DEFENDANT: **KANE, MARK A, ET AL.**  
571 TREASURE LAKE  
DUBOIS, PA 15801

Docket No.: **CV-0000670-04**  
Date Filed: **11/15/04**



**THIS IS TO NOTIFY YOU THAT:**  
Judgment:

**FOR PLAINTIFF**

☒ Judgment was entered for: (Name) **TREASURE LAKE PROP OWNERS ASSO**

☒ Judgment was entered against: (Name) **KANE, MARK A**

in the amount of \$ **2,136.20** on: (Date of Judgment) **1/03/05**

☐ Defendants are jointly and severally liable. (Date & Time) \_\_\_\_\_

☐ Damages will be assessed on:

☐ This case dismissed without prejudice.

☐ Amount of Judgment Subject to  
Attachment/42 Pa.C.S. § 8127 \$ \_\_\_\_\_

☐ Portion of Judgment for physical  
damages arising out of residential  
lease \$ \_\_\_\_\_

Amount of Judgment	\$ <b>2,040.20</b>
Judgment Costs	\$ <b>96.00</b>
Interest on Judgment	\$ <b>.00</b>
Attorney Fees	\$ <b>.00</b>
<b>Total</b>	<b>\$ 2,136.20</b>

Post Judgment Credits \$ \_\_\_\_\_  
Post Judgment Costs \$ \_\_\_\_\_

**Certified Judgment Total** \$ \_\_\_\_\_

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**1-305** Date **Patrick N. Ford - PNF**, District Justice

I certify that this is a true and correct copy of the record of the proceedings containing the judgment.  
\_\_\_\_\_, Date \_\_\_\_\_, District Justice

My commission expires first Monday of January, **2006**.

SEAL

COMMONWEALTH OF PENNSYLVANIA  
COUNTY OF: **CLEARFIELD**

**CIVIL COMPLAINT**

Mag. Dist. No.: <b>46-3-01</b>
DJ Name: Hon. <b>PATRICK N. FORD</b>
Address: <b>309 MAPLE AVENUE</b> <b>P.O. BOX 452</b> <b>DUBOIS, PA 15801</b>
Telephone: <b>(814) 371-5321</b>

PLAINTIFF: NAME and ADDRESS  
**TREASURE LAKE PROP. OWNERS ASSO. INC.**  
**13 TREASURE LAKE**  
**DUBOIS, PA. 15801**

DEFENDANT: VS.  
NAME and ADDRESS

**KANE, MARK A & ANNETTE M**  
**571 TREASURE LAKE**  
**DUBOIS, PA. 15801**

Docket No.: **CV-670-CV**  
Date Filed: **11-15-04**

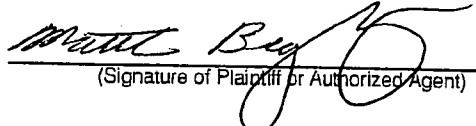


	AMOUNT	DATE PAID
FILING COSTS \$	<u>96.00</u>	<u>11/15/04</u>
SERVING COSTS \$	<u>          </u>	<u>      /      /      </u>
TOTAL \$	<u>          </u>	<u>      /      /      </u>

TO THE DEFENDANT: The above named plaintiff(s) asks judgment against you for \$ 2,040.20 together with costs upon the following claim (Civil fines must include citation of the statute or ordinance violated):

Defendant(s) owns and/or occupies a lot located in Treasure Lake. Plaintiff Treasure Lake Property Owners Association provides various services to members of the Treasure Lake Community. The above Defendant(s) reside and/or are members of the community. As unit members/owners in Treasure Lake, annual dues are assessed in accordance with the laws/articles of the Treasure Lake Property Owners Association. Despite repeated demands and requests, the above Defendant(s) have failed to pay dues outstanding and/or in arrears in the amount of:

I, Matthew Begley verify that the facts set forth in this complaint are true and correct to the best of my knowledge, information, and belief. This statement is made subject to the penalties of Section 4904 of the Crimes Code (18 PA. C.S. § 4904) related to unsworn falsification to authorities.

  
(Signature of Plaintiff or Authorized Agent)

Plaintiff's Attorney: Michael P. Yeager Address: PO Box 752  
Telephone: 814-765-9611 Clearfield, Pa. 16830

IF YOU INTEND TO ENTER A DEFENSE TO THIS COMPLAINT, YOU SHOULD SO NOTIFY THIS OFFICE IMMEDIATELY AT THE ABOVE TELEPHONE NUMBER. YOU MUST APPEAR AT THE HEARING AND PRESENT YOUR DEFENSE. UNLESS YOU DO, JUDGMENT WILL BE ENTERED AGAINST YOU BY DEFAULT.

If you have a claim against the plaintiff which is within district justice jurisdiction and which you intend to assert at the hearing, you must file it on a complaint form at this office at least five (5) days before the date set for the hearing. If you have a claim against the plaintiff which is not within district justice jurisdiction, you may request information from this office as to the procedures you may follow. If you are disabled and require assistance, please contact the Magisterial District office at the address above.



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION - EQUITY

TREASURE LAKE PROPERTY OWNERS	:	NO. 05 - 106 - CD
ASSOCIATION, INC.,	:	
Plaintiff	:	Type of Case: Assumpsit
	:	
vs	:	Type of Pleading: Complaint
	:	
MARK A. KANE and ANNETTE M. KANE,	:	Filed on Behalf of: Plaintiff
Defendants	:	
	:	Counsel of Record for this Party:
	:	
	:	Michael P. Yeager, Esq.
	:	Supreme Court No.: 15587
	:	
	:	P.O. Box 752
	:	110 North Second Street
	:	Clearfield, PA 16830
	:	
	:	(814) 765-9611

FILED <sup>2cc</sup>  
66 2/3/15/2011 *Atty Yeager*  
FEB 16 2005

William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION - EQUITY

TREASURE LAKE PROPERTY OWNERS :  
ASSOCIATION, INC., :  
Plaintiff :

vs :

MARK A. KANE and ANNETTE M. KANE, :  
Defendantss :

No. 05 - 106 - CD

**NOTICE**

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and Notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so, the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the Complaint or for any other claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

**YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.**

**IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.**

**COURT ADMINISTRATOR  
CLEARFIELD COUNTY COURTHOUSE  
2nd & Market Streets  
Clearfield, PA 16830  
Telephone: 814-765-2641 Ext 5982**

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION - EQUITY

TREASURE LAKE PROPERTY OWNERS	:	
ASSOCIATION, INC.,	:	
Plaintiff	:	
	:	No. 05 - 106 - CD
vs	:	
	:	
MARK A. KANE and ANNETTE M. KANE,	:	
Defendants	:	

**COMPLAINT**

COMES NOW, the Plaintiff, by and through its attorney, Michael P. Yeager, Esquire and files the within Complaint based upon a cause of action whereof the following is a statement:

1. The Plaintiff is a Pennsylvania nonprofit corporation formed for the purpose of promoting and preserving the community welfare of the property owners in the Treasure Lake Subdivision, Sandy Township, Clearfield County, Pennsylvania, with its principal office and place of business located at Treasure Lake, Sandy Township, Clearfield County, Pennsylvania and with a mailing address of 13 Treasure Lake, DuBois, Clearfield County, Pennsylvania.

2. The Defendants, Mark A. Kane and Annette M. Kane, are adult individuals who reside within the Treasure Lake Subdivision at Lot 66, Section 8A, Black Swan Road, Sandy Township, Clearfield County, Pennsylvania with a mailing address of 571 Treasure Lake, DuBois, PA 15801.

3. By deeds dated April 1, 1992 and March 22, 1996 and recorded in Clearfield County Deed Book Volumes 1456 at page 239 and 1751 at page 379, Defendants became the owners of Lot 66 in Section 8A and Lot 91 in Section 8A also within the

Treasure Lake Subdivision, Sandy Township, Clearfield County, Pennsylvania. Copies of those deeds are attached hereto, made part hereof and incorporated herein as "Exhibit A".

4. The aforesaid Deeds indicate that the lots conveyed therein are otherwise subject to the Declaration of Restrictions, Treasure Lake, Inc., recorded in Clearfield County Misc. Book Volume 146, page 476; and further states that "...all of said Restrictions being covenants which run with the land".

5. Under and by virtue of Paragraph 12.D. of the aforesaid Declaration of Restrictions, Plaintiff has imposed annual charges or assessments per single family lot within the Treasure Lake Subdivision as annually determined by the Board of Directors of the Plaintiff. A copy of Paragraph 12 in said Declaration of Restrictions is attached hereto, made part hereof and incorporated herein as "Exhibit B".

6. In connection with the foregoing, Plaintiff forwarded invoices to Defendants for various years and in various amounts for the lots. The years and amounts for said invoices are indicated on a listing thereof attached hereto, made part hereof and incorporated herein as "Exhibit C". The foregoing amounts were and are the reasonable, fair and actual annual assessment charges for the indicated years.

7. Although demand has been made, Defendants have failed to make payment of the assessment amounts as above indicated.

8. The Plaintiff also claims there is justly due and owing to it in addition to the aforesaid assessment amounts, interest as provided by the aforesaid Declaration of Restrictions at six (6%) percent per annum or as otherwise provided by law.

9. Plaintiff further claims that the Declaration of Restrictions as aforesaid give Plaintiff the right to claim reasonable attorney's fees (Paragraph 12.D.b); and Plaintiff accordingly claims that reasonable attorney's fees as determined by the Court are therefore also due and payable from the Defendants.

10. Although demand has been made, Defendants have failed to make payment of the total amount Plaintiff believes is due as above indicated and otherwise to be computed.

**COUNT I  
BREACH OF CONTRACT**

11. Plaintiff incorporates previous Paragraphs 1 through 10 as though the same were more fully set forth at length herein.

12. As a result of the Defendants' failure to pay the amounts described in Exhibit C, Plaintiff has been damaged in the amount of Two Thousand One Hundred Thirty-Six and 20/100 (\$2,136.20) Dollars, together with interest and reasonable attorney's fees.

WHEREFORE, Plaintiff claims there is justly due and owing to it from the Defendants, the sum of Two Thousand One Hundred Thirty-Six and 20/100 (\$2,136.20) Dollars, together with continuing interest, reasonable attorney's fees and additional costs of suit for which judgment is accordingly demanded against the Defendants, Mark A. Kane and Annette M. Kane

**COUNT II  
QUASI CONTRACT**

13. Plaintiff incorporates previous Paragraph 1 through 12 as though the same were more fully set forth at length herein.

14. Plaintiff has imposed the aforesaid assessment charges as described in Exhibit C for reimbursement of its various responsibilities as set forth in the aforesaid Declaration of Restrictions.

15. Defendants have otherwise received and accepted the benefits of the various responsibilities undertaken by the Plaintiff as aforesaid and as otherwise set forth in the aforesaid Declaration of Restrictions.

16. Defendants have accordingly been unjustly enriched in the amount of the assessment charges and interest as set forth in the attached Exhibit C.

WHEREFORE, Plaintiff claims there is justly due and owing to it from the Defendants, the sum of Two Thousand One Hundred Thirty-Six and 20/100 (\$2,136.20) Dollars, together with continuing interest, reasonable attorney's fees and additional costs of suit for which judgment is accordingly demanded against the Defendants, Mark A. Kane and Annette M. Kane

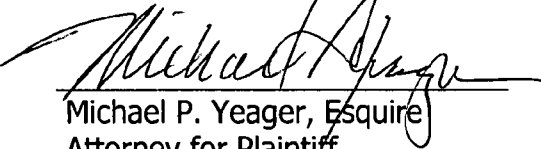
**COUNT III  
CONTRACT IMPLIED IN FACT**

17. Plaintiff incorporates previous Paragraphs 1 through 16 as though the same were more fully set forth at length herein.

18. Plaintiff believes and therefore avers that a contract may be implied from the facts and circumstances surrounding the imposition of its annual assessment charges and interest as set forth on the attached Exhibit C; and the benefits conferred and received by the Defendants as aforesaid.

WHEREFORE, Plaintiff claims there is justly due and owing to it from the Defendants, the sum of Two Thousand One Hundred Thirty-Six and 20/100 (\$2,136.20) Dollars, together with continuing interest, reasonable attorney's fees and additional costs of suit for which judgment is accordingly demanded against the Defendants

Respectfully submitted:

  
Michael P. Yeager, Esquire  
Attorney for Plaintiff

VOL 1457 PAGE 239

WARRANTY DEED — From a Corporation — 1980

County Parcel No. \_\_\_\_\_

The Planksham Co., Williamsport, Pa.

Seal

## This Deed,

MADE the First day of April  
in the year nineteen hundred and ninety-two

BETWEEN DUBOIS LITTLE LEAGUE, INC., a Pennsylvania non-profit corporation with an office located P. O. Box 71, DuBois, Pennsylvania, party of the first part, hereinafter referred to as the Grantor

A N D

MARK A. KANE and ANNETTE M. KANE, husband and wife, of the City of DuBois, Clearfield County, Pennsylvania, parties of the second part, hereinafter referred to as the Grantees

WITNESSETH, That in consideration of

Two Thousand (\$2,000.00) ----- Dollars,

in hand paid, the receipt whereof is hereby acknowledged, the said grantor do es hereby grant and convey to the said grantees,

ALL that certain tract of land designated as Lot No. 65, Section 8A "Barbuda" in the Treasure Lake Subdivision in Sandy Township, Clearfield County, Pennsylvania, recorded in Misc. Docket Map File No. 25. Excepting and reserving therefrom and subject to:

1. All easements, rights of way, reservations, restrictions and limitations shown or contained in prior instruments of record and in the aforesaid recorded plan.
2. The Declaration of Restrictions, Treasure Lake, Inc., recorded in Misc. Book Vol. 146, page 476; all of said restrictions being covenants which run with the land.
3. All minerals and mining rights of every kind and nature.
4. A lien for all unpaid charges or assessments as may be made by Treasure Lake, Inc., its successors, or Treasure Lake Property Owners Association, Inc., which lien shall run with the land and be an encumbrance against it.

ALSO ALL that certain tract of land designated as Lot No. 66, Section 8A "Barbuda" in the Treasure Lake Subdivision in Sandy

EXHIBIT

tabbies

A

Township, Clearfield County, Pennsylvania, recorded in Misc. Docket Map File No. 25. Excepting and reserving therefrom and subject to:

1. All easements, rights of way, reservations, restrictions and limitations shown or contained in prior instruments of record and in the aforesaid recorded plan.
2. The Declaration of Restrictions, Treasure Lake, Inc., recorded in Misc. Book Vol. 146, page 476; all of said restrictions being covenants which run with the land.
3. All minerals and mining rights of every kind and nature.
4. A lien for all unpaid charges or assessments as may be made by Treasure Lake, Inc., its successors, or Treasure Lake Property Owners Association, Inc.; which lien shall run with the land and be an encumbrance against it.

BRING the same premises which became vested in the Grantor herein and Patricia S. Ebaugh by deed of Treasure Lake Inc., dated January 6, 1992, and recorded in Clearfield County Deed Book 1439, page 241.

## NOTICE

In accordance with the provisions of "The Bituminous Mine Subsidence and Land Conservation Act of 1966", I/we, the undersigned grantee/grantees, hereby certify that I/we know and understand that I/we may not be obtaining the right of protection against subsidence resulting from coal mining operations and that the purchased property may be protected from damage due to mine subsidence by a private contract with the owners of the economic interest in the coal. I/we further certify that this certification is in a color contrasting with that in the deed proper and is printed in twelve point type preceded by the word "notice" printed in twenty-four point type.

Witness:

*Jean M. Hatfield*      *Mark A. Kane*  
 \_\_\_\_\_ Mark A. Kane  
 \_\_\_\_\_ Annette M. Kane

This 6th day of April 1992



AND the said grantor will GENERALLY WARRANT AND FOREVER DEFEND the property hereby conveyed.

IN WITNESS WHEREOF, the said Grantor has caused this Deed to be signed by its President or a Vice President, and also by its Secretary, or by an Assistant Secretary, or by its Treasurer, or by an Assistant Treasurer, and its Corporate Seal to be hereunto affixed, the day and year first above written.

Attest:

DUBOIS LITTLE LEAGUE, INC.

Joseph D. Shick

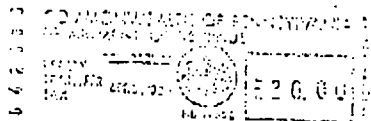
Secretary

By

Ronald H. Guthridge

President

(CORPORATE SEAL)

DUBOIS AREA SCHOOL DISTRICT  
THE REALTY TRANSFER TAX

AMOUNT \$ 30.00

PAID 4-30-92 KAREN L. STARCK  
Date Agent

## CERTIFICATE OF RESIDENCE

I hereby certify, that the precise residence of the grantee  
6-1/2 South Main Street  
DuBois, PA 15801

hereby is as follows:

Attorney at Law for Grantor

Commonwealth of Pennsylvania

County of Clearfield } ss.

On this, the 30th day of April, 1992, before me, the undersigned officer,  
personally appeared Ronald H. Guthridge, who acknowledged himself  
to be the President of DUBOIS LITTLE LEAGUE, INC.  
the foregoing corporation, and that as such, he, being authorized by such corporation to do so, executed the  
foregoing deed for the purpose therein contained by signing his name thereon as such.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Susan M. Harty  
My Commission Expires  
NOTARY PUBLIC  
SUSAN M. HARTY  
City of DuBois, Clearfield County  
My Commission Expires August 16, 1993

Commonwealth of Pennsylvania

County of \_\_\_\_\_

VOL 1457 PAGE 242

} ss.

I HEREBY CERTIFY that on this \_\_\_\_\_

day of \_\_\_\_\_

A.D. 19 \_\_\_\_\_, before me, the subscriber, a

Notary Public in and for said Commonwealth and County, personally appeared \_\_\_\_\_

, the attorney named in the foregoing Indenture,

and by virtue and in pursuance of the authority therein conferred upon him, acknowledged the said

INDENTURE to be the act and deed of the said

to the intent that the same may be duly recorded.

WITNESS my hand and Notarial Seal the day and year aforesaid.

My Commission Expires \_\_\_\_\_

Notary Public

I HEREBY CERTIFY, that the precise address of the grantor herein is \_\_\_\_\_

CLEARFIELD COUNTY  
OFFICE OF RECORDER  
TIME 10:57 AM 4-30-92  
BY Blakely & Jones  
Fees 13.50  
Karen L. Starch, Recorder

Commonwealth of Pennsylvania

County of Clearfield

} ss.

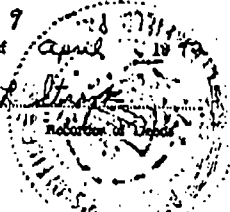
RECORDED in the Office for Recording of Deeds, etc., in and for said County, in

Deed Book No. 1457 Vol. \_\_\_\_\_, Page 239

WITNESS my Hand and Official Seal this 30th day of \_\_\_\_\_

My Commission Expires \_\_\_\_\_

First Monday in January, 1996



State July 20.00  
Dubois July 10.00  
Sandy July 10.00

BLAKELY & JONES  
ATTORNEYS AT LAW  
90 BEAVER DRIVE, BOX 6  
DUBOIS, PENNSYLVANIA

Entered of Record 4-30-1992, 10:57 AM Karen L. Starch, Recorder

## This Indenture

VOL 1751 PAGE 379

Made the 22ND day of MARCH in the year of our Lord one thousand nine hundred and 96

Between Recreation Land Corporation, a Pennsylvania corporation (hereinafter called "Grantor"), and

MARK A. KANE AND ANNETTE M. KANE

TENANCY BY ENTIRETY

(hereinafter called "Grantee")

Witnesseth, That the Grantor, for and in consideration of the sum of TWO THOUSAND NINE HUNDRED AND 00/100

Dollars, receipt of which is hereby acknowledged

does grant, bargain, sell, release, convey and confirm, unto the Grantee his heirs and assigns, forever,

All that certain tract of land designated as Lot No. 21 Section No. 8A in the Treasure Lake Subdivision in

Sandy Township, Clearfield County, Pennsylvania recorded in the Recorder of Deeds office in Misc. Docket Map File No. 25

Excepting and reserving therefrom and subject to:

1. All easements, rights of way, reservations, restrictions and limitations shown or contained in prior instruments of record and in the aforesaid recorded plan.
  2. The Declaration of Restrictions, Treasure Lake of Pennsylvania, Inc. recorded in Misc. Book Vol. 146, p. 476 as amended, Misc. Book Vol. 146, p. 476 and Misc. Book Vol. 146, p. 476; all of said restrictions being covenants which run with the land.
  3. All minerals and mining rights of every kind and nature.
  4. All unpaid charges or assessments as may be made by Grantor or Treasure Lake Property Owners' Association, Inc.; which lien shall run with the land and be an encumbrance against it.
  5. The right of the owner and/or operator of any recreational facilities within the said Treasure Lake Subdivision to assess fees and charges against Grantee, its heirs, administrators, executors, successors and assigns for the use and/or maintenance of any such facilities which if unpaid, shall become a lien upon the land and be an encumbrance against it.
- Being a portion of the premises which became vested in the Grantor by deed of Treasure Lake of Pennsylvania, Inc. and dated November 28, 1979 and recorded in Clearfield County Deed Book Volume 790, page 450.

To have and to hold the premises hereby conveyed to the Grantee's own use.

The Grantor warrants generally the property hereby conveyed to the Grantee, his heirs, executors and administrators.

NOTICE - THIS DOCUMENT DOES NOT SELL, CONVEY, TRANSFER, INCLUDE OR INSURE THE TITLE TO THE COAL AND RIGHT OF SUPPORT UNDERNEATH THE SURFACE LAND DESCRIBED OR REFERRED TO HEREIN, AND THE OWNERS OF SUCH COAL MAY HAVE THE COMPLETE LEGAL RIGHT TO REMOVE ALL OF SUCH COAL AND, IN THAT CONNECTION, DAMAGE MAY RESULT TO THE SURFACE OF THE LAND AND ANY HOUSE, BUILDING OR OTHER STRUCTURE ON OR IN SUCH LAND. THE INCLUSION OF THIS NOTICE DOES NOT ENLARGE, RESTRICT OR MODIFY ANY LEGAL RIGHTS OR ESTATES OTHERWISE CREATED, TRANSFERRED, EXCEPTED OR RESERVED BY THIS INSTRUMENT. (This notice is set forth in the manner provided in Section 1 of the Act of July 17, 1957, P.L. 984, as amended.)

## NOTICE

THE UNDERSIGNED, AS EVIDENCED BY THE SIGNATURE(S) TO THIS NOTICE AND THE ACCEPTANCE AND RECORDING OF THIS DEED, (IS, ARE) FULLY COGNIZANT OF THE FACT THAT THE UNDERSIGNED MAY NOT BE OBTAINING THE RIGHT OF PROTECTION AGAINST SUBSIDENCE, AS TO THE PROPERTY HEREIN CONVEYED, RESULTING FROM COAL MINING OPERATIONS AND THAT THE PURCHASED PROPERTY, HEREIN CONVEYED, MAY BE PROTECTED FROM DAMAGE DUE TO MINE SUBSIDENCE BY A PRIVATE CONTRACT WITH THE OWNERS OF THE ECONOMIC INTEREST IN THE COAL. THIS NOTICE IS INSERTED HEREIN TO COMPLY WITH THE BITUMINOUS MINE SUBSIDENCE AND LAND CONSERVATION ACT OF 1966.

WITNESS:

Frank L. Taylor

Mark A. Kane  
Grantee  
Annette M. Kane  
Grantee

VOL 1751 PAGE 380

This Deed is made under and by virtue of a Resolution of the Board of Directors of the Grantor duly passed at a regular meeting thereof, held on the 3rd day of March, A.D. 1996, a full quorum being present, authorizing and directing the same to be done.  
In Witness Whereof, The said Corporation, Grantor, has caused its common and corporate seal to be affixed to these presents by the hand of its Vice President, and the same to be duly attested by its Assistant Secretary, Dated the day of

CORPORATE SEAL and year first above written.

Attest:

RECREATION LAND CORPORATION

Assistant Secretary

Kenneth E. Hendry Vice President

State of Mississippi  
County of Jackson

On this, the 3rd day of April, 1996, before me, a notary public, the undersigned officer, personally appeared Kenneth E. Hendry who acknowledged himself to be the Vice President of Recreation Land Corporation, a corporation, and that he as such Vice President, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation by himself as Vice President.

In witness whereof, I hereunto set my hand and official seal.  
NOTARY PUBLIC STATE OF MISSISSIPPI  
My Commission Expires JAN 31, 1998  
JACKSON, MISSISSIPPI

Notary Public

### Certificate of Residence

I hereby certify that the precise residence of the grantee herein is

571 TREASURE LAKE

Street/House

DUBOIS, PA 15801

City

State

ZIP

CLEARFIELD COUNTY

ENTERED OF RECORD

TIME 12:36 PM

BY Karen L. Starck

RECORDS

Karen L. Starck, Recorder

DUBOIS AREA SCHOOL DISTRICT

1% REALTY TRANSFER TAX

AMOUNT \$ 29.00

PAID 4/19/96

KAREN L. STARCK

Date

Agent

Deed

RECREATION LAND CORPORATION

To

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF REVENUE

APR 19 1996

29.00



Commonwealth of Pennsylvania

County of Clearfield

Recorded on this 19th day of April, A.D. 1996

Vol. 1751, page 380

Given under my hand and the seal of the said office the day and year aforesaid.

My Commission Expires

First Monday in January, 2000

Recorder

Entered of Record April 19, 1996; 12:36 PM Karen L. Starck, Recorder

Mail To: RECREATION LAND CORP.  
P.O. BOX 687  
DUBOIS, PA 15801

140 130  
12. TREASURE LAKE PROPERTY OWNERS ASSOCIATION, INC.

A. Every person before acquiring title, legal or equitable, to any lot in the Subdivisions must be a member of the Treasure Lake Property Owners Association, Inc., a Pennsylvania non-profit corporation, herein referred to as "Association". No person shall acquire such title until he has been approved for membership in the Association, nor shall the owner of a lot or lots in the Subdivisions convey title to said lot or lots to any person who has not been approved in writing for membership in the Association, provided, however, that such membership is not intended to apply to those persons who hold an interest in any such lot merely as security for the performance of an obligation to pay money, e.g., mortgages, bonds or trust, or real estate contract purchases. However, if such a person should realize upon his security and become the real owner of a lot, he will then be subject to all the requirements and limitations imposed in these Restrictions on owners of lots within the Subdivision and on members of the Association, including those provisions with respect to alienation and the payment of an annual charge.

B. The general purpose of the Association is to further and promote the community welfare of property owners in the Subdivisions.

C. The Association shall be responsible for the maintenance, repair and upkeep of the private streets and parks owned by it within the Subdivisions. The Association shall also promulgate and enforce all regulations necessary for the use and enjoyment of such streets and parks and such other properties as it may from time to time own.

D. The Association shall have all the powers that are set out in its Articles of Incorporation and all other powers that belong to it by operation of law, including (but not limited to) the power to levy against every member of the Association a uniform annual charge per single-family residential

-15-  
EXHIBIT

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lot within the Subdivisions, the amount of said charge to be determined by the Board of Directors of the Association after consideration of current maintenance needs and future needs of the Association, for the purposes set forth in its Articles of Incorporation; provided, however, that the uniform annual charge shall in no event be less than \$30.00 per year for road maintenance and after a clubhouse is built, \$7.50 per month for membership in the club. No such charge shall ever be made against, or be payable by, the Declarant, the Association itself, or any corporation or corporations that may be created to acquire title to, and operate, the water or sewer utilities serving the area, or any lakes, dams, beaches, lake access tracts, marinas, golf courses, tennis courts, swimming pools, clubhouse grounds, campgrounds, or other like recreational facilities.

- (a) Every such charge so made shall be paid by the member to the Association or its designee on or before the first day of May of each year, for the ensuing year. The Board of Directors of the Association shall fix the amount of the annual charge per lot on or before the first day of April of each year, and written notice of the charge so fixed shall be sent to each member.
- (b) If any such charge shall not be paid when due, it shall bear interest from the date of delinquency at the rate of six per cent (6%) per annum. The annual charge shall, if unpaid within 30 days of its due date, become a lien or encumbrance upon the land and acceptance of each deed, not including acceptance by a mortgagee, shall be construed to be a covenant to pay the charge. The

Association may publish the names of the delinquent members, and may record a lien to secure payment of the unpaid charge, plus costs and reasonable attorneys' fees. Every such lien may be foreclosed at any time. In addition to the remedy of lien foreclosure, the Association shall have the right to sue for such unpaid charges, interest costs, and reasonable attorneys' fees, in any court of competent jurisdiction as for a debt owed by any delinquent member to the Association. Every person who shall become the owner of the title (legal or equitable) to any lot in the subdivisions by any means shall be conclusively held to have covenanted to pay the Association or its designees all charges that the Association shall make pursuant to any paragraph or subparagraph of these Restrictions or its By-laws. Any lot acquired is taken subject to the lien for any prior unpaid charges.

- (c) The Association shall upon demand at any time furnish a certificate in writing signed by an officer of the Association certifying that the charges on a specified lot have been paid or that certain charges against said lot remain unpaid, as the case may be. A reasonable charge may be made by the Board of Directors of the Association for the issuance of these certificates. Such certificate shall be conclusive evidence of payment of any charges therein stated to have been paid.

E. The fund accumulated as the result of the charges levied by the Association shall be used exclusively to promote the recreational facilities of, and the health, safety and welfare of the members of the Association and in particular for the improvement and maintenance of the streets, those areas designated as parks, and other property within the Subdivisions which shall have been conveyed to or acquired by the Association.

F. The lien of a mortgage or deed of trust representing a first lien placed upon any lot for the purpose of permanent financing and/or constructing a residence or other improvement shall be recorded in accordance with the laws of Pennsylvania, shall be, from the date of recordation, superior to any and all such liens provided for herein.

G. The Board of Directors of the Association shall have the right to suspend the voting rights (if any) and the right to use of the recreational facilities of the Association of Declarant or any member:

- (a) For any period during which any Association charge (including the charges and the fines, if any, assessed under paragraphs 12-D, 13 and 14 of these Restrictions) owed by the Member remains unpaid;
- (b) During the period of any continuing violation of the restrictive covenants for the Subdivision, after the existence of the violation shall have been declared by the Board of Directors of the Association;
- (c) During the period that any utility bill for water or sewer service rendered to the member or associate member shall remain unpaid.





# STATEMENT

## TREASURE LAKE PROPERTY OWNERS ASSOCIATION, INC.

13 TREASURE LAKE • DuBOIS, PA 15801-9099

PHONE: (814) 371-0711 • FAX: (814) 375-9072 • www.treasurelakepoa.com

SECTION NO. & LOT

8A/66 & 8A/91

DATE OCT. 19, 2004

INDICATE AMOUNT PAID \$

PAYMENT METHOD: ☐ CASH ☐ CHECK ☐ CREDIT CARD  
(Complete information below)

TO: ☐

KANE, MARK A & ANNETTE M  
371 TREASURE LAKE  
DUBOIS, PA. 15801



CARD #

EXPIRATION DATE

SIGNATURE

DETACH AND RETURN THIS PORTION WITH YOUR REMITTANCE

DATE	EXPLANATION	REFERENCE	AMOUNT
8A/66	2003 ASSESSMENT		\$ 488.00
	2004 ASSESSMENT		493.00
	interest		39.10
	BALANCE		\$1020.10
8A/91	2003 ASSESSMENT		\$ 488.00
	2004 ASSESSMENT		493.00
	interest		39.00
	BALANCE		\$1020.10
	fees		96.00
	TOTAL BALANCE		\$2136.20

THE DECLARATION OF RESTRICTIONS PROVIDE FOR COLLECTION OF ASSESSMENTS.

ANNUAL ASSESSMENT DUE ON OR BEFORE MAY 1.

INTEREST ADDED, ON UNPAID BALANCE, AT RATE OF 1/2% PER MONTH (NOT TO EXCEED 6% PER ANNUM).

TREASURE LAKE PROPERTY OWNERS ASSOCIATION • 13 TREASURE LAKE • DuBOIS, PA 15801-9099

PHONE: (814) 371-0711 • FAX: (814) 375-9072 • www.treasurelakepoa.com

EXHIBIT


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## VERIFICATION

I, MATTHEW S. BEGLEY, General Manager of TREASURE LAKE PROPERTY OWNERS ASSOCIATION, INC., being duly authorized to make this Verification, have read the foregoing Complaint. The statements therein are true and correct to the best of my personal knowledge, information and belief.

This statement and verification is made subject to the penalties of 18 Pa. C.S.A., Section 4904 relating to unsworn fabrication to authorities, which provides that if I make knowingly false averments, I may be subject to criminal penalties.

A handwritten signature in black ink, appearing to read "Matthew S. Begley", is written over a horizontal line.

Matthew S. Begley, General Manager  
Treasure Lake Property Owners  
Association, Inc.

Date: 2-14- , 2005

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION - LAW

TREASURE LAKE PROPERTY OWNERS  
ASSOCIATION, INC.,

Plaintiff

vs

MARK A. KANE and ANNETTE M. KANE,  
Defendants

: NO. 05 - 106 - CD

: Type of Case: Assumpsit

: Type of Pleading: Amended Complaint

: Filed on Behalf of: Plaintiff

: Counsel of Record for this Party:

: Michael P. Yeager, Esq.

: Supreme Court No.: 15587

: P.O. Box 752

: 110 North Second Street

: Clearfield, PA 16830

: (814) 765-9611

FILED

MAR 11 2005

01/31/05  
William A. Shaw

Prothonotary/Clerk of Courts

1 c sent to Mr. [unclear]

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION - LAW

TREASURE LAKE PROPERTY OWNERS :  
ASSOCIATION, INC., :  
Plaintiff :

vs :

MARK A. KANE and ANNETTE M. KANE, :  
Defendants :

No. 05 - 106 - CD

**NOTICE**

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and Notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so, the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the Complaint or for any other claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

**YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.**

**IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.**

**COURT ADMINISTRATOR  
CLEARFIELD COUNTY COURTHOUSE  
2nd & Market Streets  
Clearfield, PA 16830  
Telephone: 814-765-2641 Ext 5982**

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION - LAW

TREASURE LAKE PROPERTY OWNERS :  
ASSOCIATION, INC., :  
Plaintiff :

vs :

MARK A. KANE and ANNETTE M. KANE, :  
Defendants :

No. 05 - 106 - CD

**AMENDED COMPLAINT**

COMES NOW, the Plaintiff, by and through its attorney, Michael P. Yeager, Esquire and files the within Amended Complaint based upon a cause of action whereof the following is a statement:

1. The Plaintiff is a Pennsylvania nonprofit corporation formed for the purpose of promoting and preserving the community welfare of the property owners in the Treasure Lake Subdivision, Sandy Township, Clearfield County, Pennsylvania, with its principal office and place of business located at Treasure Lake, Sandy Township, Clearfield County, Pennsylvania and with a mailing address of 13 Treasure Lake, DuBois, Clearfield County, Pennsylvania.

2. The Defendants, Mark A. Kane and Annette M. Kane, are adult individuals who reside within the Treasure Lake Subdivision at Lot 66, Section 8A, Black Swan Road, Sandy Township, Clearfield County, Pennsylvania with a mailing address of 571 Treasure Lake, DuBois, PA 15801.

3. By deeds dated April 1, 1992 and March 22, 1996 and recorded in Clearfield County Deed Book Volumes 1456 at page 239 and 1751 at page 379, Defendants became the owners of Lot 66 in Section 8A and Lot 91 in Section 8A also within the

Treasure Lake Subdivision, Sandy Township, Clearfield County, Pennsylvania. Copies of those deeds are attached hereto, made part hereof and incorporated herein as "Exhibit A".

4. The aforesaid Deeds indicate that the lots conveyed therein are otherwise subject to the Declaration of Restrictions, Treasure Lake, Inc., recorded in Clearfield County Misc. Book Volume 146, page 476; and further states that "...all of said Restrictions being covenants which run with the land".

5. Under and by virtue of Paragraph 12.D. of the aforesaid Declaration of Restrictions, Plaintiff has imposed annual charges or assessments per single family lot within the Treasure Lake Subdivision as annually determined by the Board of Directors of the Plaintiff. A copy of Paragraph 12 in said Declaration of Restrictions is attached hereto, made part hereof and incorporated herein as "Exhibit B".

6. In connection with the foregoing, Plaintiff forwarded invoices to Defendants for various years and in various amounts for the lots. The years and amounts for said invoices are indicated on a listing thereof attached hereto, made part hereof and incorporated herein as "Exhibit C". The foregoing amounts were and are the reasonable, fair and actual annual assessment charges for the indicated years.

7. Although demand has been made, Defendants have failed to make payment of the assessment amounts as above indicated.

8. The Plaintiff also claims there is justly due and owing to it in addition to the aforesaid assessment amounts, interest as provided by the aforesaid Declaration of Restrictions at six (6%) percent per annum or as otherwise provided by law.

9. Plaintiff further claims that the Declaration of Restrictions as aforesaid give Plaintiff the right to claim reasonable attorney's fees (Paragraph 12.D.b); and Plaintiff accordingly claims that reasonable attorney's fees as determined by the Court are therefore also due and payable from the Defendants.

10. Although demand has been made, Defendants have failed to make payment of the total amount Plaintiff believes is due as above indicated and otherwise to be computed.

**COUNT I  
BREACH OF CONTRACT**

11. Plaintiff incorporates previous Paragraphs 1 through 10 as though the same were more fully set forth at length herein.

12. As a result of the Defendants' failure to pay the amounts described in Exhibit C, Plaintiff has been damaged in the amount of Two Thousand One Hundred Thirty-Six and 20/100 (\$2,136.20) Dollars, together with interest and reasonable attorney's fees.

WHEREFORE, Plaintiff claims there is justly due and owing to it from the Defendants, the sum of Two Thousand One Hundred Thirty-Six and 20/100 (\$2,136.20) Dollars, together with continuing interest, reasonable attorney's fees and additional costs of suit for which judgment is accordingly demanded against the Defendants, Mark A. Kane and Annette M. Kane.

**COUNT II  
QUASI CONTRACT**

13. Plaintiff incorporates previous Paragraph 1 through 12 as though the same were more fully set forth at length herein.

14. Plaintiff has imposed the aforesaid assessment charges as described in Exhibit C for reimbursement of its various responsibilities as set forth in the aforesaid Declaration of Restrictions.

15. Defendants have otherwise received and accepted the benefits of the various responsibilities undertaken by the Plaintiff as aforesaid and as otherwise set forth in the aforesaid Declaration of Restrictions.

16. Defendants have accordingly been unjustly enriched in the amount of the assessment charges and interest as set forth in the attached Exhibit C.

WHEREFORE, Plaintiff claims there is justly due and owing to it from the Defendants, the sum of Two Thousand One Hundred Thirty-Six and 20/100 (\$2,136.20) Dollars, together with continuing interest, reasonable attorney's fees and additional costs of suit for which judgment is accordingly demanded against the Defendants, Mark A. Kane and Annette M. Kane.

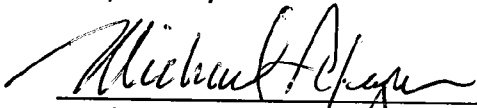
**COUNT III  
CONTRACT IMPLIED IN FACT**

17. Plaintiff incorporates previous Paragraphs 1 through 16 as though the same were more fully set forth at length herein.

18. Plaintiff believes and therefore avers that a contract may be implied from the facts and circumstances surrounding the imposition of its annual assessment charges and interest as set forth on the attached Exhibit C; and the benefits conferred and received by the Defendants as aforesaid.

WHEREFORE, Plaintiff claims there is justly due and owing to it from the Defendants, the sum of Two Thousand One Hundred Thirty-Six and 20/100 (\$2,136.20) Dollars, together with continuing interest, reasonable attorney's fees and additional costs of suit for which judgment is accordingly demanded against the Defendants.

Respectfully submitted:

  
\_\_\_\_\_  
Michael P. Yeager, Esquire  
Attorney for Plaintiff



VOL 1457 of 279

WARRANTY DEED - Fees & Corporation - 1980

County Parcel No. \_\_\_\_\_

The Mackintosh Co., Williamsport, Pa.

© 1981

## This Deed,

MADE the First day of April

in the year nineteen hundred and ninety-two

BETWEEN DUBOIS LITTLE LEAGUE, INC., a Pennsylvania non-profit corporation with an office located P. O. Box 71, DuBois, Pennsylvania, party of the first part, hereinafter referred to as the Grantor

A N D

MARK A. KANE and ANNETTE M. KANE, husband and wife, of the City of DuBois, Clearfield County, Pennsylvania, parties of the second part, hereinafter referred to as the Grantees

WITNESSETH, That in consideration of

Two Thousand (\$2,000.00) -----

Dollars,

in hand paid, the receipt whereof is hereby acknowledged, the said grantor does hereby grant and convey to the said grantees,

ALL that certain tract of land designated as Lot No. 65, Section 8A "Barbuda" in the Treasure Lake Subdivision in Sandy Township, Clearfield County, Pennsylvania, recorded in Misc. Docket Map File No. 25. Excepting and reserving therefrom and subject to:

1. All easements, rights of way, reservations, restrictions and limitations shown or contained in prior instruments of record and in the aforesaid recorded plan.
2. The Declaration of Restrictions, Treasure Lake, Inc., recorded in Misc. Book Vol. 146, page 476; all of said restrictions being covenants which run with the land.
3. All minerals and mining rights of every kind and nature.
4. A lien for all unpaid charges or assessments as may be made by Treasure Lake, Inc., its successors, or Treasure Lake Property Owners Association, Inc.; which lien shall run with the land and be an encumbrance against it.

ALSO ALL that certain tract of land designated as Lot No. 66, Section 8A "Barbuda" in the Treasure Lake Subdivision in Sandy

EXHIBIT

A

Township, Clearfield County, Pennsylvania, recorded in Misc. Docket Map File No. 25. Excepting and reserving therefrom and subject to:

1. All easements, rights of way, reservations, restrictions and limitations shown or contained in prior instruments of record and in the aforesaid recorded plan.
2. The Declaration of Restrictions, Treasure Lake, Inc., recorded in Misc. Book Vol. 146, page 476; all of said restrictions being covenants which run with the land.
3. All minerals and mining rights of every kind and nature.
4. A lien for all unpaid charges or assessments as may be made by Treasure Lake, Inc., its successors, or Treasure Lake Property Owners Association, Inc.; which lien shall run with the land and be an encumbrance against it.

BEING the same premises which became vested in the Grantor herein and Patricia S. Ebaugh by deed of Treasure Lake Inc., dated January 6, 1992, and recorded in Clearfield County Deed Book 1439, page 241.

## NOTICE

In accordance with the provisions of "The Bituminous Mine Subsidence and Land Conservation Act of 1968", I/we, the undersigned grantee/grantees, hereby certify that I/we know and understand that I/we may not be obtaining the right of protection against subsidence resulting from coal mining operations and that the purchased property may be protected from damage due to mine subsidence by a private contract with the owners of the economic interest in the coal. I/we further certify that this certification is in a color contrasting with that in the deed proper and is printed in twelve point type preceded by the word "notice" printed in twenty-four point type.

Witness:

*Susan M. Hatzfeld*      *Mark A. Kane*  
 Susan M. Hatzfeld      Mark A. Kane  
 Annette M. Kane

This 6th day of April 1992

AND the said grantor will GENERALLY WARRANT AND FOREVER DEFEND the property hereby conveyed.

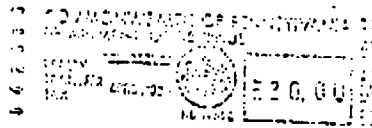
IN WITNESS WHEREOF, the said Grantor has caused this Deed to be signed by its President or a Vice President, and also by its Secretary, or by an Assistant Secretary, or by its Treasurer, or by an Assistant Treasurer, and its Corporate Seal to be hereunto affixed, the day and year first above written.

Attest:

*Joseph D. Shick*  
Secretary

DUBOIS LITTLE LEAGUE, INC.  
By *Ronald H. Guthridge*  
President

(CORPORATE SEAL)



DUBOIS AREA SCHOOL DISTRICT  
1% REALTY TRANSFER TAX

AMOUNT \$ 30.00

PAID 4-30-92 KAREN L. STARCK  
Date Agent

## CERTIFICATE OF RESIDENCE

I hereby certify, that the precise residence of the grantor is  
6-1/2 South Main Street  
DuBois, PA 15801

hereto is as follows:

*[Signature]*  
Attorney at Law for Grantor

Commonwealth of Pennsylvania

County of Clearfield

ss.

On this, the 30th day of April, 1992, before me, the undersigned officer, personally appeared Ronald H. Guthridge, who acknowledged himself to be the President of DUBOIS LITTLE LEAGUE, INC. the foregoing corporation, and that as such, he, being authorized by such corporation to do so, executed the foregoing deed for the purpose therein contained by signing his name thereon as such.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

*[Signature]*  
My Commission Expires  
NOTARIAL SEAL  
SUSAN M. HENDERSON, NOTARY PUBLIC  
City of DuBois, Clearfield County  
My Commission Expires August 16, 1993



Commonwealth of Pennsylvania

Vol. 1457 Page 242

County of \_\_\_\_\_ } ss.

I HEREBY CERTIFY that on this

day of

A.D. 10 , before me, the subscriber, a

Notary Public in and for said Commonwealth and County, personally appeared

, the attorney named in the foregoing Indenture,

and by virtue and in pursuance of the authority therein conferred upon him, acknowledged the said

INDENTURE to be the act and deed of the said

to the intent that the same may be duly recorded.

WITNESS my hand and Notarial Seal the day and year aforesaid.

My Commission Expires \_\_\_\_\_

Notary Public

I HEREBY CERTIFY, that the precise address of the grantee herein is

CLEAFIELD COUNTY  
DEEDS RECORD  
TIME 10:51 AM 4-30-92  
BY Blakely & Jones  
Fees 13.50  
Karen L. Storch, Recorder

Commonwealth of Pennsylvania

County of Chesapeake } ss.

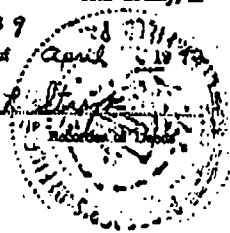
RECORDED in the Office for Recording of Deeds, etc., in and for said County, in

Deed Book No. 1457 Vol. Page 239

WITNESS my Hand and Official Seal this 30th day of April 1992

My Commission Expires \_\_\_\_\_

First Monday in January, 1996



State Tax 20.00  
Dubois 10.00  
Landy 10.00

BLAKELY & JONES  
ATTORNEYS AT LAW  
90 BEAVER DRIVE, BOX 4  
DUBOIS, PENNSYLVANIA

Entered of Record 4-30-1992, 10:51 AM, Karen L. Storch, Recorder

## This Indenture

VOL 1751 PAGE 379

Made the 22ND day of MARCH in the year of our Lord one thousand nine hundred and 96

Between Recreation Land Corporation, a Pennsylvania corporation (hereinafter called "Grantor"), and  
MARK A. KANE AND ANNETTE M. KANE

TENANCY BY ENTIRETY

(hereinafter called "Grantee")

Witnesseth, That the Grantor, for and in consideration of the sum of TWO THOUSAND NINE HUNDRED AND 00/100

Dollars, receipt of which is hereby acknowledged,

does grant, bargain, sell, release, convey and confirm, unto the Grantee, his heirs and assigns, forever,

All that certain tract of land designated as Lot No. 91 Section No. BA in the Treasure Lake Subdivision in

Sandy Township, Clearfield County, Pennsylvania recorded in the Recorder of Deeds office in Misc. Docket Map File No. 25

Excepting and reserving therefrom and subject to:

1. All easements, rights of way, reservations, restrictions and limitations shown or contained in prior instruments of record and in the aforesaid recorded plan.
2. The Declaration of Restrictions, Treasure Lake of Pennsylvania, Inc. recorded in Misc Book Vol. 140 p. 476 as amended, Misc. Book Vol. --- p. --- and Misc. Book Vol. --- p. --- all of said restrictions being covenants which run with the land.
3. All minerals and mining rights of every kind and nature.
4. A lien for all unpaid charges or assessments as may be made by Grantor or Treasure Lake Property Owners' Association, Inc. which lien shall run with the land and be an encumbrance against it.
5. The right of the owner and/or operator of any recreational facilities within the said Treasure Lake Subdivision to assess fees and charges against Grantee, its heirs, administrators, executors, successors and assigns for the use and/or maintenance of any such facilities which if unpaid, shall become a lien upon the land and be an encumbrance against it using a portion of the premises which became vested in the Grantor by deed of Treasure Lake of Pennsylvania, Inc. and dated November 28, 1979 and recorded in Clearfield County Deed Book Volume 790, page 450.

To have and to hold the premises hereby conveyed to the Grantee's own use.

The Grantor warrants generally the property hereby conveyed to the Grantee, his heirs, executors and administrators.

NOTICE - THIS DOCUMENT DOES NOT SELL, CONVEY, TRANSFER, INCLUDE OR INSURE THE TITLE TO THE COAL AND RIGHT OF SUPPORT UNDERNEATH THE SURFACE LAND DESCRIBED OR REFERRED TO HEREIN, AND THE OWNERS OR OWNERS OF SUCH COAL MAY HAVE THE COMPLETE LEGAL RIGHT TO REMOVE ALL OF SUCH COAL AND, IN THAT CONNECTION, DAMAGE MAY RESULT TO THE SURFACE OF THE LAND AND ANY HOUSE, BUILDING OR OTHER STRUCTURE ON OR IN SUCH LAND. THE INCLUSION OF THIS NOTICE DOES NOT ENLARGE, RESTRICT OR MODIFY ANY LEGAL RIGHTS OR ESTATES OTHERWISE CREATED, TRANSFERRED, EXCEPTED OR RESERVED BY THIS INSTRUMENT. (This notice is set forth in the manner provided in Section 1 of the Act of July 17, 1937, P.L. 984, as amended.)

## NOTICE

THE UNDERSIGNED, AS EVIDENCED BY THE SIGNATURE(S) TO THIS NOTICE AND THE ACCEPTANCE AND RECORDING OF THIS DEED, (IS, ARE) FULLY COGNIZANT OF THE FACT THAT THE UNDERSIGNED MAY NOT BE OBTAINING THE RIGHT OF PROTECTION AGAINST SUBSIDENCE, AS TO THE PROPERTY HEREIN CONVEYED, RESULTING FROM COAL MINING OPERATIONS AND THAT THE PURCHASED PROPERTY, HEREIN CONVEYED, MAY BE PROTECTED FROM DAMAGE DUE TO MINE SUBSIDENCE BY A PRIVATE CONTRACT WITH THE OWNERS OF THE ECONOMIC INTEREST IN THE COAL. THIS NOTICE IS INSERTED HEREIN TO COMPLY WITH THE BITUMINOUS MINE SUBSIDENCE AND LAND CONSERVATION ACT OF 1956.

WITNESS:

*Frank H. Taylor*

*Mark A. Kane*  
Grantee  
*Annette M. Kane*  
Grantee

TL-9-87

VOL 1751 PAGE 380

This Deed is made under and by virtue of a Resolution of the Board of Directors of the Grantor duly passed at a regular meeting thereof, held on the 3rd day of March, A.D., 1980, a full quorum being present, authorizing and directing the same to be done.  
In Witness Whereof, The said Corporation, Grantor, has caused its common and corporate seal to be affixed to these presents by the hand of its Vice President, and the same to be duly attested by its Assistant Secretary, Dated the day of

(CORPORATE SEAL) and year first above written.

Attest:  
*[Signature]*  
Assistant Secretary  
Recreation Land Corporation

*[Signature]*  
Kenneth E. Hendryck Vice-President  
Recreation Land Corporation

State of Mississippi  
County of Jackson

On this, the 3rd day of April, 1996, before me, a notary public, the undersigned officer, personally appeared Kenneth E. Hendryck who acknowledged himself to be the Vice President of Recreation Land Corporation, a corporation, and that he as such Vice President, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation by himself as Vice President.

In witness whereof, I hereunto set my hand and official seal.  
NOTARY PUBLIC STATE OF MISSISSIPPI  
My Commission expires Jan. 31, 1996  
BONDED THRU NOTARY PUBLIC UNDERWRITERS

*[Signature]*  
Notary Public

### Certificate of Residence

I hereby certify that the precise residence of the grantee herein is  
571 TREASURE LAKE  
Street/House  
DUBOIS, PA 15801  
City State Zip

*[Signature]*  
(For Grantee)  
*[Signature]*  
(For Grantor)

CLEARFIELD COUNTY

ENTERED OF RECORD

DATE 12-36-96

BY *[Signature]*

FEES 13.35

Karen L. Starck, Recorder

DUBOIS AREA SCHOOL DISTRICT  
1% REALTY TRANSFER TAX

AMOUNT \$ 29.00

PAID 4/19/96

KAREN L. STARCK  
Agent

Deed

RECREATION LAND CORPORATION

TO

COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF REVENUE

APR 19 1996  
\$ 20.00

RECREATION LAND CORP.  
P.O. BOX 687  
DUBOIS, PA. 15801

Commonwealth of Pennsylvania

County of Clearfield

Recorded on this 19th day of April, A.D. 1996

Vol. 1751, page 329

Given under my hand and the seal of the said office the day and year aforesaid.

My Commission Expires  
First Monday in January, 2000

*[Signature]*  
Recorder

Entered of Record April 19, 1996; 12:36 PM Karen L. Starck, Recorder

Att. TW 29.00

Dr. Ben. del. 14.50

Recorded Number 14.50

Sandy top 14.50

D. The Association shall have all the powers that are set out in its Articles of Incorporation and all other powers that belong to it by operation of law, including (but not limited to) the power to levy against every member of the Association a uniform annual charge per single-family residential

D

lot within the Subdivisions, the amount of said charge to be determined by the Board of Directors of the Association after consideration of current maintenance needs and future needs of the Association, for the purposes set forth in its Articles of Incorporation; provided, however, that the uniform annual charge shall in no event be less than \$30.00 per year for road maintenance and after a club lot is built, \$7.50 per month for membership in the club. No such charge shall ever be made against, or be payable by, the Declarant, the Association itself, or any corporation or corporations that may be created to acquire title to, and operate, the water or sewer utilities serving the lots, or to build, dams, canals, levees, bridges, tracts, marinas, golf courses, tennis courts, swimming pools, clubhouse grounds, playgrounds, or other like recreational facilities.

(2) Every such charge so made shall be paid by the member to the Association or its agent, on or before the first day of November of each year for the coming year. The Board of Directors of the Association shall fix the amount of the annual charge per lot on or before the first day of April of each year, and written notice of the charge so fixed shall be sent to each owner.

(3) If any such charge shall not be paid when due, it shall bear interest from the date of delinquency at the rate of six per cent (6%) per annum. The annual charge, if not paid within 30 days of its due date, shall be a lien or encumbrance upon the lot and all improvements thereon, not including accretions to a mortgage, shall be considered to be a covenant to pay the charge. The





K. The fund accumulated as the result of the charges levied by the Association shall be used exclusively to purchase or recreational facilities of, and the health, safety and welfare of the members of the Association and in particular for the improvement and maintenance of the streets, those areas designated as parks, and other property within the Subdivision, which shall have been conveyed to or acquired by the Association.

L. The lien of a mortgage or deed of trust representing a first lien placed upon any lot for the purpose of securing it in whole and/or constructing a residence or other improvement thereon recorded in accordance with the laws of this jurisdiction shall be, from the date of recordation, superior to any and all such liens provided for herein.

M. The Board of Directors of the Association shall have the right to suspend the voting rights (if any) and the right to use of the recreational facilities of the Association of any member:

- (1) For any period during which any Association charge (including the charges and the fines, if any, assessed under paragraphs 12-1, 13 and 14 of these Restrictions) or by the member remains unpaid;
- (2) During the period of any continuing violation of the restrictive covenants for the Subdivision after the existence of the violation shall have been declared by the Board of Directors of the Association;
- (3) If, during the period that any utility bill for water or gas or service rendered to the member or associate member shall remain unpaid.



# STATEMENT

## TREASURE LAKE PROPERTY OWNERS ASSOCIATION, INC.

13 TREASURE LAKE • DuBOIS, PA 15801-9099

PHONE: (814) 371-0711 • FAX: (814) 375-9072 • www.treasurelakepoa.com

SECTION NO. & LOT

8A/66 & 8A/91

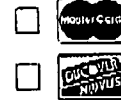
DATE OCT. 19, 2004

INDICATE AMOUNT PAID \$

PAYMENT METHOD: ☐ CASH ☐ CHECK ☐ CREDIT CARD  
(Complete information below)

TO: ☐

KANE, MARK A & ANNETTE M  
571 TREASURE LAKE  
DUBOIS, PA. 15801



CARD #

EXPIRATION DATE

SIGNATURE

DETACH AND RETURN THIS PORTION WITH YOUR REMITTANCE

DATE	EXPLANATION	REFERENCE	AMOUNT
8A/66	2003 ASSESSMENT		\$ 488.00
	2004 ASSESSMENT		493.00
		interest	39.10
		BALANCE	\$1020.10
8A/91	2003 ASSESSMENT		\$ 488.00
	2004 ASSESSMENT		493.00
		interest	39.00
		BALANCE	\$1020.10
		fees	96.00
		TOTAL BALANCE	\$2136.20

THE DECLARATION OF RESTRICTIONS PROVIDE FOR COLLECTION OF ASSESSMENTS.  
ANNUAL ASSESSMENT DUE ON OR BEFORE MAY 1.

INTEREST ADDED, ON UNPAID BALANCE, AT RATE OF 1/2% PER MONTH (NOT TO EXCEED 6% PER ANNUM).

TREASURE LAKE PROPERTY OWNERS ASSOCIATION • 13 TREASURE LAKE • DuBOIS, PA 15801-9099

PHONE: (814) 371-0711 • FAX: (814) 375-9072 • www.treasurelakepoa.com

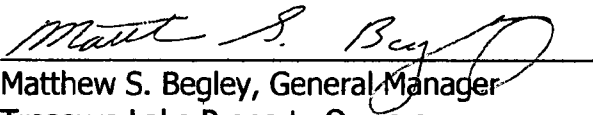
EXHIBIT

C

## VERIFICATION

I, MATTHEW S. BEGLEY, General Manager of TREASURE LAKE PROPERTY OWNERS ASSOCIATION, INC., being duly authorized to make this Verification, have read the foregoing Amended Complaint. The statements therein are true and correct to the best of my personal knowledge, information and belief.

This statement and verification is made subject to the penalties of 18 Pa. C.S.A., Section 4904 relating to unsworn fabrication to authorities, which provides that if I make knowingly false averments, I may be subject to criminal penalties.

  
Matthew S. Begley, General Manager  
Treasure Lake Property Owners  
Association, Inc.

Date: 3/10, 2005

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION - LAW

TREASURE LAKE PROPERTY OWNERS :  
ASSOCIATION, INC., :  
Plaintiff :

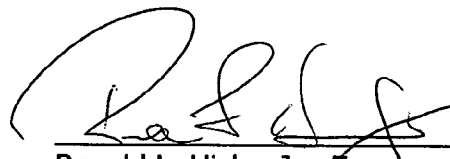
vs :

MARK A. KANE and ANNETTE M. KANE, :  
Defendants :

No. 05 - 106 - CD

**ACCEPTANCE OF SERVICE**

I, RONALD L. HICKS, JR., ESQUIRE, of Meyer, Unkovic & Scott, LLP, attorney for the Defendants, Mark A. Kane and Annette M. Kane, hereby accept service of the Amended Complaint in the above-captioned matter on behalf of said Defendants, as above-captioned.

  
\_\_\_\_\_  
Ronald L. Hicks, Jr., Esquire  
Attorney for the Defendants

Dated: March 14, 2005

**FILED**

MAR 17 2005  
0/3:40  
William A. Shaw  
Prothonotary/Clerk of Courts (G)  
1 Cent to Att

**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA**

DOCKET # 100236  
NO: 05-106-CD  
SERVICE # 1 OF 2  
COMPLAINT IN ASSUMPSIT

PLAINTIFF: TREASURE LAKE PROPERTY OWNERS ASSOCIATION INC.

vs.

DEFENDANT: MARK A. KANE and ANNETTE M. KANE

**SHERIFF RETURN**

NOW, March 02, 2005 AT 1:30 PM SERVED THE WITHIN COMPLAINT IN ASSUMPSIT ON MARK A. KANE DEFENDANT AT TL LOT 66 SEC 8A, BLACK SWAN ROAD, DUBOIS, CLEARFIELD COUNTY, PENNSYLVANIA, BY HANDING TO MARK KANE, DEFENDANT A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT IN ASSUMPSIT AND MADE KNOWN THE CONTENTS THEREOF.

SERVED BY: COUDRIET / DEHAVEN

**FILED**  
019:0004  
MAR 23 2005

William A. Shaw  
Prothonotary/Clerk of Courts

**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA**

DOCKET # 100236  
NO: 05-106-CD  
SERVICE # 2 OF 2  
COMPLAINT IN ASSUMPSIT

PLAINTIFF: TREASURE LAKE PROPERTY OWNERS ASSOCIATION INC.

VS.

DEFENDANT: MARK A. KANE and ANNETTE M. KANE

**SHERIFF RETURN**

NOW, March 02, 2005 AT 1:30 PM SERVED THE WITHIN COMPLAINT IN ASSUMPSIT ON ANNETTE M. KANE DEFENDANT AT TL LOT 66 SEC 8A, BLACK SWAN ROAD, DUBOIS, CLEARFIELD COUNTY, PENNSYLVANIA, BY HANDING TO MARK KANE, HUSBAND A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT IN ASSUMPSIT AND MADE KNOWN THE CONTENTS THEREOF.

SERVED BY: COUDRIET / DEHAVEN

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 100236  
NO: 05-106-CD  
SERVICES 2  
COMPLAINT IN ASSUMPSIT

PLAINTIFF: TREASURE LAKE PROPERTY OWNERS ASSOCIATION INC.

vs.

DEFENDANT: MARK A. KANE and ANNETTE M. KANE

SHERIFF RETURN

RETURN COSTS

Description	Paid By	CHECK #	AMOUNT
SURCHARGE	YEAGER	4597	20.00
SHERIFF HAWKINS	YEAGER	4597	70.54

Sworn to Before Me This

\_\_\_\_\_ Day of \_\_\_\_\_ 2005

\_\_\_\_\_

So Answers,


Chester A. Hawkins  
Sheriff



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION - EQUITY

TREASURE LAKE PROPERTY OWNERS  
ASSOCIATION, INC.,

CIVIL DIVISION

Plaintiff,

No. 05-106-CD

vs.

Issue No.

MARK A. KANE and ANNETTE M. KANE,  
Defendants.

**ANSWER AND NEW MATTER TO  
COMPLAINT AND COUNTERCLAIM**

Code:

Filed on Behalf of:

Mark A. Kane and Annette M. Kane,  
Defendants

**NOTICE TO PLEAD**

Counsel of Record for this Party:

**To The Above-Named Plaintiff:**

Ronald L. Hicks, Esquire  
Pa. I.D. #49520

**You are hereby notified to plead to the  
enclosed New Matter and Counterclaim  
within twenty (20) days from service  
hereof or a default judgment may be  
entered against you.**

Joshua R. Lorenz, Esquire  
Pa. I.D. #84397

MEYER, UNKOVIC & SCOTT LLP  
Firm #199  
1300 Oliver Building  
Pittsburgh, PA 15222  
(412) 456-2800

**FILED** <sup>(64)</sup>  
m/j:11/64  
APR 19 2005

William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION – EQUITY

TREASURE LAKE PROPERTY OWNERS	)	CIVIL DIVISION
ASSOCIATION, INC.,	)	
	)	No. 05-106-CD
Plaintiff,	)	
	)	
vs.	)	
	)	
MARK A. KANE and ANNETTE M. KANE,	)	
	)	
Defendants.	)	

**ANSWER AND NEW MATTER TO COMPLAINT AND COUNTERCLAIM**

Defendants, Mark A. Kane and Annette M. Kane, hereby state that they have a full, just and complete defense to the claims set forth in the complaint filed by Plaintiff (hereinafter referred to "Plaintiff's Complaint"), the nature of which is as follows:

**ANSWER**

As to each averment of fact in the complaint, Defendants plead as follows:

1. The averments of Paragraph 1 of Plaintiff's Complaint are denied as stated. On the contrary, upon information and belief, Plaintiff Treasure Lake Property Owners Association, Inc., is a Pennsylvania non-stock non-profit corporation whose principal place of business and mailing address is 13 Treasure Lake, Dubois, Pennsylvania 15801. Further, although the stated general purpose of Plaintiff is to further and promote the community welfare of the property owners of certain lots of real property located in Sandy Township, Clearfield County, Pennsylvania, that were owned and subdivided by Treasure Lake, Inc. (hereinafter referred to as the "Treasure Lake Subdivision"), Plaintiff's purpose is not to "preserve" such community

welfare or to otherwise act beyond or in contravention of the Declaration of Restrictions made on May 28, 1968 by Treasure Lake, Inc.

2. The averments of Paragraph 2 of Plaintiff's Complaint are denied as stated. On the contrary, Defendants Mark A. Kane and Annette M. Kane are adult individuals who, along with the children, reside within the Treasure Lake Subdivision at Lot 91, Section 8A, Black Swan Road, Sandy Township, Clearfield County, Pennsylvania, with a mailing address of 571 Treasure Lake, Dubois, Pennsylvania 15801.

3. The averments of Paragraph 3 of Plaintiff's Complaint are admitted.

4. The averments of Paragraph 4 of Plaintiff's Complaint are admitted.

5. After reasonable investigation, Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 5 of Plaintiff's Complaint. Therefore, said averments are denied in accordance with Pennsylvania Rule of Civil Procedure 1029(c).

6. The averments of Paragraph 6 of Plaintiff's Complaint are admitted in part and denied in part. It is admitted that Plaintiff forwarded invoices to Defendants for annual charges or assessments for the years 2003 and 2004 for Lots 66 and 91. It is further admitted that Plaintiff forwarded to Defendant the invoice attached as Exhibit C to the Complaint. The remaining averments of Paragraph 6 are denied. On the contrary, after reasonable investigation, Defendants are without knowledge or information sufficient to form a belief as to the truth of the remaining averments of Paragraph 6 of Plaintiff's Complaint. Therefore, said averments are denied in accordance with Pennsylvania Rule of Civil Procedure 1029(c). Further, Defendants deny that they owe any interest or fees as reflected on Exhibit C. On the contrary, the assessment

of interest and fees is improper and contrary to the May 28, 1968 Declaration of Restrictions because Defendants have made and/or offered to make payment of the annual assessments for 2003 and 2004, but Plaintiff has refused and/or failed to accept such payments and/or to otherwise act in accordance with the May 28, 1968 Declaration of Restrictions.

7. The averments of Paragraph 7 of Plaintiff's Complaint state conclusions of law to which no responsive pleading is required. To the extent that a response is required, the averments of Paragraph 7 of Plaintiff's Complaint are denied. On the contrary, Defendants have made and/or offered to make payment of the annual assessments for 2003 and 2004, but Plaintiff has refused and/or failed to accept such payments and/or to otherwise act in accordance with the May 28, 1968 Declaration of Restrictions.

8. The averments of Paragraph 8 of Plaintiff's Complaint state conclusions of law to which no responsive pleading is required. To the extent that a response is required, the averments of Paragraph 8 of Plaintiff's Complaint are denied. On the contrary, Plaintiff's claim for interest is improper and contrary to the May 28, 1968 Declaration of Restrictions because Defendants have made and/or offered to make payment of the annual assessments for 2003 and 2004, but Plaintiff has refused and/or failed to accept such payments and/or to otherwise act in accordance with the May 28, 1968 Declaration of Restrictions.

9. The averments of Paragraph 9 of Plaintiff's Complaint state conclusions of law to which no responsive pleading is required. To the extent that a response is required, the averments of Paragraph 9 of Plaintiff's Complaint are denied. On the contrary, Plaintiff's claim for attorneys' fees is improper and contrary to the May 28, 1968 Declaration of Restrictions because Defendants have made and/or offered to make payment of the annual assessments for

2003 and 2004, but Plaintiff has refused and/or failed to accept such payments and/or to otherwise act in accordance with the May 28, 1968 Declaration of Restrictions.

10. The averments of Paragraph 10 of Plaintiff's Complaint state conclusions of law to which no responsive pleading is required. To the extent that a response is required, the averments of Paragraph 10 of Plaintiff's Complaint are denied. On the contrary, Defendants have made and/or offered to make payment of the annual assessments for 2003 and 2004, but Plaintiff has refused and/or failed to accept such payments and/or to otherwise act in accordance with the May 28, 1968 Declaration of Restrictions. By way of further answer, Defendants refer to and incorporate by reference their answer to Paragraphs 6 through 9 of Plaintiff's Complaint.

11. The averments of Paragraph 11 of Plaintiff's Complaint merely incorporate Paragraphs 1 through 10 of Plaintiff's Complaint and therefore do not require an answer or other responsive pleading. To the extent a response is required, Defendants refer to and incorporate by reference their answer to Paragraphs 1 through 10 of Plaintiff's Complaint.

12. The averments of Paragraph 12 of Plaintiff's Complaint state conclusions of law to which no responsive pleading is required. To the extent that a response is required, the averments of Paragraph 12 of Plaintiff's Complaint are denied. On the contrary, Defendants refer to and incorporate by reference their answer to Paragraphs 6 through 10 of Plaintiff's Complaint.

13. The averments of Paragraph 13 of Plaintiff's Complaint merely incorporate Paragraphs 1 through 12 of Plaintiff's Complaint and therefore do not require an answer or other responsive pleading. To the extent a response is required, Defendants refer to and incorporate by reference their answer to Paragraphs 1 through 12 of Plaintiff's Complaint.

14. After reasonable investigation, Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 14 of Plaintiff's Complaint. Therefore, said averments are denied in accordance with Pennsylvania Rule of Civil Procedure 1029(c).

15. After reasonable investigation, Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 15 of Plaintiff's Complaint. Therefore, said averments are denied in accordance with Pennsylvania Rule of Civil Procedure 1029(c).

16. The averments of Paragraph 16 of Plaintiff's Complaint state conclusions of law to which no responsive pleading is required. To the extent that a response is required, the averments of Paragraph 16 of Plaintiff's Complaint are denied. On the contrary, after reasonable investigation, Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 16 of Plaintiff's Complaint. Therefore, said averments are denied in accordance with Pennsylvania Rule of Civil Procedure 1029(c). By way of further answer, Defendants refer to and incorporate by reference their answer to Paragraphs 6 through 15 of Plaintiff's Complaint.

17. The averments of Paragraph 17 of Plaintiff's Complaint merely incorporate Paragraphs 1 through 16 of Plaintiff's Complaint and therefore do not require an answer or other responsive pleading. To the extent a response is required, Defendants refer to and incorporate by reference their answer to Paragraphs 1 through 16 of Plaintiff's Complaint.

18. The averments of Paragraph 18 of Plaintiff's Complaint state conclusions of law to which no responsive pleading is required. To the extent that a response is required, the

averments of Paragraph 18 of Plaintiff's Complaint are denied. On the contrary, after reasonable investigation, Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 18 of Plaintiff's Complaint. Therefore, said averments are denied in accordance with Pennsylvania Rule of Civil Procedure 1029(c). By way of further answer, Defendants refer to and incorporate by reference their answer to Paragraphs 6 through 16 of Plaintiff's Complaint.

**NEW MATTER**

In further answer to the Complaint, Defendants plead the following new matter:

19. Plaintiff's Complaint fails to state a cause or causes of action upon which relief can be granted.

20. At all times material hereto, Treasure Lake Subdivision is a planned community subject to the Uniform Planned Community Act, P.L. 1336, No. 180, §1 (Dec. 19, 1996), as amended and codified at 68 Pa.C.S.A. §5101, *et seq.*

21. At all times material hereto, Plaintiff is an association subject to the provisions of the Uniform Planned Community Act, P.L. 1336, No. 180, §1 (Dec. 19, 1996), as amended and codified at 68 Pa.C.S.A. §5101, *et seq.*, and the May 28, 1968 Declaration of Restrictions for the Treasure Lake Subdivision.

22. At all times material hereto, Plaintiff adopted by-laws, a true and correct copy of which is attached hereto, marked as Exhibit "1" and made a part hereof.

23. Section 2.1 of Article II of Plaintiff's By-Laws provides, in pertinent part, as follows:

Section 2.1. REGULAR MEMBERSHIP. Regular membership of the Association shall consist of the following: all persons, partnerships or corporation who acquire title, legal or equitable, to any form of real estate within the Treasure Lake sub-division, Sandy Township, Clearfield County, Pennsylvania, other than the Treasure Lake land developer, its successors or assigns.

24. By deeds dated April 1, 1992 and March 22, 1996 and recorded in Clearfield County Deed Book Volume 1456, page 239 and Volume 1751, page 379, Defendants acquired title, both legal and equitable, to Lot Nos. 66 and 91 in the Treasure Lake Subdivision.

25. As a result of their acquisition of title to Lot Nos. 66 and 91 of the Treasure lake Subdivision, Defendants are regular members of the Plaintiff within the meaning of Section 2.1 of Plaintiff's By-Laws.

26. Section 2.5 of Article II of Plaintiff's By-Laws provides, in pertinent part, as follows:

Section 2.5. PRIVILEGES OF REGULAR MEMBERSHIP. The privileges of Regular Membership shall include:

2.5.1. The right of access to the lot or lots owned by the respective members over and across the roads owned or maintained by the Association.

27. Section 2.6 of Article II of Plaintiff's By-Laws provides, in pertinent part, as follows:

Section 2.6. DISCIPLINARY MEASURES:

2.6.1. The right granted under Section 2.5.1 shall be absolute and cannot under any circumstances be withdrawn by the Association.



28. At all times material hereto, Defendants have tendered payment to Plaintiff and/or have offered to pay for all properly imposed annual charges or assessments for Lot Nos. 66 and 91 of the Treasure Lake Subdivision, including without limitation the charges and assessments issued for the years 2003 and 2004. Indeed, on or about the last week of June 2003, Defendants tendered to Plaintiff a check in the amount of the 2003 charges or assessments for Lot Nos. 66 and 91, to which Plaintiff acknowledged by written Receipt No. 0454195.

29. Despite Defendants' willingness to pay and/or tender of payment to Plaintiff for all properly imposed annual charges or assessments for Lot Nos. 66 and 91, the Board of Directors of Plaintiff and/or their agents, employees and/or other representatives have refused and continue to refuse to accept such payments and/or to provide Defendants with parking permits and other necessary documentation to enable Defendants and their invited guests to use and enjoy the private streets and parks of the Treasure Lake Subdivision or otherwise peacefully access Lot Nos. 66 and 91, and the Board of Directors of Plaintiff and/or their agents, employees and/or other representatives have interfered with and continue to interfere with Defendants' rights and privileges as property owners in the Treasure Lake Subdivision and as regular members of Plaintiff, including without limitation Section 2.5.1 of Article II of Plaintiff's By-Laws.

30. Both before and after issuance of the annual charges or assessments for Lot Nos. 66 and 91 for the years 2003 and 2004, including without limitation at the January 3, 2005 hearing held before Magistrate Judge Patrick N. Ford, the Board of Directors of Plaintiff and/or their agents, employees and/or other representatives have told Defendants that even if they paid such annual charges or assessments, the Board of Directors of Plaintiff and/or their agents,

employees and/or other representatives would not allow Defendants and their family and/or invited guests to use and enjoy the private streets and parks of the Treasure Lake Subdivision or otherwise peacefully access Lot Nos. 66 and 99, and the Board of Directors of Plaintiff and/or their agents, employees and/or other representatives would continue to interfere with and/or refuse to recognize Defendants' rights and privileges as property owners in the Treasure Lake Subdivision and as regular members of Plaintiff, including without limitation Section 2.5.1 of Article II of Plaintiff's By-Laws.

31. The refusal by the Board of Directors of Plaintiff and/or their agents, employees and/or other representatives to accept payment from Defendants for the annual charges or assessments for Lot Nos. 66 and 91 and/or to provide Defendants with parking permits and other necessary documentation to enable Defendants and their invited guests to use and enjoy the private streets and parks of the Treasure Lake Subdivision or otherwise peacefully access their property and their interference with and/or refusal to recognize Defendants' rights and privileges as property owners in the Treasure Lake Subdivision and as regular members of Plaintiff, including without limitation Section 2.5.1 of Article II of Plaintiff's By-Laws, are beyond the powers and authority granted under the May 28, 1968 Declaration of Restrictions and, in fact, are in direct contravention of such powers and authority.

32. The claims, liabilities, losses and/or damages alleged to have been or to be sustained by Plaintiff, all of which are expressly denied, are barred, in whole or in part, by Plaintiff's anticipatory and/or stated breach of contract.

33. The claims, liabilities, losses and/or damages alleged to have been or to be sustained by Plaintiff, all of which are expressly denied, are barred, in whole or in part, by the defense of payment.

34. The claims, liabilities, losses and/or damages alleged to have been or to be sustained by Plaintiff, all of which are expressly denied, are barred, in whole or in part, by the defense of failure and/or lack of consideration.

35. The claims, liabilities, losses and/or damages alleged to have been or to be sustained by Plaintiff, all of which are expressly denied, are barred, in whole or in part, by the defense of impossibility of performance.

36. The claims, liabilities, losses and/or damages alleged to have been or to be sustained by Plaintiff, all of which are expressly denied, are barred, in whole or in part, by the defense of illegality.

37. The claims, liabilities, losses and/or damages alleged to have been or to be sustained by Plaintiff, all of which are expressly denied, are barred, in whole or in part, because the interest and fees charged is usurious and/or unconscionable.

38. The claims, liabilities, losses and/or damages alleged to have been or to be sustained by Plaintiff, all of which are expressly denied, are barred, in whole or in part, by the pendency of a prior action between the parties, captioned *Treasure Lake Property Owners Association, Inc. v. Mark A. Kane and Annette M. Kane*, No. 03-1892-CD (C.C.P. Clearfield County, PA).

39. Defendants refer to and incorporate by reference their defenses and allegations made in the case of *Treasure Lake Property Owners Association, Inc. v. Mark A. Kane and Annette M. Kane*, No. 03-1892-CD (C.C.P. Clearfield County, PA).

WHEREFORE, Defendants respectfully request that judgment be entered in their favor and against Plaintiff by dismissing Plaintiff's complaint with prejudice, awarding Defendants their attorney's fees and costs, and granting such further relief that this Court deems just and appropriate.

### **COUNTERCLAIM**

Defendants plead the following Counterclaim:

### **COUNT I**

40. Paragraphs 1 through 39 of Defendants' Answer and New Matter are referred to and incorporated by reference as though the same were repeated at length herein.

41. Plaintiff owes Defendants a duty, contractual, legal or otherwise, to act in accordance with the Declaration of Restrictions for the Treasure Lake Subdivision, the Plaintiff's By-Laws, and/or the applicable provisions of the Uniform Planned Community Act, P.L. 1336, No. 180, §1 (Dec. 19, 1996), as amended and codified at 68 Pa.C.S.A. §5101, *et seq.*

42. Plaintiff has breached its duty toward Defendants by, *inter alia*, refusing to accept payment from Defendants for the annual charges or assessments for Lot Nos. 66 and 91, refusing to provide Defendants with parking permits and other necessary documentation to enable Defendants and their invited guests to use and enjoy the private streets and parks of the Treasure Lake Subdivision or otherwise peacefully access their property, and/or interfering with or

refusing to recognize Defendants' rights and privileges as property owners in the Treasure Lake Subdivision and as regular members of Plaintiff, including without limitation Section 2.5.1 of Article II of Plaintiff's By-Laws.

43. As a result of Plaintiff's breach of its duty, Defendants have suffered and continue to suffer the following damages, losses and injuries:

a. The loss of Defendants' unfettered right to access Lot Nos. 66 and 91 of the Treasure Lake Subdivision over and across the roads owned and maintained by Plaintiff and/or to otherwise peacefully access and enjoy their property at Treasure Lake Subdivision;

b. The loss of Defendants' rights and privileges as property owners in the Treasure Lake Subdivision and as regular members of Plaintiff, including without limitation Section 2.5.1 of Article II of Plaintiff's By-Laws;

c. Extreme embarrassment and humiliation and/or the loss of Defendants' good name and reputation within the community; and

d. Such other damages, losses and injuries which are currently being investigated and will be presented at the time of trial.

44. In committing the breach of its duty, Plaintiff has acted and continues to act intentionally, willfully, maliciously and with reckless indifference to the rights of Defendants and Plaintiff has been motivated and continues to be motivated solely by its own benefit, profit and compensation.

WHEREFORE, Defendants respectfully request that judgment be entered in their favor and against Plaintiff as follows:

- A. For compensatory damages, the amount of which is currently unknown but believed to be in excess of Twenty-Five Thousand Dollars (\$25,000.00);
- B. For punitive damages;
- C. For payment of Defendants' attorney's fees and costs;
- D. For an injunction and/or other declaratory or equitable relief compelling Plaintiff to accept payment from Defendants for the annual charges or assessments for Lot Nos. 66 and 91, to provide Defendants with parking permits and other necessary documentation to enable Defendants and their invited guests to use and enjoy the private streets and parks of the Treasure Lake Subdivision or otherwise peacefully access their property, and to no longer interfere with and/or refuse to recognize Defendants' rights and privileges as property owners in the Treasure Lake Subdivision and as regular members of Plaintiff, including without limitation Section 2.5.1 of Article II of Plaintiff's By-Laws; and
- E. For such further relief that this Court deems just and appropriate.

### **COUNT II**

45. Paragraphs 1 through 44 of Defendants' Answer and New Matter are referred to and incorporated by reference as though the same were repeated at length herein.

46. Plaintiff's conduct and acts toward Defendants constitute an unlawful trespass of, infringement upon and/or interference with Defendants' rights and privileges as property owners in the Treasure Lake Subdivision and as regular members of Plaintiff, including without limitation Defendants' unfettered right to access Lot Nos. 66 and 91 of the Treasure Lake Subdivision over and across the roads owned and maintained by Plaintiff and/or to otherwise peacefully access and enjoy their property at Treasure Lake Subdivision as provided by Section 2.5.1 of Article II of Plaintiff's By-Laws.

47. As a result of Plaintiff's tortious conduct, Defendants have suffered and continue to suffer the following damages, losses and injuries:

a. The loss of Defendants' unfettered right to access Lot Nos. 66 and 91 of the Treasure Lake Subdivision over and across the roads owned and maintained by Plaintiff and/or to otherwise peacefully access and enjoy their property at Treasure Lake Subdivision;

b. The loss of Defendants' rights and privileges as property owners in the Treasure Lake Subdivision and as regular members of Plaintiff, including without limitation Section 2.5.1 of Article II of Plaintiff's By-Laws;

c. Extreme embarrassment and humiliation and/or the loss of Defendants' good name and reputation within the community; and

d. Such other damages, losses and injuries which are currently being investigated and will be presented at the time of trial.

48. In engaging in the tortious conduct, Plaintiff has acted and continues to act intentionally, willfully, maliciously and with reckless indifference to the rights of Defendants and Plaintiff has been motivated and continues to be motivated solely by its own benefit, profit and compensation.

WHEREFORE, Defendants respectfully request that judgment be entered in their favor and against Plaintiff as follows:

- A. For compensatory damages, the amount of which is currently unknown but believed to be in excess of Twenty-Five Thousand Dollars (\$25,000.00);
- B. For punitive damages;
- C. For payment of Defendants' attorney's fees and costs;
- D. For an injunction and/or other declaratory or equitable relief compelling Plaintiff to accept payment from Defendants for the annual charges or assessments for Lot Nos. 66 and 91, to provide Defendants with parking permits and other necessary documentation to enable Defendants and their invited guests to use and enjoy the private streets and parks of the Treasure Lake Subdivision or otherwise peacefully access their property, and to no

longer interfere with and/or refuse to recognize Defendants' rights and privileges as property owners in the Treasure Lake Subdivision and as regular members of Plaintiff, including without limitation Section 2.5.1 of Article II of Plaintiff's By-Laws; and

E. For such further relief that this Court deems just and appropriate.

### **COUNT III**

49. Paragraphs 1 through 48 of Defendants' Answer and New Matter are referred to and incorporated by reference as though the same were repeated at length herein.

50. Plaintiff's conduct and acts toward Defendants constitute violations of the May 28, 1968 Declaration of Restrictions and the Plaintiff's By-Laws within the meaning of 68 Pa.C.S.A. §5412 of the Uniform Planned Community Act, P.L. 1336, No. 180, §1 (Dec. 19, 1996), as amended.

51. As a result of Plaintiff's violations, Defendants have suffered and continue to suffer the following damages, losses, injuries and/or adverse effects:

a. The loss of Defendants' unfettered right to access Lot Nos. 66 and 91 of the Treasure Lake Subdivision over and across the roads owned and maintained by Plaintiff and/or to otherwise peacefully access and enjoy their property at Treasure Lake Subdivision;

b. The loss of Defendants' rights and privileges as property owners in the Treasure Lake Subdivision and as regular members of Plaintiff, including without limitation Section 2.5.1 of Article II of Plaintiff's By-Laws;

c. Extreme embarrassment and humiliation and/or the loss of Defendants' good name and reputation within the community; and

d. Such other damages, losses, injuries and/or adverse effects which are currently being investigated and will be presented at the time of trial.



52. In committing the violations, Plaintiff has acted and continues to act intentionally, willfully, maliciously and with reckless indifference to the rights of Defendants and Plaintiff has been motivated and continues to be motivated solely by its own benefit, profit and compensation.

WHEREFORE, Defendants respectfully request that judgment be entered in their favor and against Plaintiff as follows:

- A. For compensatory damages, the amount of which is currently unknown but believed to be in excess of Twenty-Five Thousand Dollars (\$25,000.00);
- B. For punitive damages;
- C. For payment of Defendants' attorney's fees and costs;
- D. For an injunction and/or other declaratory or equitable relief compelling Plaintiff to accept payment from Defendants for the annual charges or assessments for Lot Nos. 66 and 91, to provide Defendants with parking permits and other necessary documentation to enable Defendants and their invited guests to use and enjoy the private streets and parks of the Treasure Lake Subdivision or otherwise peacefully access their property, and to no longer interfere with and/or refuse to recognize Defendants' rights and privileges as property owners in the Treasure Lake Subdivision and as regular members of Plaintiff, including without limitation Section 2.5.1 of Article II of Plaintiff's By-Laws; and
- E. For such further relief that this Court deems just and appropriate.

Respectfully submitted,

MEYER, UNKOVIC & SCOTT LLP

By: 

Ronald L. Hicks, Jr.

Attorneys For Defendants





## Treasure Lake Property Owners Association

13 Treasure Lake

Du Bois, PA 15801 814-371-0711 Matt Begley, PCAM Email: [tlpoa@penn.com](mailto:tlpoa@penn.com)



### BYLAWS OF THE

### TREASURE LAKE PROPERTY

### OWNERS ASSOCIATION, INC.

#### ARTICLE I

**Section 1.1** NAME: This Corporation shall be known as the Treasure Lake Property Owners Association, Inc. (The "Association"), a Pennsylvania non-profit corporation whose business address is 13 Treasure Lake, DuBois, PA, 15801.

**Section 1.2** PURPOSE and OBJECTIVE: The general purpose of the "Association" is to further and promote the community welfare of the Treasure Lake property owners, including but not limited to, the holding, management, maintenance and enhancement of such real properties, infrastructures and easements owned by the Association and those which the

Association has acquired or may acquire in the future. In exercising this obligation the Association may take such steps as it deems necessary to promote the safety, security, and well-being of its property owners.

### Section 1.3

**AFFILIATIONS:** All Treasure Lake organizations, or groups, as of the date of adoption of these By-Laws, shall continue to be recognized as being affiliated with or otherwise under the auspices of the Association until their dissolution.

#### 1.3.1

**Procedures For Affiliations or Sponsorship:** No organization or group may be affiliated with the Treasure Lake Property Owners Association, Inc. without the approval of a majority of the Board of Directors. Application for affiliation with or sponsorship by the Association shall be submitted in writing to the Board for review and consideration. The application may be in letter form and shall contain a brief description of the applicant (s) / organization (s) purpose, its structure, and its requirements for membership. Upon receipt of such an application, the Board shall make its study and decision to approve or disapprove such affiliation within sixty (60) days after receipt of the organizations application by the Board Secretary. The Board of Directors may, for just cause, withdraw affiliation upon a majority vote to do so.

## ARTICLE II

### MEMBERSHIP

### Section 2.1

**REGULAR MEMBERSHIP:** Regular membership of the Association shall consist of the following: all persons, partnerships, or corporations, who acquire title, legal or equitable, to any form of real estate within the Treasure Lake sub-division, Sandy Township, Clearfield County, Pennsylvania, other than the Treasure Lake land developer, its successors or assigns.

### Section 2.2

**ASSOCIATE MEMBERSHIP:** Associate memberships shall be divided into two groups: Full Associate and Limited Associate memberships.

#### 2.2.1

**Full Associate Membership.** Full Associate Membership shall be afforded, with all

rights and privileges as that of a Regular Membership, to all persons residing legally in the same household as a Regular Member. However, Full Associate members shall not have the right to vote, hold elective office, or chair any committee of the Association.

**2.2.2 Limited Associate Membership.** Limited Associate membership may be granted for usage of amenities which allow public access as deemed by the Board of Directors. Rules and Regulations regarding Limited Associate Membership will be defined by the Board of Directors.

**Section 2.3** **ASSIGNMENTS of MEMBERSHIP:** Neither class of memberships described in Sections 2.1 or 2.2 inclusive shall be assignable.

**Section 2.4** **MEMBERSHIP STANDING:** To be recognized as a Regular member in good standing of the Association, a person must:

**2.4.1** Possess ownership of, or an equitable interest in a lot or lots situated within the environs of the Treasure Lake sub-division (including the area known as Cayman Landing, Silverwoods and Wolf Run) Sandy Township, Clearfield County, Pennsylvania. Such ownership must be capable of being verified by a Deed of Trust on that lot or lots.

**2.4.2** Have paid, or are otherwise current with all financial obligations to the Treasure Lake Property Owners Association, as witnessed by the Financial Records of the Treasure Lake Property Owners Association, Inc, to include Association annual assessments, as well as any and all outstanding fines, fees, or penalties imposed by the Association on the property owner(s) and members.

**2.4.3** In determining the eligible standing of an Association Regular member, no residency requirements within the Treasure Lake community shall be applicable.

**Section 2.5** **PRIVILEGES of REGULAR MEMBERSHIP.** The privileges of Regular Membership shall include:

**2.5.1** The right of access to the lot or lots owned by the respective members over and across the roads owned or maintained by the Association.

2.5.2 The use of such facilities as the Association may acquire or establish for the convenience of its members.

2.5.3 The use of such facilities as the Association may acquire or establish for recreational purposes.

2.5.4 The right to petition and vote with respect to all matters that may be referred to the vote of the Regular members by law or by the By-Laws.

2.5.5 The right to attend all open Board meetings, hearings, and meetings of the membership.

#### Section 2.6 DISCIPLINARY MEASURES:

2.6.1 The right granted under Section 2.5.1 shall be absolute and cannot under any circumstances be withdrawn by the Association.

2.6.2 The rights conferred by Sections 2.5.3, 2.5.4, 2.5.5 and 2.5.6 shall be revoked automatically if the member (1) is in default of any monetary obligation owed to the Association, or (2) is otherwise in default of any other provisions of the Association's legal documents, such as the Declaration of Restrictions, these By-Laws, Association Policies, etc., and has been given ten (10) days written notice of non-monetary default. The member's rights shall be restored after all defaults have been cured as determined by the Board of Directors.

2.6.3 If a Member, his or her guests, tenants or invitee, or a member of his or her immediate family (Full Associate Member) creates a nuisance upon any of the Association's properties, or by intentional actions or omissions, causes damage or expense to the Association in a determinable amount, or violates the Rules and Regulations of the Association, including, but not limited to the Association Rules of the Road, he or she shall be subjected to disciplinary measures as provided for by the Board of Directors in its Administrative Code.

2.6.4 The rights and remedies provided in this Section 2.6 shall not be exclusive of any

other rights and remedies which the Association may have at law or otherwise discipline its members.



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# Treasure Lake Property Owners Association

13 Treasure Lake

Du Bois, PA 15801 814-371-0711 Matt Begley,  
PCAM Email: tlpoa@penn.com



## ARTICLE III

### GOVERNMENT

#### Section 3.1 BOARD OF DIRECTORS

- 3.1.1 The general management of the affairs of the Association shall be vested in the Board of Directors, who shall be elected as provided in the By-Laws.
- 3.1.2 The Board shall consist of not more than nine (9) Directors, including a President, a Vice President, a Secretary and a Treasurer.
- 3.1.3 The President shall be a member ex-officio of all standing committees.
- 3.1.4 The Board of Directors may hire a General Manager to handle day to day management of the activities of the Association. The duties of this position shall be determined by the Board of Directors.

#### Section 3.2 DUTIES and POWERS of the BOARD of DIRECTORS

- 3.2.1 The Board shall have general charge and management of the affairs, funds, and property of the Association. They shall have full power and it shall be



their duty to carry out the purpose of the Association according to its charter, Declaration of Restrictions and By-Laws.

3.2.2 The Board shall have the power to make Rules and Policies for the conduct of the members and the use of the Association property and to determine whether the conduct of any member is detrimental to the welfare of the Association and to fix penalty for such misconduct or any violation of the by-laws, rules or policies.

3.2.3 The Board shall have the power to:

3.2.3.1 Vote the expenditures of money, as deemed necessary.

3.2.3.2 To contract for lease or purchase in the name of the Association.

3.2.4 The Board may accept or acquire and administer any property or rights from anyone for the benefit of the Association.

3.2.5 The Board shall have the power and authority to do any and all acts to carry out and achieve its objectives, without limiting the foregoing. It shall have the duty, responsibility, power and authority to:

3.2.5.1 Arrange for garbage and refuse collection by private haulers for members of the Association.

3.2.5.2 Provide standards of safety for the protection of the members of the Association and its employees.

3.2.5.3 Maintain, repair and keep open all roads in the Treasure Lake Development owned by or under the control of the Association.

3.2.5.4 Operate and maintain all other properties and amenities owned or acquired by the Association for the benefit of the Association.

3.2.5.5 Provide such other services as may be deemed necessary but not limited to those areas or

items listed above.

- 3.2.6 The Board shall have the power to impose an assessment or charge upon the members in such amounts as it shall deem necessary for the Association to properly perform its functions and for the services furnished by the Association. No such charge shall ever be made against, the Association itself or any corporation(s) that may be created to acquire title to, and operate, the water or sewer utilities servicing the area, or any lakes, dams, beaches, lake access tracts, marinas, golf courses, tennis courts, swimming pools, clubhouse grounds, campgrounds, or other like recreational facilities.
- 3.2.7 The Board may engage and employ such persons at such compensation as it may deem necessary to carry out and achieve any of the objectives and purposes of the Association. However, no person serving as an elected or appointed director or as an employee can receive and be compensated in any form, any benefit, from the Treasure Lake Property Owners Association during their full term of office. Any elected or appointed director shall make known any financial interest in any company transacting business with the Treasure Lake Property Owners Association during their full term of office (A full term of office is defined as that time for which a director is elected or appointed to service).

Section 3.3            CONFLICT of INTEREST. Defined: Any Director, Officer or employee having a compensatory interest in privately owned company, or more than 1% of the outstanding stock of publicly held corporation with whom Association business is conducted. No contracts, agreements and transactions between the Association and any of its Directors, Officers, employees, or any other entity in which one (1) or more of the aforesaid Directors, Officers, or employees are deemed to have an interest shall be entered into by the Association, unless:

- 3.3.1        The material facts as to the relationship or interest and as to the contract or transaction are disclosed or are known to the Board of Directors and;
- 3.3.2        The material facts as to the relationship or interest

and as to the contract or transaction are disclosed or are known to the members entitled to vote thereon, if any, and the contract or transaction is specifically approved in good faith by a vote of six (6) members, or;

3.3.3 The contract or transaction is fair to the Association at the time it is authorized, approved, or ratified by the Board of Directors or Association Members.

3.3.4 Any Director, Officer, or employee of the Association shall be deemed to have vacated his or her office or position of employment if found to be involved in or a party to a conflict of interest, the circumstances of which he/she has failed or neglected to disclose to the Board of Directors and/or the Association prior to approval or ratification of such contracts or transactions by the Board of Association Members, when applicable.

3.3.5 The provisions of 3.3.4 concerning removal from office or employment by virtue of conflict of interest in the exercise of assigned duties and responsibilities is hereby incorporated by reference as a part of Article V, Section 5.8 of these By-Laws. In such cases, after reasonable inquiry and investigation of the circumstances and facts pertaining to the alleged conflict, a majority vote of the remaining members of the Board of Directors shall be sufficient to determine whether there is just cause for vacating the respective Board office or position of employment.

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# Treasure Lake Property Owners Association

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## ARTICLE IV

### Section 4.1 MEETINGS

4.1.1 Regular Meetings. The Board of Directors shall hold regular meetings for the purpose of conducting the business of the Association. Regular meetings of the Board of Directors are to be held monthly, at times and locations designated by the Board of Directors, to conduct the business of the Association. Informal work sessions of the Board may be scheduled as necessary. All Association members in good standing may attend all Board meetings except those dealing with personnel items, legal issues, potential real estate purchase transactions or other items deemed to be of a confidential nature.

4.1.2 Order of Business. The order of business shall be determined by the Board of Directors, and shall include, but not limited to:

- 4.1.2.1 Quorum count
- 4.1.2.2 Minutes of previous meeting
- 4.1.2.3 Treasurers report or financial report

- 4.1.2.4 Department committee reports
- 4.1.2.5 Unfinished (old) business
- 4.1.2.6 New business
- 4.1.2.7 Adjournment
- 4.1.3 Special Meetings. The President or Secretary may call special meetings of the Board of Directors on their own initiative whenever, in their judgement, it may be necessary; or otherwise by the Secretary upon the request of any two members of the Board of Directors. Five (5) days notice of a special meeting shall be given to all Directors, and shall be deemed sufficient notice of such meetings. The five (5) day notice may be waived upon unanimous consent of all Directors.
  - 4.1.3.1 Notice. Notice of a special meeting shall be the same as of regular meetings except that the notice shall include the purpose for which the meeting is being called.
  - 4.1.3.2 Order of Business. The order of business is limited to the purpose for which the meeting has been called.
- 4.1.4 Annual Membership Meeting. There shall be an annual membership meeting of the members in July of each year. The exact date, time and location shall be set forth in the notice thirty (30) days before such meeting.
  - 4.1.4.1 Order of Business. The order of business shall be as stated in subparagraphs 1 through 7 under Section 4.1.2.
- 4.1.5 Special Membership Meeting. The President may call a special membership meeting after first having secured the approval of the Board of Directors or upon receipt of a petition signed by at least six (600) hundred Regular members in good standing.
  - 4.1.5.1 Notice. Same as for general membership meetings except that the

notice shall include the purpose for which the meeting is being called.

- 4.1.6 Quorum. At meetings of the Board of Directors a majority of the total numbers of directorships authorized shall constitute a quorum. Six hundred (600) Regular members in good standing, including proxies, shall constitute a quorum at general or special membership meetings.



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### ARTICLE V

#### VOTING AND ELECTIONS

##### Section 5.1 VOTING ELIGIBILITY.

- 5.1.1 Defined. Units of real estate within the subdivision of Treasure Lake, and defined as lots by the Declaration of Restrictions, may have more than one owner which may result in more than one Regular Member of the Association. However, all voting within the Association by individual single residential lots shall be limited to one (1) vote for each parcel or unit of real estate giving rise to membership.
- 5.1.2 The voting eligibility for all other types of real estate ownership and real estate usage concepts within the Treasure Lake Subdivision (i.e. ownership interest at Wolf Run Manor and Silverwoods) will be determined based on the details of an agreement as amended and signed by the Recreation Land Corporation, Silverwoods Association, Inc., Wolf Run Manor Association, Inc., and the Treasure Lake Property Owners Association, Inc. on December 30, 1988 and as amended on May 9, 1989. (A copy of the agreement with amendment is on file at the office of the Treasure Lake Property Owners Association, Inc.)

5.1.3 Voting shall be in person or by proxy executed in writing by the member or his duly authorized representative. No proxy will be recognized as valid after 11 months from the date of its execution. However, all Regular members of each respective parcel or unit of real estate must indicate assent to vote for that parcel or unit in the manner prescribed by the Board of Directors.

5.1.4 In order for the votes to be counted, voting parcels or units must be in good standing relative to payment of all financial obligations collected by the Association, and otherwise be in good standing with respect to the Rules and Regulations of the Association.

Section 5.2 ELECTION of BOARD DIRECTORS. The Directors of the Association shall be elected at the Annual membership meeting of the Association held in July of each year based on the policies and procedures approved by the board of Directors and as outlined in the Operating Manual of the Association. Voting shall be by written ballot.

Section 5.3 TERMS of OFFICE. The Board of Directors shall be divided into classes such that one- third of said Directors shall be elected each year. All elected Directors shall serve for terms of three (3) years. However, Directors elected by the Board of Directors under Article V Section 5.9 of the by-laws, shall serve only until the next annual election. No Director(s) shall be elected for more than two (2) consecutive terms, not including any additional period elected to fill a Board vacancy per Article V. After a one (1) year absence, former Directors shall again be eligible to be nominated and elected to the Board.

Section 5.4 NOMINATING and ELECTION COMMITTEES.

5.4.1 Nominating Committee. Prior to the annual election, the President of the Board of Directors shall establish a Nominating Committee, and, with the advice and consent of the Board of Directors, appoint a member of the Association in good standing to be chairperson of this committee. The chairperson will appoint an even number of additional members in good standing, but not less than two (2) such additional members, to the Nominating Committee. One member



of the Nominating Committee shall also be a member of the Election Committee. It shall be the exclusive responsibility of the Nominating Committee to present nominees to be placed on the ballot to stand for election to the Board of Directors of the Association. Additional nominations of Board candidates may not be made from the floor.

5.4.2 Election Committee. An Election Committee shall be appointed by the President of the Board of Directors, prior to each Annual membership meeting. This committee shall perform their duties according to the policies and procedures established by the Board of Directors and as outlined in the operating manual of the Association. Additionally, this committee shall act as judges of election and perform such duties as specified by the laws of Pennsylvania relating to judges of election for non-profit corporations.

Section 5.5 ELIGIBILITY of NOMINEES. To be eligible to be a nominee for the Board of Directors, and to continue to serve on the Board, all candidates must agree to and maintain the following conditions:

5.5.1 Be a Regular member of the Association in good standing and have met all financial obligations to the Association.

5.5.2 Provide signed endorsements from no fewer than five (5) Regular members of the Association in good standing with their application.

5.5.3 Submit their completed application with all endorsements as a nominee prior to the applicable deadline for such submissions.

5.5.4 Agree to the restrictions as outlined in the Declaration of Restrictions and the By-Laws of the Association.

5.5.5 Be willing to serve on the Board of Directors, if elected.

Section 5.6 REMOVAL FROM OFFICE. After election to the Board of Directors of the Association, the Board may remove any Director(s) for any of the following reasons:

5.6.1 If, within thirty (30) days after notice of their election, the newly elected Board Member(s) do/does not accept such office either in writing or by attending a meeting of the Board of Directors, the newly elected Board Member(s) shall be removed from the Board;

5.6.2 If any Board member is absent from twenty-five percent (25%) of the regularly scheduled business meetings (3 meetings) within the twelve (12) month period beginning with the July Board meeting, they have forfeited their right to serve on the Board of Directors and shall be removed from it. A successor(s) shall be elected to serve until the next annual election according to procedures established in Section 5.9 of this Article.

NOTE: This removal action does not require a majority vote by the remaining Board Members. **Removal is mandatory upon the 3<sup>rd</sup> absence.** The only absences that will not count toward the 25% limit are:

1. Death in the family;
2. Serious illness or injury involving the Board Member, or a member of their immediate family requiring hospital stay or home care under a doctor's orders.

NOTE: All other reasons, including vacation time, will count toward the 25% limit.

5.6.3 Declaration of unsound mind by a court order.

5.6.4 Conviction of any felony.

5.6.5 Failure to fulfill the responsibilities for Directors as specified in the By-Laws of the Association, or by law.

5.6.6 Any Member in good standing or Director of the Association may petition the Court to remove from office any Director in case of fraudulent or dishonest acts, or gross abuse of authority or discretion with reference to the Association, or for any other proper cause and may thereafter bar from any office any Director so removed for a period prescribed by the Court. The Association shall be made party to such action.

**Section 5.7**                      **VACANCIES IN OFFICE.** Vacancies occurring on the Association Board of Directors resulting from Board removal, resignation, death or other reasons, shall be filled by election by the Board. The Board should give serious consideration to the unsuccessful candidates from the last election. However, if the Board cannot elect from this group by a majority vote, the Board may then elect any Association Regular member who is in good standing. The person(s) elected by the Board shall serve until the next annual election. The person(s) elected by the Board of Directors must agree to the requirements as listed in Sections 5.5.1, 5.5.4, and 5.5.5 of this Article.

**Section 5.8**                      **OFFICER VACANCIES.** Vacancies occurring among the officers of the Board of Directors shall be filled by nominations from the Board, of a Board member. A majority vote of the Board will be required to confirm election.

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### ARTICLE VI

#### OFFICERS

Section 6.1 ELECTION of OFFICERS. The Board of Directors shall elect one of their number President, one of their number Vice-President, one of their number Secretary; and one of their number Treasurer. Secretary and Treasurer may be one person if a majority of the Board so designate by vote. The meeting to elect officers shall be held within one month following the Annual membership meeting of the Association.

6.1.1 Terms of Officers. Officers shall be elected for one (1) year terms and shall otherwise continue to serve as officers until their successors have been elected by the Board of Directors.

Section 6.2 DUTIES of OFFICERS.

6.2.1 PRESIDENT: The President shall be elected by the Board from among the Directors. The President shall be the chief executive officer of the Association and shall, subject to the control of the Board, have general supervision, direction and control of affairs and officers

of the Association. The President shall preside at all meetings of the Board and shall have the general power and duties of management usually vested in the office of president of a corporation, together with such powers and duties as may be prescribed by the Board or the By-Laws.

6.2.2 VICE-PRESIDENT: The Vice-President shall be elected by the Board from among the Directors. In the absence or disability of the President, the Vice-President shall perform all duties of the President, and when so acting shall have all the powers of and be subject to the same restrictions as the President. The Vice-President shall have such other powers and perform such other duties as from time to time may be prescribed by the Board or the By-Laws.

6.2.3 SECRETARY: The Secretary shall:

(1) Keep, or cause to be kept, at the Association's principal office or other such place as the Board may order, a Book of Minutes of all meetings of Directors and Members, with the time and place of holding same, whether regular or special, and if special, how authorized, notice thereof given, the names of those members present at Directors' meetings, the number of members present at members' meetings, and the proceedings thereof, and records of the number of member votes cast by written ballot, or by proxy, when applicable.

Keep, or cause to be kept, appropriate current records showing the members of the Association, together with their addresses.

(3) Give, or cause to be given, notice of all meetings of the Board required by the by-laws or by law to be given.

(4) Keep the seal of the Association in safe custody, and shall have such other powers and perform such other duties as may be hereafter prescribed by the Board or by the By-Laws.

6.2.4 TREASURER: The Treasurer shall:

(1) Keep and maintain, or cause to be kept and maintained, adequate and correct accounts of the properties and business transactions of the Association, including accounts of its assets, liabilities, receipts, disbursements, gains, losses, capital, retained earnings and other matters customarily included in financial statements, and be the Board liaison to the Finance Committee.

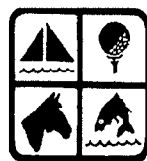
(2) Keep and maintain, or cause to be kept and maintained, the

books and records which shall be reviewed as required, but in no event less than once a year, under the direction of the Treasurer and the results thereof reported to the Association membership. An audit shall be performed no less than every three (3) years or as prescribed by the Board, under the direction of the Treasurer and the results thereof reported to the Association membership. Such books and records shall be open at all reasonable times to inspection by any Director or member in good standing.

Section 6.3      SIGNATURE AUTHORITY. All checks, leases, contracts and other instruments executed for the benefit of the Association shall be signed by the President, Vice-President, Secretary, Treasurer, or by such other person or signature authority as required by state law and as the Board of Directors may designate. The signatures of at least two (2) Board Members or an Officer and a Board Member (if the designated officer is not a Board Member) shall be required for withdrawal of monies from the Association's reserve accounts.

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### ARTICLE VII

#### FINANCE

#### Section 7.1 DEFINITIONS:

- 7.1.1 Operating Expenses. As used in this Article, Operating Expenses shall mean all of the recurring expenses of the Association other than the expenses described in Subsections 7.1.2 and 7.1.3 of this section.
- 7.1.2 Capital Expenses. As used in this Article, Capital Expenses shall mean all items of expenditure for the purchase or improvement of real estate, construction, re-construction, or improvement of Association buildings and structures, and the purchase of machinery and equipment exceeding an acquisition cost of two thousand (\$2000) dollars.
- 7.1.3 Capital Project. As used in this Article, Capital Project shall mean a proposal to purchase or construct a facility of the Association involving expenditures totaling more than twenty-five thousand (\$25,000) in the aggregate.

#### Section 7.2 BUDGETS and BUDGET PREPARATION:

7.2.1 Expenditures. All expenditures of the Association shall be provided for in the budgets described in this section. The budgets shall consist of an operating budget and a capital budget, and the Board of Directors shall have the duty to adopt said budgets for each fiscal year. Further, as an adjunct to the budget process, the Board of Directors shall fix the amount of the annual assessment.

7.2.2 Operating Budget. Each operating expense item shall be included in an annual operating budget and shall be classified as to type and amount in a manner approved by the Board of Directors and consistent with generally accepted accounting principles.

(a) Once an operating budget has been approved by the Board of Directors, no budget line item shall be exceeded by ten percent or one thousand dollars (10% or \$1000) unless reviewed by the Treasurer, General Manager and/or the Board President. Said items will be reported to the Board of Directors by the Treasurer. The excesses so approved by the Board of Directors, shall be transferred from another line item within the same function, or if not possible, then from the emergency reserve funds as a last resort.

(b) All unexpended funds remaining in the operating budget for any one fiscal year, at the conclusion of said year, shall be carried forward in the general fund, used to reduce debt, or placed in one of the reserve accounts, after being reviewed by the Finance Committee, which will make a recommendation to the Board of Directors for approval.

7.2.3 Capital Budget. Each item of capital expense shall be classified as to type and amount in a manner approved by the Board of Directors and consistent with general accounting principles.

(a) All expenditures over five thousand dollars (\$5000) must first go through the bidding process as prescribed by the Board of Directors in its administrative policies/guidelines regarding the expenditure of Association funds. Once a capital



budget has been approved by the Board of Directors, no budget line item within said budget may be exceeded at any time, unless otherwise approved by the Board.

(b) Unexpended sums budgeted for capital expenses, or otherwise authorized for a capital project which has been completed, shall be applied either to the reduction of the debt or to a capital reserve account, after consideration of the Finance Committee and recommendation to the Board of Directors.

7.2.4 Hearings, Approvals and Publication. The Board of Directors shall hold at least one (1) public hearing at least seven (7) days prior to the Board taking final action on a proposed operating budget. The notice for these hearings shall include a summary of the proposed budget plus the anticipated dues, fees and assessments to be levied upon the membership if said budget is approved. The budget, so prepared, shall be set and approved on or before the last day of March preceding the fiscal year for which it was prepared. Once approved, the General Manager shall print the budgets in reasonable detail in the official publication and posted on the bulletin boards located throughout the Treasure Lake community.

Section 7.3 UNRESTRICTED CAPITAL RESERVE ACCOUNT. The Unrestricted Capital Reserve Account shall remain sacrosanct with its only use to be set aside for approved capital expenditures. The Board of Directors shall have the right to borrow therefrom with an annual interest rate of five percent (5%) payable (principle and interest) by May 31 following the fiscal year in which the funds were borrowed.

Section 7.4 DUES, FEES, and ASSESSMENTS. The Board of Directors shall fix membership dues, fees and assessments. The method and basis for determining the amount of annual dues by type of lot shall not be charged unless approved by favorable vote as stated in the Declaration of Restrictions.

7.4.1 Special Assessments. Special assessments to meet unbudgeted operating or capital expenses shall be deemed additional dues and shall be computed as a stated percentage of each member's annual dues.

- (a) The Board of Directors shall hold a minimum of two (2) public hearings at least fourteen (14) days apart, with the last occurring at least seven (7) days prior to the Board taking final action. The notice for these hearings shall include a summary of the proposed budget plus the anticipated special assessment to be levied upon the membership if said budget is approved.
- (b) A special assessment shall only be approved by a minimum of six (6) Directors voting in the affirmative.

7.4.2 Billing. The General Manager shall prepare and mail dues notices to the entire membership no later than April 1 of each year. Said notices shall indicate the lot number, the member's name and permanent address and the amount due for the fiscal year in question, and all unpaid prior balances. All such amounts shall become due and payable on the first day of May of each year, except as otherwise provided for by the Board of Directors.

## ARTICLE VIII

### COMPENSATION, LIABILITY and INDEMNIFICATION

Section 8.1 COMPENSATION. The Officers, Directors and Association members serving on any Standing or Special Committees shall not receive any salary, gratuity, or compensation in any other form for services rendered to the Association. However, the Board of Directors is hereby authorized and empowered to reimburse reasonable out-of-pocket expenses incurred on the behalf of the Association upon written request and justification for such reimbursement as may be prescribed by the Board.

Section 8.2 LIMITS on PERSONAL LIABILITY of DIRECTORS. A Director of the Association shall not be personally liable for monetary damages as such for any action taken, or any failure to take action, unless:

- (a) the Director has a breach or failure to perform the duties of his or her office under Section 8363 of the Director's Liability Act, Title 42 of the

Pennsylvania Consolidated Statutes (relating to standard of care and justifiable reliance);

(b) the breach or failure to perform constitutes self-dealing, willful misconduct or recklessness; and,

(c) provided, however, that this Section shall not apply to the responsibility or liability of a Director pursuant to any criminal statute or liability of a Director of the payment of taxes under state or federal laws.

Section 8.3            **MANDATORY INDEMNIFICATION.** The Association shall, to the fullest extent now or hereafter permitted by law, including, but not limited to, the Director's Liability Act, Title 42 of the Pennsylvania Consolidated Statutes, indemnify and make advances on behalf of any person who was or is a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal administrative or investigative (including any action by or in the right of the Association) by reason of the fact he or she is or was a Director or Officer of the Association, or is or was serving at the request of the Association as a Director, Officer, committee member, employee or agent of another association, corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorney fees), judgements, fines and amounts paid in settlement actually and reasonably incurred in connection with such action, suit or proceeding. Indemnification may be denied if a majority of the Board of Directors vote disapproval thereof, at a Special Meeting, with ten (10) days notice given, called for that purpose, upon a determination made by the Board of Directors that the person seeking indemnification was not attempting to advance the best interest of the Association.

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### ARTICLE IX

#### ASSESSMENTS

- Section 9.1      **ANNUAL ASSESSMENT.** The annual assessment of members for operating and capital budgets will be determined by the Board of Directors each fiscal year based upon the proposed budgets.
- Section 9.2      **DUE DATE.** The annual assessments shall be payable by all members on or before May 1 of each year and shall be paid to the Treasure Lake Property Owners Association, Inc.
- Section 9.3      **SUSPENSION of VOTING RIGHTS.** The Board of Directors shall have the authority to suspend the voting rights of any Regular member whose assessments, fines, penalties or other fees are unpaid as of July 1 of any year.
- Section 9.4      **AUTHORITY TO RESTRICT USE.** The Board of Directors shall also have the authority to restrict use by any such members and guests of any facilities and property owned by or under lease or contract by the Association.

## ARTICLE X

### AMENDMENTS

The Bylaws of the Association may be amended in the manner prescribed below.

Section 10.1      RESOLUTION for BY-LAW AMENDMENT. A resolution for amendment of these Bylaws may be proposed by petition signed by at least 600 Regular Members in good standing of the Association, or by the recommendation of at least two-thirds (2/3) of the Board of Directors at a Special meeting of said Board to be called for that purpose only; provided, however, that the purpose of this meeting has been clearly stated in the call for the meeting. However, no amendment(s) shall be considered for adoption by the membership of the Association if, after consultation and review by the Board and a Bylaws Committee, the proposed amendment(s) is/are determined to be inconsistent with the Declaration of Restrictions or with Pennsylvania law. Such allegation of inconsistency(ies) must be documented in writing.

Section 10.2      ADOPTION of AMENDMENTS. Amendments to these Bylaws may be adopted only upon the affirmative vote of two-thirds (2/3) of the votes cast by eligible voters at any Special, or Annual Membership meeting, a quorum being present; provided, written notice of such meeting for the purpose of amending the Bylaws, along with a copy of the proposed amendment(s) is/are mailed not less than **30 days** prior to the date set for such meeting.

Section 10.3      SECONDARY AMENDMENTS. At any annual or special meeting of the Association membership called to consider amendment of these Bylaws, proper written notice having been given, no second degree amendments to the proposed original amendatory language may be recognized from the floor.

10.3.1      Motions to Modify. Any and all additional proposals for further amendment must be submitted to the Board within ten (10) days of the time and date set for the

annual or special meeting. Thereafter, the Board of Directors of the Treasure Lake Property Owners Association will make a determination as to whether, and in what form, such secondary amendatory language will be submitted to the membership.

Section 10.4      EFFECTIVE DATE of AMENDMENTS. Unless otherwise agreed to by a majority of those members present and casting votes for the ratification of amendments, all such actions shall become effective on the first day of the month following the month in which such approval took place.



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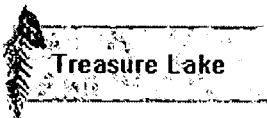


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### ARTICLE XI

#### COMMITTEES

Section 11.1 ESTABLISHMENT of COMMITTEES. The Board of Directors may establish such committees as it determines to be essential to the fulfillment of Association programs and objectives. The chairmanship of all committees shall be appointed by the President and confirmed by the majority Board. Only members in good standing, as defined in ARTICLE II section 2.4 shall be considered.

11.2 STANDING COMMITTEES. The following Standing Committees are hereby established by the Association and these Bylaws. These committees shall have the authority to administer the activities of the Association within the general scope of their assigned responsibilities, as hereinafter defined. However, such committees shall not, by their conduct, operate in such manner as to relieve the Board of any authority or responsibility granted specifically to it by the Declaration of Restrictions, these Bylaws, or by civil law. The President shall be ex-officio of all standing committees.

11.2.1 Property Control. In accordance with Section 5 of the Declaration of Restrictions, the Property Control

Committee shall be comprised of three (3) members, to be appointed by the Board. It shall be the responsibility of this committee to review all plans and specifications for any structures or improvements thereto on any lot or lots, and, upon approval thereof, to issue an appropriate permit to the property owner(s) for the construction, improvement, remodeling, reconstruction, additions or alterations thereto. It is also authorized to monitor the prohibitions and requirements pertaining to the use and activities conducted on any lot or lots within the Treasure Lake subdivision, as defined in Section 8a through 8t of the Declaration of Restrictions, and to take such steps as necessary to bring to the attention of the owner(s) of the property (ies) the nature of the violation.

11.2.2        Budget and Finance Committee. The Budget and Finance Committee shall prepare and make recommendations to the Board concerning the annual operating budgets of the Association; it shall prepare budget changes or amendments as well as supplemental budget requirements. It shall also review Association budget and accounting procedures and recommend such changes as necessary to be compliant with standard practices. Consistent with the financial position of the Association and its anticipated future monetary requirements, the Budget and Finance Committee recommends the use of funds for investment or savings purposes. It also supervises preparation of the annual report of budget operations and, acting in cooperation with the Treasurer, implements recommendations resulting from the annual audit of the Association. The Treasurer shall be a member of this committee.

11.2.3        Judicial Committee. The Judicial Committee is to function as a voluntary quasi-magisterial body to review and hear the facts of cases referred to it by the Property Control Committee and the Security Department involving infractions and/or violations of the provisions of the Declaration of Restrictions, as well as the enforcement of Treasure Lake security and safety policies designed from time to time to protect residents of the community, their property, and their welfare. The committee, under this provision, is granted the authority to act on behalf of the Board to impose established penalties and costs resulting from convictions of such violations.



11.2.3.1 Judicial Procedure. Each person or persons who citation(s) has

been referred for hearing to the Judicial Committee by either the Property Control Committee or the Security Department, shall have the right to appeal the decision rendered by the Judicial Committee and shall be so advised at the time of the hearing before that Committee. However, it shall be the duty and responsibility of the Board of Directors to establish and implement the procedures governing such appeals as from time to time may be deemed necessary to assure the fair and equitable closure of violation cases which have been referred for hearing.

Additionally, the following Standing Committees are established with such duties as the Board of Directors may prescribe from time to time. In general, however, the responsibilities of these Standing Committees shall be, but not limited to the following:

1. Recommendations to changes and additions in the Association's administrative policies, codes, and procedures;
2. Analyzes and conducts studies as necessary to make recommendations to the Budget and Finance Committee, after consultation with the General Manager, regarding proposed operating and capital expense items for inclusion in the Annual Budget of the Association;
1. Performs in-depth studies as necessary from time to time to enhance the appearance, condition and the uses of recreational, as well as the service facilities of the Treasure Lake community.

11.2.4 Safety and Security. The Safety and Security Committee shall be responsible mainly for monitoring adequate security, property protection, and general safety of all Treasure Lake residents.

11.2.5 Recreation. The Recreation Committee shall plan and make recommendations to the Recreation Director for the implementation of recreational programs for the diverse population of the Treasure

Lake community.

11.2.6 Cayman Landing. The Cayman Landing committee shall review and monitor the operation of the campground and make recommendations to the Board to enhance its use and maintenance, and its overall recreational atmosphere.

11.2.7 House. The House Committee shall monitor the physical structures, appearance, and general operations of the several food and beverage establishments within Treasure Lake.

11.2.8 Golf. The Golf Committee reviews the operations of the Silver and Gold golf courses and makes recommendations to the Board for the enhancement, use and maintenance of these courses and their peripheral facilities.

11.2.9 Infrastructure and Maintenance committee. Infrastructure & Maintenance Committee is responsible for advising the Board of Directors on all matters relating to the preservation and construction of existing and new physical structures, roads and amenities.

11.3 Special Committees. Special Committees may be established by the Board as it deems necessary. The duties, authority and membership of such committees shall accordingly be defined by the Board, in keeping with Article II, Section 2.4. However, in no event shall such committees be delegated authority to participate in the management of the Association. Upon fulfillment of its assigned objectives, or its dissolution by the Board, each committee shall cease to exist.

11.4 Committee Membership. Each of the Standing Committees shall consist of no less than three (3) members who shall serve at the pleasure of the Board. The membership of all standing committees shall be approved by the Board of Directors at the regular organizational meeting of the Board. A minimum of one (1) Director shall be a member on any standing committee, but at no time shall the Directors compose the majority membership. The chairperson of all committees shall be appointed by the President of the Association.

[«BACK](#)

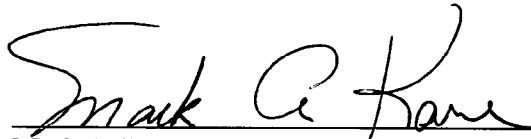
[\[ Treasure Lake \]](#) [\[ Up \]](#) [Camping](#) [Lakeview Lodge](#)

**VERIFICATION**

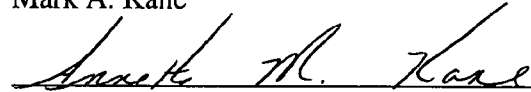
WE, MARK A. KANE AND ANNETTE M. KANE, state that the information contained in the foregoing Answer and New Matter to Complaint and Counterclaim is true and correct to the best of our knowledge, information and belief.

This Verification is made subject to the penalties of perjury of 18 Pa.C.S.A. §4904 relating to unsworn falsification to authorities.

Date: 4 15 05

  
\_\_\_\_\_  
Mark A. Kane

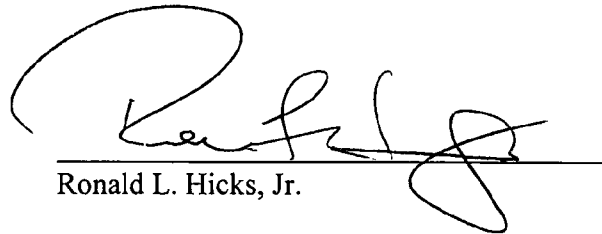
Date: 4/15/05

  
\_\_\_\_\_  
Annette M. Kane

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the within Answer, New Matter and Counterclaim was served upon counsel and/or parties of record by First-Class United States Mail, postage prepaid, this 18<sup>th</sup> day of April, 2005, at the following addresses:

Michael P. Yeager, Esq.  
P.O. Box 752  
110 North Second Street  
Clearfield, PA 16830



Ronald L. Hicks, Jr.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION - LAW

TREASURE LAKE PROPERTY OWNERS  
ASSOCIATION, INC.,

Plaintiff

vs

MARK A. KANE and ANNETTE M. KANE,  
Defendants

: NO. 05 - 106 - CD

:

: Type of Case: Assumpsit

:

: Type of Pleading: Reply to New  
: Matter and Counterclaim

:

: Filed on Behalf of: Plaintiff

:

: Counsel of Record for this Party:

:

: Michael P. Yeager, Esq.

: Supreme Court No.: 15587

:

: P.O. Box 752

: 110 North Second Street

: Clearfield, PA 16830

:

: (814) 765-9611

Dated: May 31, 2005

FILED <sup>icc</sup>  
013:45 <sup>Ed</sup> / <sup>Any Yeager</sup>  
MAY 31 2005 <sup>EW</sup>

William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION - LAW

TREASURE LAKE PROPERTY OWNERS	:	
ASSOCIATION, INC.,	:	
Plaintiff	:	
	:	No. 05 - 106 - CD
vs	:	
	:	
MARK A. KANE and ANNETTE M. KANE,	:	
Defendants	:	

**REPLY TO NEW MATTER AND COUNTERCLAIM**

COMES NOW, the Plaintiff above-captioned, by and through its attorney, Michael P. Yeager, Esquire, and files the within Reply to Defendants' New Matter and Counterclaim whereof the following is a statement:

19. The averments contained in Paragraph 19 of Defendants' New Matter plead a conclusion of law to which no response is required. To the extent any such response is required, Plaintiff incorporates the averments contained in its Complaint and elsewhere within this Reply as if the same were more fully set forth herein.

20. The averments contained in Paragraph 20 of Defendants' New Matter plead a conclusion of law to which no response is required. To the extent any such response is required, the Uniform Planned Community Act P.L. 1336, No. 180, §1 (Dec. 19, 1996). as amended and codified at 68 Pa. C.S.A. §1101, et seq. (the "Act") was enacted subsequent to the creation, formation and initial development of the Treasure Lake Subdivision. Consequently, the Act has only limited application to the Treasure Lake Subdivision as provided by the Act and particularly 68 Pa. C.S.A. §5102(b).

21. The averments contained in Paragraph 21 of Defendants' New Matter relative to the Plaintiff Association being subject to the Act plead a conclusion of law to which no response is required. To the extent any such response is required, Plaintiff

incorporates its response to Paragraph 20 above. Additionally, Plaintiff admits that it is subject, in part, to the May 28, 1968 Declaration of Restrictions for the Treasure Lake Subdivision ("Restrictions").

22. The averments contained in Paragraph 22 of Defendants' New Matter are admitted.

23. The provisions of Plaintiff's Bylaws as noted in Paragraph 23 of Defendant's New Matter and particularly Section 2.1 of Article 2 can speak for themselves.

24. The averments contained in Paragraph 24 of Defendants' New Matter are admitted.

25. The averments contained in Paragraph 25 of Defendants' New Matter plead a conclusion of law to which no response is required. However, to the extent a response is required, while Plaintiff admits that Defendants own lots within Treasure Lake and are therefore considered to be Regular Members of the Plaintiff Association; Plaintiff also believes and therefore avers that Defendants are subject to additional paragraphs of Plaintiff's Bylaws which delineate membership standing, privileges of membership and disciplinary measures appropriate for Regular Members not otherwise in good standing. Plaintiff otherwise incorporates its responses to Defendants' New Matter Paragraphs 28, 29 and 30 as if the same were more fully set forth herein.

26. The provisions of Plaintiff's Bylaws as noted in Paragraph 26 of Defendants' New Matter and particularly Section 2.5 of Article 2 can speak for themselves.

27. The provisions of Plaintiff's Bylaws as noted in Paragraph 27 of Defendants' New Matter and particularly Section 2.6 of Article 2 can speak for themselves.

28. The averments contained in Paragraph 28 of Defendants' New Matter are admitted in part and denied in part. It is admitted that Defendants initially tendered a check in payment of annual charges or assessments but on only one of the two lots they own in the Treasure Lake Subdivision for the years 2003-2004. A Receipt (No. 0454195) evidencing receipt of that tendered check in payment for Lot 66, Section 8A



only is attached hereto, made part hereof and incorporated herein as "Exhibit A". However, Plaintiff denies any averments to the effect that Defendants made the payment or complete payment. On the contrary, Defendants initially refused to make payment on both lots and informed Plaintiff's representative to "hold" the check they tendered relative to payment on the one lot until Defendants conferred. Ultimately, Defendants refused to make payments on either of the lots. Defendants' check was never deposited by Plaintiff, and was returned to Defendants with their account never having been credited with payment. Plaintiff otherwise incorporates its responses to Defendants' New Matter Paragraphs 29 and 30 as if the same were more fully set forth at length herein.

29. The averments contained in Paragraph 29 of Defendants' New Matter with respect to payment are denied as indicated in its reply to Paragraph 28 of Defendants' New Matter above. As noted therein, Defendants only initially tendered a check for the annual charge or assessment for one lot. That check was returned and Defendants' account was never credited with any payment on either lot. Defendants, although Regular Members of Plaintiff, were and are not in good standing as described in various other provisions of Plaintiff's Bylaws (principally Sections 2.4.2 and 2.6.2). Plaintiff denies that Defendants were somehow ever denied any "...parking permits and other necessary documentation to enable Defendants and their invited guests to use and enjoy the private streets and parks of the Treasure Lake Subdivision and otherwise peacefully access Lots 66 and 91..." On the contrary, Plaintiff believes and there avers that Defendants have never been denied access to their lots and have not been cited with regard to parking permits nor have any of their invited guests been denied that access or permit to park. However, in view of the lack of payment described previously herein and the fact that Defendants are no longer considered to be Regular Members in good standing, certain privileges have been denied to Defendants as described in other

provisions of Plaintiff's Bylaws (principally Sections 2.6.2 and 2.6.3 affecting privileges described in Sections 2.5.2 and 2.5.3).

30. The averments contained in Paragraph 30 of Defendants' New Matter are admitted in part and denied in part. The Plaintiff admits that its representatives advised Defendants that they must comply with all applicable provisions of the Plaintiff's Bylaws and the Declaration of Restrictions dated May 28, 1968 in order to be considered as Regular Members of the Plaintiff in good standing and otherwise entitled to various benefits and privileges of membership as provided by those documents. It is denied that Defendants and their family and/or invited guests have ever been denied the ability to "...use and enjoy the private streets and parks of the Treasure Lake Subdivision or otherwise peacefully access Lot Nos. 66 and 91..." Plaintiff further incorporates its responses to Paragraphs 28 and 29 of Defendants' New Matter as if the same were more fully set forth at length herein.

31. The averments contained in Paragraph 31 of Defendants' New Matter are admitted in part and denied in part. Plaintiff incorporates its responses to Paragraphs 28 and 29 relative to any payment from Defendants and otherwise incorporates its responses to Paragraphs 29 and 30 with regard to the denial of parking permits and other necessary documentation to enable Defendants and their invited guests to use and enjoy the private streets and parks of the Treasure Lake Subdivision or otherwise peacefully access their property. Additionally, Plaintiff believes and therefore avers that it acted appropriately with regard to Defendants as described in its Bylaws and the Declaration of Restrictions as also described in its responses as aforesaid. Otherwise, the averments contained in Paragraph 31 of Defendants' New Matter plead a conclusion of law to which no response is required.

32. The averments contained in Paragraph 32 of Defendants' New Matter plead a conclusion of law to which no response is required. To the extent that a response is

required, Plaintiff incorporates its other responses herein and particularly to Paragraphs 28, 29 and 30 of Defendants' New Matter.

33. The averments contained in Paragraph 33 of Defendants' New Matter are denied. Plaintiff incorporates its other responses herein, and particularly to Paragraphs 28 and 29 as if the same were more fully set forth at length herein relative to payment of any assessment charges and the current status of those accounts. Otherwise, the averments contained in Paragraph 33 of Plaintiff's New Matter plead a conclusion of law to which no response is required.

34. The averments contained in Paragraph 34 of Defendants' New Matter are denied. Plaintiff incorporates its other responses herein, and particularly to Paragraphs 28, 29 and 30 as if the same were more fully set forth at length herein relative to payment of any assessment charges, the current status of Defendants' accounts and the effects of various provisions of Plaintiff's Bylaws on Defendants'. Otherwise, the averments contained in Paragraph 34 of Plaintiff's New Matter plead a conclusion of law to which no response is required.

35. The averments contained in Paragraph 35 of Defendants' New Matter are denied. Plaintiff incorporates its other responses herein, and particularly to Paragraphs 28, 29 and 30 as if the same were more fully set forth at length herein relative to payment of any assessment charges, the current status of those accounts and the effects of various provisions of Plaintiff's Bylaws on Defendants. Otherwise, the averments contained in Paragraph 35 of Plaintiff's New Matter plead a conclusion of law to which no response is required.

36. The averments contained in Paragraph 36 of Defendants' New Matter are denied. Plaintiff incorporates its other responses herein, and particularly to Paragraphs 28, 29 and 30 as if the same were more fully set forth at length herein relative to payment of any assessment charges, the current status of those accounts and the effects of various provisions of Plaintiff's Bylaws on Defendants. Otherwise, the

averments contained in Paragraph 36 of Plaintiff's New Matter plead a conclusion of law to which no response is required.

37. The averments contained in Paragraph 37 of Defendant's New Matter plead a conclusion of law to which no response is required. Otherwise, Plaintiff believes and therefore avers that the interest and fees charged to Defendants herein are in accordance with its Declaration of Restrictions.

38. The averments contained in Paragraph 38 of Defendant's New Matter plead a conclusion of law to which no response is required. Otherwise, Plaintiff believes and therefore avers that the prior action between the parties, captioned Treasure Lake Property Owners Association, Inc. v. Mark A. Kane and Annette M. Kane, No. 03-1893-CD (CCP Clearfield County, PA) is irrelevant with regard to the amounts claimed to be owed herein.

39. The averments contained in Paragraph 39 of Defendants' New Matter plead a conclusion of law to which no response is required. To the extent any such response is required, Plaintiff incorporates the averments contained in its Complaint in the case of Treasure Lake Property Owners Association, Inc. v. Mark A. Kane and Annette M. Kane No. 03-1892-CD. Otherwise, Plaintiff believes that Defendants may not yet refer to or incorporate defenses or allegations made in that action in that the same have not yet been disclosed or otherwise made.

WHEREFORE, Plaintiff continues to request that judgment be entered in its favor and as against Defendants as specified in its Complaint.

### **COUNTERCLAIM COUNT I**

40. The averments of Paragraph 40 of Defendants' Counterclaim Count I merely incorporate Paragraphs 1 through 39 of Defendants' Answer and New Matter and therefore do not require a response. To the extent a response is required, Plaintiff

refers to and incorporates its responses to Paragraphs 1 through 39 of Defendants' Answer and New Matter.

41. The averments contained in Paragraph 41 of Defendants' Counterclaim plead a conclusion of law to which no response is required. To the extent any such response is required; Plaintiff incorporates the averments contained in its Complaint as well as its other responses herein, and particularly to Paragraphs 28, 29 and 30 of Defendants' New Matter as if the same were more fully set forth at length herein.

42. The averments contained in Paragraph 42 of Defendants' Counterclaim plead a conclusion of law to which no response is required. To the extent any such response is required, Plaintiff incorporates the averments contained in its Complaint as well as its other responses herein, and particularly to Paragraphs 28, 29 and 30 of Defendants' New Matter as if the same were more fully set forth at length herein.

43. After reasonable investigation, the Plaintiff is without sufficient knowledge or information to form a belief as to the truth or falsity of the averments contained in Paragraph 43 and its subparagraphs of Defendants' Counterclaim Count I in general. Therefore, said averments are denied and strict proof thereof is demanded and the trail of this case.

(a) Plaintiff denies that Defendants have been denied or somehow lost the right of access to Lot Nos. 66 and 91 of the Treasure Lake Subdivision and otherwise over and across the roads owned and maintained by Plaintiff and/or to otherwise peacefully access and enjoy their property at the Treasure Lake Subdivision. In connection therewith, Plaintiff incorporates its other responses herein, and particularly to Paragraphs 28, 29 and 30 of Defendants' New Matter as if the same were more fully set forth at length herein.

(b) Plaintiff incorporates its other responses herein, and particularly to Paragraphs 28, 29 and 30 of Defendants' New Matter as if the same were more fully set forth at length herein. Any loss Defendants have experienced with

regard to rights and privileges as property owners in the Treasure Lake Subdivision and as Regular Members of the Plaintiff have otherwise been authorized by its Bylaws. Accordingly, the averments contained in Paragraph 43(b) of Defendants' Counterclaim Count I are denied.

(c) No additional response is required other than previously contained herein.

(d) No additional response is required other than previously contained herein.

44. The averments contained in Paragraph 44 of Defendants' Counterclaim are denied in that they plead a conclusion of law to which no response is required. To the extent any such response is required, Plaintiff incorporates the averments contained in its Complaint as well as its other responses herein, and particularly to Paragraphs 28, 29 and 30 of Defendants' New Matter as if the same were more fully set forth at length herein.

WHEREFORE, Plaintiff requests that judgment be entered in its favor and as against Defendant and Plaintiff incorporates the averments contained in its Complaint.

## **COUNT II**

45. The averments of Paragraph 45 of Defendants' Counterclaim Count II merely incorporate Paragraphs 1 through 44 of Defendants' Answer, New Matter and Counterclaim and therefore do not require a response. To the extent a response is required, Plaintiff refers to and incorporates its responses to Paragraph 1 through 44 of Defendants' Answer, New Matter and Counterclaim.

46. The averments contained in Paragraph 46 of Defendants' Counterclaim plead a conclusion of law to which no response is required. To the extent any such response is required. Plaintiff incorporates its other responses herein, and particularly to Paragraphs 28, 29 and 30 as if the same were more fully set forth at length herein .

47. After reasonable investigation, the Plaintiff is without sufficient knowledge or information to form a belief as to the truth or falsity of the averments contained in Paragraph 47 and its subparagraphs of Defendants' Counterclaim Count II in general. Therefore, said averments are denied and strict proof thereof is demanded and the trail of this case.

(a) Plaintiff denies that Defendants have lost an unfettered right to access to their property at Treasure Lake and otherwise over and across the roads owned and maintained by Plaintiff and to otherwise peacefully access and enjoy their property. In connection therewith, Plaintiff incorporates its other responses herein, and particularly to previous Paragraphs 28, 29 and 30 of Defendants' New Matter as if the same were more fully set forth at length herein.

(b) Plaintiff denies that Defendants have lost any rights at Treasure Lake as Regular Members except as referred to herein previously and particularly as described in Plaintiff's responses to Paragraphs 28, 29 and 30 of Defendants' New Matter.

(c) No additional response is required other than previously contained herein.

(d) No additional response is required other than previously contained herein.

48. The averments contained in Paragraph 48 of Defendants' Counterclaim are denied. Plaintiff incorporates its responses to previous paragraphs herein. Otherwise, the averments contained in Paragraph 48 of Defendants' Counterclaim plead a conclusion of law to which no response is required.

WHEREFORE, requests that judgment be entered in its favor and against Defendant; and Plaintiff incorporates the averments contained in its Complaint.

### **COUNT III**

49. The averments of Paragraph 49 of Defendants' Counterclaim Count III merely incorporate Paragraphs 1 through 48 of Defendants' Answer, New Matter and Counterclaim and therefore do not require a response. To the extent a response is required, Plaintiff refers to and incorporates its responses to Paragraph 1 through 48 of Defendants' Answer, New Matter and Counterclaim.

50. The averments contained in Paragraph 50 of Defendants' Counterclaim plead a conclusion of law to which no response is required. To the extent any such response is required; Plaintiff incorporates its responses to previous paragraphs herein.

51. After reasonable investigation, the Plaintiff is without sufficient knowledge or information to form a belief as to the truth or falsity of the averments contained in Paragraph 51 and its subparagraphs of Defendants' Counterclaim Count III in general. Therefore, said averments are denied and strict proof thereof is demanded and the trail of this case.

(a) Plaintiff denies that Defendants have lost an unfettered right to access to their property at Treasure Lake and otherwise over and across the roads owned and maintained by Plaintiff and to otherwise peacefully access and enjoy their property. In connection therewith, Plaintiff incorporates its other responses herein, and particularly to Paragraphs 28, 29 and 30 of Defendants' New Matter as if the same were more fully set forth at length herein.

(b) Plaintiff denies that Defendants have lost any rights at Treasure Lake as Regular Members except as referred to herein previously and particularly as described in Plaintiff's responses to Paragraphs 28, 29 and 30 herein of Defendants' New Matter.

(c) No additional response is required other than previously contained herein.

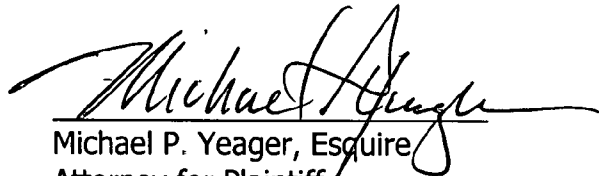


(d) No additional response is required other than previously contained herein.

52. The averments contained in Paragraph 52 of Defendants' Counterclaim are denied. Plaintiff incorporates its responses to previous paragraphs herein. Otherwise, the averments contained in Paragraph 52 of Defendants' Counterclaim plead a conclusion of law to which no response is required.

WHEREFORE, requests that judgment be entered in its favor and against Defendant; and Plaintiff incorporates the averments contained in its Complaint.

Respectfully submitted:

  
Michael P. Yeager, Esquire  
Attorney for Plaintiff

RECEIPT

DATE	July 1, 2003		No.	0454195	
RECEIVED FROM	Kane Mark & Annette			\$593.00	
Five hund. ninety three and 00/100				DOLLARS	
FOR RENT	8A/66 2003/2004 house & boat				
FOR					
ACCOUNT			<input type="radio"/> CASH	FROM	TO
PAYMENT	593	-	<input type="radio"/> CHECK		
BAL DUE			<input type="radio"/> MONEY ORDER	BY	CH

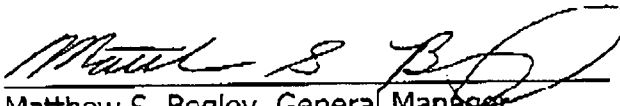
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## VERIFICATION

I, MATTHEW S. BEGLEY, General Manager of TREASURE LAKE PROPERTY OWNERS ASSOCIATION, INC., being duly authorized to make this Verification, have read the foregoing Reply to New Matter and Counterclaim. The statements therein are true and correct to the best of my personal knowledge, information and belief.

This statement and verification is made subject to the penalties of 18 Pa. C.S.A., Section 4904 relating to unsworn fabrication to authorities, which provides that if I make knowingly false averments, I may be subject to criminal penalties.

  
Matthew S. Begley, General Manager  
Treasure Lake Property Owners  
Association, Inc.

Date: May 31, 2005

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION - LAW

TREASURE LAKE PROPERTY OWNERS  
ASSOCIATION, INC.,

Plaintiff

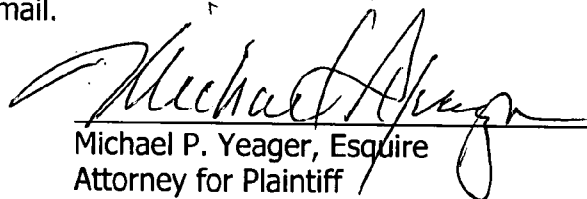
vs

MARK A. KANE and ANNETTE M. KANE,  
Defendants

No. 05 - 106 - CD

**AFFIDAVIT OF SERVICE**

I, MICHAEL P. YEAGER, attorney for the Plaintiff, TREASURE LAKE PROPERTY OWNERS ASSOCIATION, INC, depose and say that on June 1, 2005 I forwarded the Plaintiffs Reply to New Matter and Counterclaim relative to the above-captioned matter. Said forwarding was by first class mail.

  
Michael P. Yeager, Esquire  
Attorney for Plaintiff

Sworn to and subscribed

before me this 1<sup>st</sup> day

of June, 2005.





FILED <sup>NO CC</sup>  
0131781  
JUN 02 2005

William A. Shaw  
Prothonotary/Clerk of Courts

VA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION - EQUITY

TREASURE LAKE PROPERTY OWNERS  
ASSOCIATION, INC.,

Plaintiff,

vs.

MARK A. KANE and ANNETTE M. KANE,

Defendants.

CIVIL DIVISION

No. 05-106-CD

Issue No.

**MOTION TO WITHDRAW  
APPEARANCE**

Code:

Filed on Behalf of:  
Mark A. Kane and Annette M. Kane,  
Defendants

Counsel of Record for this Party:

Ronald L. Hicks, Jr., Esquire  
Pa. I.D. #49520

Joshua R. Lorenz, Esquire  
Pa. I.D. #84397

MEYER, UNKOVIC & SCOTT LLP  
Firm #199  
1300 Oliver Building  
Pittsburgh, PA 15222  
(412) 456-2800

**FILED**

NOV 13 2007

cc Atty Hicks  
GR

William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION – EQUITY

TREASURE LAKE PROPERTY OWNERS	)	CIVIL DIVISION
ASSOCIATION, INC.,	)	
	)	No. 05-106-CD
Plaintiff,	)	
	)	
vs.	)	
	)	
MARK A. KANE and ANNETTE M. KANE,	)	
	)	
Defendants.	)	

**MOTION TO WITHDRAW APPEARANCE**

AND NOW comes Meyer, Unkovic & Scott LLP and its attorneys, Ronald L. Hicks, Jr., Esquire and Joshua R. Lorenz, Esquire, counsel for defendants in the above-captioned matter, and request leave to withdraw as counsel in this matter, and in support of thereof, aver as follows:

1. Movants represent the Defendants in this dispute.
2. Irreconcilable differences have arisen which render it impossible for Movants to continue as legal counsel for the Defendants in this matter. Such differences include, without limitation, a complete lack of communication from Defendants.
3. Under the present circumstances, Movants are unable to continue their representation of Defendants and have so informed Defendants of their decision to withdraw as counsel.
4. Contemporaneously with the filing of this Motion, Movants are serving a copy of this Motion upon Defendants.

WHEREFORE, Meyer, Unkovic & Scott LLP and its attorneys, Ronald L. Hicks, Jr., Esquire and Joshua R. Lorenz, Esquire, respectfully request that this Court enter the attached Rule to Show Cause why this Court should not enter an order granting them leave to withdraw as counsel for the Defendants in this action.

Respectfully submitted,

MEYER, UNKOVIC & SCOTT LLP

By: 

Ronald L. Hicks, Jr.

Attorneys for Defendants

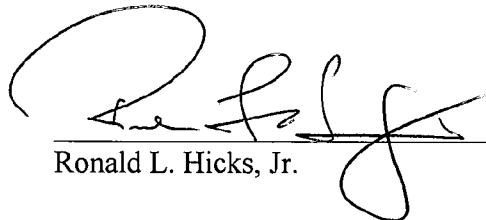
**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the within Motion was served upon Defendants and counsel of record for Plaintiff by first class mail, postage prepaid, this 9<sup>th</sup> day of November, 2007, at the following addresses:

Mark A. Kane  
571 Treasure Lake  
Dubois, PA 15801

Annette M. Kane  
571 Treasure Lake  
Dubois, PA 15801

Michael P. Yeager, Esq.  
P.O. Box 752  
110 North Second Street  
Clearfield, PA 16830



Ronald L. Hicks, Jr.



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION – EQUITY

TREASURE LAKE PROPERTY OWNERS	)	CIVIL DIVISION
ASSOCIATION, INC.,	)	
	)	No. 05-106-CD
Plaintiff,	)	
	)	
vs.	)	
	)	
MARK A. KANE and ANNETTE M. KANE,	)	
	)	
Defendants.	)	

**FILED** *icc*  
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*Hicks*  
 William A. Shaw  
 Prothonotary/Clerk of Courts *GR*

**RULE TO SHOW CAUSE**

NOW, this 14<sup>th</sup> day of November, 2007, upon consideration of the attached Motion for Leave to Withdraw Appearance filed by Meyer, Unkovic & Scott LLP and its attorneys, Ronald L. Hicks, Jr., Esquire and Joshua R. Lorenz, Esquire, a Rule is hereby issued upon the parties to Show Cause why the Motion should not be granted. This Rule shall be returnable the 14<sup>th</sup> day of December, 2007, for filing a written response. If no written response is filed by such date, then the Motion shall be automatically granted, and Movants shall be entitled to file a praecipe to withdraw as counsel without any further Order of Court.

**NOTICE**

A MOTION HAS BEEN FILED AGAINST YOU IN COURT. IF YOU WISH TO DEFEND AGAINST THE CLAIMS SET FORTH IN THE FOLLOWING MOTION OR MOTION BY ENTERING A WRITTEN APPEARANCE PERSONALLY OR BY ATTORNEY AND FILING IN WRITING WITH THE COURT YOUR DEFENSES OR OBJECTIONS TO THE MATTER SET FORTH AGAINST YOU. YOU ARE WARNED THAT IF YOU FAIL TO DO SO THE CASE MAY PROCEED WITHOUT YOU AND AN ORDER MAY BE ENTERED AGAINST YOU BY THE COURT WITHOUT FURTHER NOTICE FOR RELIEF

REQUESTED BY THE PETITIONER OR MOVANT. YOU MAY LOSE RIGHTS IMPORTANT TO YOU.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

COURT ADMINISTRATOR  
Clearfield County Courthouse  
230 East Market Street, Suite 228  
Clearfield, PA 16830  
(814) 765-2641, Ext. 5982

BY THE COURT:

A handwritten signature in black ink, appearing to read "Judge J. Crumman", written over a horizontal line.

President Judge

FILED

NOV 15 2007

William A. Shaw  
Prothonotary/Clerk of Courts

DATE: 11/15/07

☒ You are responsible for serving all appropriate parties.

☐ The Prothonotary's office has provided service to the following parties:

☐ Plaintiff(s) ☐ Plaintiff(s) Attorney ☐ Other

☐ Defendant(s) ☐ Defendant(s) Attorney

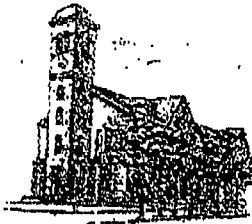
☐ Special Instructions:

Final copy of car pen  
to attorney 12-5-07  
w/urp

\*\*\*\*\*  
 \*\*\* FAX TX REPORT \*\*\*  
 \*\*\*\*\*

TRANSMISSION OK

JOB NO. 0844  
 DESTINATION ADDRESS 14124563278  
 PSWD/SUBADDRESS  
 DESTINATION ID  
 ST. TIME 12/05 10:50  
 USAGE T 00' 50  
 PGS. 2  
 RESULT OK



ATTN: FRANK AUSTRAWSKI

## Clearfield County Office of the Prothonotary and Clerk of Courts

William A. Shaw  
 Prothonotary/Clerk of Courts

Jack Kendrick  
 Deputy Prothonotary/Clerk of Courts

Bonnie Hudson  
 Administrative Assistant

David S. Ammerman  
 Solicitor

PO Box 649, Clearfield, PA 16830 ■ Phone: (814) 765-2641 Ext. 1330 ■ Fax: (814) 765-7659 ■ www.clearfieldco.org

To: All Concerned Parties

FAX 412-456-3278

From: William A. Shaw, Prothonotary

It has come to my attention that there is some confusion on court orders over the issue of service. To attempt to clear up this question, from this date forward until further notice, this or a similar memo will be attached to each order, indicating responsibility for service on each order or rule. If you have any questions, please contact me at (814) 765-2641, ext. 1331. Thank you.

Sincerely,

William A. Shaw  
 Prothonotary

DATE: 12-5-07

☒ You are responsible for serving all appropriate parties.

☐ The Prothonotary's office has provided service to the following parties:

☐ Plaintiff(s) ☐ Plaintiff(s) Attorney ☐ Other

☐ Defendant(s) ☐ Defendant(s) Attorney

☐ Special Instructions:

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION - EQUITY

TREASURE LAKE PROPERTY OWNERS  
ASSOCIATION, INC.,

Plaintiff,

vs.

MARK A. KANE and ANNETTE M. KANE,  
Defendants.

CIVIL DIVISION

No. 05-106-CD

Issue No.

**FILED** ICC A-Hy  
m/11:50Lm Hicks  
MAR 13 2009 Copy to C/A  
§  
William A. Shaw  
Clerk of Courts

**PRAECIPE FOR WITHDRAWAL  
OF APPEARANCE**

Code:

Filed on Behalf of:  
Mark A. Kane and Annette M. Kane,  
Defendants

Counsel of Record for this Party:

Ronald L. Hicks, Jr., Esquire  
Pa. I.D. #49520

Joshua R. Lorenz, Esquire  
Pa. I.D. #84397

MEYER, UNKOVIC & SCOTT LLP  
Firm #199  
1300 Oliver Building  
Pittsburgh, PA 15222  
(412) 456-2800

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION – EQUITY

TREASURE LAKE PROPERTY OWNERS	)	CIVIL DIVISION
ASSOCIATION, INC.,	)	
	)	No. 05-106-CD
Plaintiff,	)	
	)	
vs.	)	
	)	
MARK A. KANE and ANNETTE M. KANE,	)	
	)	
Defendants.	)	

**PRAECIPE FOR WITHDRAWAL OF APPEARANCE**

TO: William A. Shaw, Prothonotary of Clearfield County

In accordance with the Court's Rule dated November 14, 2007, kindly withdraw the appearance of Ronald L. Hicks, Jr., Esquire, Joshua R. Lorenz, Esquire and Meyer, Unkovic & Scott LLP, as counsel for Defendants Mark A. Kane and Annette M. Kane.

Respectfully submitted,

MEYER, UNKOWIC & SCOTT LLP

By: \_\_\_\_\_

Ronald L. Hicks, Jr.

Attorneys for Defendants

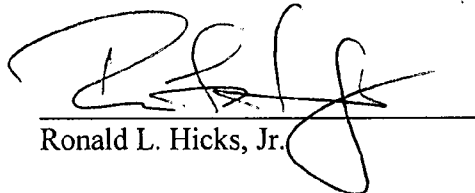
**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the within Praeceptum was served upon Defendants and counsel of record for Plaintiff by first class mail, postage prepaid, this 8th day of April, 2009, at the following addresses:

Mark A. Kane  
571 Treasure Lake  
Dubois, PA 15801

Annette M. Kane  
571 Treasure Lake  
Dubois, PA 15801

Michael P. Yeager, Esq.  
P.O. Box 752  
110 North Second Street  
Clearfield, PA 16830

  
\_\_\_\_\_  
Ronald L. Hicks, Jr.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION - EQUITY

TREASURE LAKE PROPERTY OWNERS  
ASSOCIATION, INC.,

Plaintiff,

vs.

MARK A. KANE and ANNETTE M. KANE,

Defendants.

CIVIL DIVISION

No. 05-106-CD

Issue No.

**FILED** *icc Atty*  
*m/11:50am Hicks*  
APR 13 2009

William A. Shaw  
Prothonotary/Clerk of Courts

**AFFIDAVIT OF SERVICE OF  
RULE TO SHOW CAUSE**

Code:

Filed on Behalf of:

Mark A. Kane and Annette M. Kane,  
Defendants

Counsel of Record for this Party:

Ronald L. Hicks, Jr., Esquire  
Pa. I.D. #49520

Joshua R. Lorenz, Esquire  
Pa. I.D. #84397

MEYER, UNKOVIC & SCOTT LLP  
Firm #199  
1300 Oliver Building  
Pittsburgh, PA 15222  
(412) 456-2800



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION – EQUITY

TREASURE LAKE PROPERTY OWNERS	)	CIVIL DIVISION
ASSOCIATION, INC.,	)	
	)	No. 05-106-CD
Plaintiff,	)	
	)	
vs.	)	
	)	
MARK A. KANE and ANNETTE M. KANE,	)	
	)	
Defendants.	)	

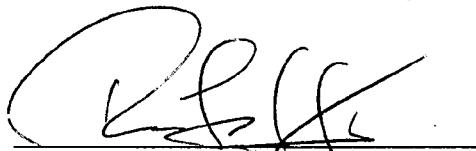
**AFFIDAVIT OF SERVICE OF RULE TO SHOW CAUSE**

COMMONWEALTH OF PENNSYLVANIA	)
	) SS:
COUNTY OF ALLEGHENY	)

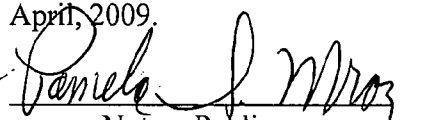
Before me, the undersigned, deposes and states as follows:

1. A true and correct copy of the Rule to Show Cause was mailed for service upon Defendants and Counsel for Plaintiff, by first class, U.S. Mail, postage pre-paid and by certified mail, return receipt requested, as evidenced by the attached correspondence and mail receipts, true and correct copies of which are collectively marked as Exhibit "1" and made a part hereof.

2. True and correct copies of the signed return receipts and/or other proofs of service from the United States Postal Service are attached hereto, marked collectively as Exhibit "2" and made a part hereof.

  
Ronald L. Hicks, Jr.

Sworn to and subscribed  
before me this 8<sup>th</sup> day of  
April, 2009.

  
Notary Public  
COMMONWEALTH OF PENNSYLVANIA  
Notarial Seal  
Pamela S. Mroz, Notary Public  
City of Pittsburgh, Allegheny County  
My Commission Expires Nov. 30, 2011  
Member, Pennsylvania Association of Notaries

**EXHIBIT “1”**



Writer's direct dial phone number and e-mail address:  
412-456-2837 ~ rlh@muslaw.com

1300 Oliver Building  
Pittsburgh, Pennsylvania 15222-2304  
Tel: 412-456-2800  
Fax: 412-456-2864  
110 East King Street  
Lancaster, Pennsylvania 17602-2832  
Tel: 717-390-4760  
Fax: 717-390-4766  
www.muslaw.com

December 5, 2007

**VIA CERTIFIED MAIL RETURN, RECEIPT REQUESTED  
AND U.S. FIRST CLASS MAIL**

Mark A. and Annette M. Kane  
571 Treasure Lake  
Dubois, PA 15801-9012

Michael P. Yeager, Esquire  
P.O. Box 752  
110 North Second Street  
Clearfield, PA 16830

RE: Treasure Lake Property Owners Association, Inc. v. Mark A. Kane, et ux.  
Civil Action No. 05-106-CD (CCP Clearfield Cty., Pa.)

Dear all:

I am enclosing a copy of the certified Rule To Show Cause that the Court has entered in the above matter. Please note that if you want to submit a written response to our firm's Motion For Leave To Withdraw Appearance, you will need to do so on or before December 14, 2007. Otherwise, our Motion will be granted and we will file a praecipe to formally withdraw as counsel for Defendants.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Ronald L. Hicks, Jr.', is written over the closing 'Very truly yours,'.

Ronald L. Hicks, Jr.

RLHjr/fma  
711640.1

Enclosure

I hereby certify this to be a true  
and attested copy of the original  
statement filed in this case.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION – EQUITY

DEC 2007

TREASURE LAKE PROPERTY OWNERS  
ASSOCIATION, INC.,

Plaintiff,

vs.

MARK A. KANE and ANNETTE M. KANE,

Defendants.

CIVIL DIVISION

No. 05-106-CD

Attest.

*William A. Shaw*  
Prothonotary/  
Clerk of Courts

FILED  
9/20/07  
NOV 15 2007

ICC  
Hicks

William A. Shaw  
Prothonotary/Clerk of Courts

RULE TO SHOW CAUSE

NOW, this 14<sup>th</sup> day of November, 2007, upon consideration of the attached Motion for Leave to Withdraw Appearance filed by Meyer, Unkovic & Scott LLP and its attorneys, Ronald L. Hicks, Jr., Esquire and Joshua R. Lorenz, Esquire, a Rule is hereby issued upon the parties to Show Cause why the Motion should not be granted. This Rule shall be returnable the 14<sup>th</sup> day of December, 2007, for filing a written response. If no written response is filed by such date, then the Motion shall be automatically granted, and Movants shall be entitled to file a praecipe to withdraw as counsel without any further Order of Court.

NOTICE

A MOTION HAS BEEN FILED AGAINST YOU IN COURT. IF YOU WISH TO DEFEND AGAINST THE CLAIMS SET FORTH IN THE FOLLOWING MOTION OR MOTION BY ENTERING A WRITTEN APPEARANCE PERSONALLY OR BY ATTORNEY AND FILING IN WRITING WITH THE COURT YOUR DEFENSES OR OBJECTIONS TO THE MATTER SET FORTH AGAINST YOU. YOU ARE WARNED THAT IF YOU FAIL TO DO SO THE CASE MAY PROCEED WITHOUT YOU AND AN ORDER MAY BE ENTERED AGAINST YOU BY THE COURT WITHOUT FURTHER NOTICE FOR RELIEF

707712.1

05-106-CD (Clearfield County, PA)

REQUESTED BY THE PETITIONER OR MOVANT. YOU MAY LOSE RIGHTS  
IMPORTANT TO YOU.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO  
NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE  
OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

COURT ADMINISTRATOR  
Clearfield County Courthouse  
230 East Market Street, Suite 228  
Clearfield, PA 16830  
(814) 765-2641, Ext. 5982

BY THE COURT:



President Judge

I hereby certify this to be a true  
and attested copy of the original  
statement filed in this case.

DEC 05 2007

Attest.

  
Prothonotary/  
Clerk of Courts

7006 0100 0002 9090 4943

U.S. Postal Service<sup>TM</sup>  
**CERTIFIED MAIL<sup>TM</sup> RECEIPT**  
 (Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at [www.usps.com](http://www.usps.com)

**OFFICIAL USE**

Postage	\$ .41
Certified Fee	2.65
Return Receipt Fee (Endorsement Required)	2.15
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$ 5.21

Sent To Michael P. Yeager, Esq.  
 Street, Apt. No.,  
 or PO Box No. 276271 100  
 City, State, ZIP+4 RLH

PS Form 3800, June 2002

See Reverse for Instructions

7006 0100 0002 9090 4950

U.S. Postal Service<sup>TM</sup>  
**CERTIFIED MAIL<sup>TM</sup> RECEIPT**  
 (Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at [www.usps.com](http://www.usps.com)

**OFFICIAL USE**

Postage	\$ .41
Certified Fee	2.65
Return Receipt Fee (Endorsement Required)	2.15
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$ 5.21

Sent To Mark Kane  
 Street, Apt. No.,  
 or PO Box No. 276271 100  
 City, State, ZIP+4 RLH

PS Form 3800, June 2002

See Reverse for Instructions

7006 0100 0002 9090 4998

U.S. Postal Service<sup>TM</sup>  
**CERTIFIED MAIL<sup>TM</sup> RECEIPT**  
 (Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at [www.usps.com](http://www.usps.com)

**OFFICIAL USE**

Postage	\$ .41
Certified Fee	2.65
Return Receipt Fee (Endorsement Required)	2.15
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$ 5.21

Sent To Annette Kane  
 Street, Apt. No.,  
 or PO Box No. 276271 100  
 City, State, ZIP+4 RLH

PS Form 3800, June 2002

See Reverse for Instructions

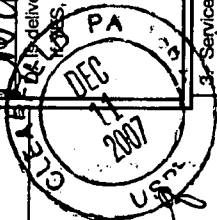
**EXHIBIT “2”**

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Michael P.  
Yeager, Esq.  
276271. 100 RTH



**COMPLETE THIS SECTION ON DELIVERY**

Signature Donda T. Hays ☐ Agent  
☐ Addressee

(B) Received by (Printed Name) Donda T. Hays ☐ Date of Delivery 12/11/07

(C) Is delivery address different from item 1? ☐ Yes ☐ No

If Yes, enter delivery address below:

3. Service Type

- ☒ Certified Mail ☐ Express Mail
- ☐ Registered ☒ Return Receipt for Merchandise
- ☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes ☐ No

2. Article Number  
 (Transfer from service label) 7006 0100 0002 9090 4943

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540



**Ruth A. Clifford**

---

**From:** U.S.\_Postal\_Service\_ [U.S.\_Postal\_Service@usps.com]  
**Sent:** Monday, April 06, 2009 11:21 PM  
**To:** Ruth A. Clifford  
**Subject:** U.S. Postal Service Track & Confirm email Restoration - 7006 0100 0002 9090 4998

This is a post-only message. Please do not respond.

Ruth Clifford has requested that you receive this restoration information for Track & Confirm as listed below.

Current Track & Confirm e-mail information provided by the U.S. Postal Service.

Label Number: 7006 0100 0002 9090 4998

Service Type: Certified Mail(TM)

Shipment Activity	Location	Date & Time
Unclaimed	DU BOIS PA 15801	01/26/08 11:04am
Notice Left	DU BOIS PA 15801	12/07/07 11:51am
Acceptance	PITTSBURGH PA 15219	12/05/07 4:13pm

-----  
USPS has not verified the validity of any email addresses submitted via its online Track & Confirm tool.

For more information, or if you have additional questions on Track & Confirm services and features, please visit the Frequently Asked Questions (FAQs) section of our Track & Confirm site at <http://www.usps.com/shipping/trackandconfirmfaqs.htm>

**Ruth A. Clifford**

---

**From:** U.S. Postal Service [U.S. Postal\_Service@usps.com]  
**Sent:** Monday, April 06, 2009 11:21 PM  
**To:** Ruth A. Clifford  
**Subject:** U.S. Postal Service Track & Confirm email Restoration - 7006 0100 0002 9090 4950

This is a post-only message. Please do not respond.

Ruth Clifford has requested that you receive this restoration information for Track & Confirm as listed below.

Current Track & Confirm e-mail information provided by the U.S. Postal Service.

Label Number: 7006 0100 0002 9090 4950

Service Type: Certified Mail(TM)

Shipment Activity	Location	Date & Time
Unclaimed	DU BOIS PA 15801	01/26/08 11:04am
Notice Left	DU BOIS PA 15801	12/07/07 11:51am
Acceptance	PITTSBURGH PA 15219	12/05/07 4:13pm

USPS has not verified the validity of any email addresses submitted via its online Track & Confirm tool.

For more information, or if you have additional questions on Track & Confirm services and features, please visit the Frequently Asked Questions (FAQs) section of our Track & Confirm site at <http://www.usps.com/shipping/trackandconfirmfaq.htm>

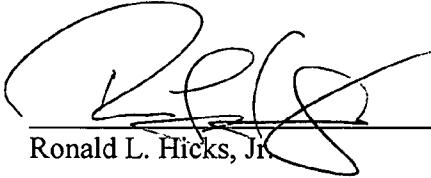
**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the within Affidavit of Service was served upon Defendants and counsel of record for Plaintiff by first class mail, postage prepaid, this 8th day of April, 2009, at the following addresses:

Mark A. Kane  
571 Treasure Lake  
Dubois, PA 15801

Annette M. Kane  
571 Treasure Lake  
Dubois, PA 15801

Michael P. Yeager, Esq.  
P.O. Box 752  
110 North Second Street  
Clearfield, PA 16830

  
\_\_\_\_\_  
Ronald L. Hicks, Jr.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION - LAW

TREASURE LAKE PROPERTY OWNERS  
ASSOCIATION, INC.,  
Plaintiff

VS

MARK A. KANE and ANNETTE M. KANE,  
Defendants

\* No. 05 - 106 - CD  
\*  
\*  
\* Type of Case: Civil Action  
\*  
\* Type of Pleading:  
\* Motion and Order for  
\* Consolidation  
\*  
\*

TREASURE LAKE PROPERTY OWNERS  
ASSOCIATION, INC.,  
Plaintiff

VS

MARK A. KANE and ANNETTE M. KANE,  
Defendants

\*  
\* No. 09 - 238 - CD  
\*  
\* Type of Case: Civil Action  
\*  
\* Type of Pleading:  
\* Motion and Order for  
\* Consolidation  
\*  
\* Filed on Behalf of: Plaintiff & Defendants

Counsel of Record for these Parties:

Michael P. Yeager, Esq.  
Supreme Court No.: 15587  
P.O. Box 752  
110 North Second Street  
Clearfield, PA 16830  
(814) 765-9611

Patrick Lavelle, Esquire  
PA ID No. 85537  
25 East Park Ave.  
Suite #4  
DuBois, PA 15801  
(814) 371-2232

**FILED**

AUG 17 2009

William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION - LAW

TREASURE LAKE PROPERTY OWNERS	*	
ASSOCIATION, INC.,	*	
Plaintiff	*	
	*	No. 05 - 106 - CD
vs	*	
	*	
	*	
MARK A. KANE and ANNETTE M. KANE,	*	
Defendants	*	

TREASURE LAKE PROPERTY OWNERS	*	
ASSOCIATION, INC.,	*	
Plaintiff	*	
	*	
vs	*	No. 09 - 238 - CD
	*	
	*	
MARK A. KANE and ANNETTE M. KANE,	*	
Defendants	*	

## MOTION FOR CONSOLIDATION

**COME NOW**, the Plaintiff, **TREASURE LAKE PROPERTY OWNERS ASSOCIATION, INC. ("TLPOA")**, by and through its attorney, **MICHAEL P. YEAGER, ESQUIRE**, and Defendants, **MARK A. KANE and ANNETTE M. KANE**, by and through their attorney, **PATRICK LAVELLE, ESQUIRE**, and file the within Motion for Consolidation of the above-captioned actions, whereof the following is a statement:

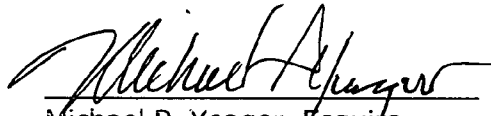
1. The Plaintiff is the organization seeking to collect unpaid annual assessments from a delinquent property owner as described in both lawsuits.

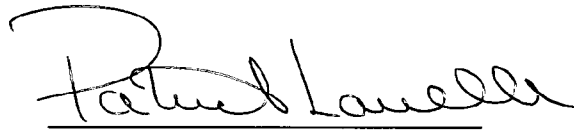
2. Both of the above-captioned actions involve the collection of two such annual assessments for the same years as described in each lawsuit from the same two Treasure Lake lots, both of which are owned by the Defendants.

3. Both of the above-captioned actions arise out of and relate to identical factual situations.

**WHEREFORE,** Plaintiff and Defendants request that the above-captioned matters be consolidated for purposes of trial.

Respectfully submitted:


  
Michael P. Yeager, Esquire  
Attorney for Plaintiff

  
Patrick Lavelle, Esquire  
Attorney for Defendants

## VERIFICATION

I, **DANIEL L. JOHNSTON**, Chief Financial Officer and Interim General Manager of **TREASURE LAKE PROPERTY OWNERS ASSOCIATION, INC.**, being duly authorized to make this Verification, have read the foregoing Motion for Consolidation. The statements therein are true and correct to the best of my personal knowledge, information and belief.

This statement and verification is made subject to the penalties of 18 Pa. C.S.A., Section 4904 relating to unsworn fabrication to authorities, which provides that if I make knowingly false averments, I may be subject to criminal penalties.

A handwritten signature in black ink, appearing to read "Daniel L. Johnston", is written over a horizontal line.

Daniel L. Johnston, Chief Financial Officer and  
Interim General Manager  
Treasure Lake Property Owners  
Association, Inc.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION - LAW

TREASURE LAKE PROPERTY OWNERS \*  
ASSOCIATION, INC., \*  
Plaintiff \*

VS

MARK A. KANE and ANNETTE M. KANE, \*  
Defendants \*

No. 05 - 106 - CD

TREASURE LAKE PROPERTY OWNERS \*  
ASSOCIATION, INC., \*  
Plaintiff \*

VS

MARK A. KANE and ANNETTE M. KANE, \*  
Defendants \*

No. 09 - 238 - CD

*5* **FILED** *2cc*  
*Red* *012:40801* *Any*  
**AUG 18 2009**  
William A. Shaw  
Prothonotary/Clerk of Courts *Yeager*

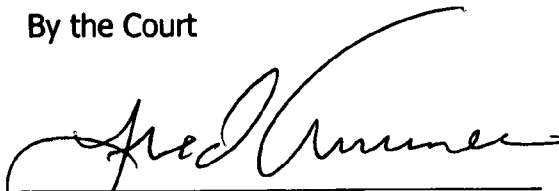
**ORDER**

**AND NOW,** this 18 day of August, 2009, upon consideration of the

foregoing Motion for Consolidation, and otherwise for cause shown that the above two  
actions arise out of the identical factual situation, it is

ORDERED, ADJUDGED and DECREED that the cases above captioned be  
consolidated for purposes of trial.

By the Court

  
J



FILED

AUG 18 2009

William A. Shaw  
Prothonotary/Clerk of Courts

DATE: 8/18/09

☒ You are responsible for serving all appropriate parties.

☒ The Prothonotary's office has provided service to the following parties:

\_\_\_ Plaintiff(s) \_\_\_ Plaintiff(s) Attorney \_\_\_ Other

\_\_\_ Defendant(s) \_\_\_ Defendant(s) Attorney

\_\_\_ Special Instructions:

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION - LAW

TREASURE LAKE PROPERTY OWNERS  
ASSOCIATION, INC.,

Plaintiff

vs

MARK A. KANE and ANNETTE M. KANE,  
Defendants

\* No. 05 - 106 - CD  
\*  
\*  
\* Type of Case: Civil Action  
\*  
\* Type of Pleading:  
\* Certificate of Service  
\*  
\*

FILED  
013:21cm  
AUG 20 2009  
William A. Shaw  
Prothonotary/Clerk of Courts

TREASURE LAKE PROPERTY OWNERS  
ASSOCIATION, INC.,

Plaintiff

vs

MARK A. KANE and ANNETTE M. KANE,  
Defendants

\*  
\* No. 09 - 238 - CD  
\*  
\* Type of Case: Civil Action  
\*  
\* Type of Pleading:  
\* Certificate of Service  
\*  
\* Filed on Behalf of: Plaintiff  
\*  
\* Counsel of Record for this Party:  
\*  
\* Michael P. Yeager, Esq.  
\* Supreme Court No.: 15587  
\*  
\* P.O. Box 752  
\* 110 North Second Street  
\* Clearfield, PA 16830  
\* (814) 765-9611

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION - LAW

TREASURE LAKE PROPERTY OWNERS :  
ASSOCIATION, INC., :

Plaintiff :

No. 09 - 238 - CD

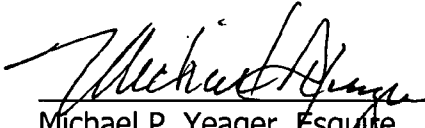
vs :

MARK A. KANE and ANNETTE M. KANE, :  
Defendants :

**CERTIFICATE OF SERVICE**

I, MICHAEL P. YEAGER, attorney for the Plaintiff, TREASURE LAKE PROPERTY OWNERS ASSOCIATION, INC, depose and say that on August 20, 2009 I forwarded the Interrogatories to Defendants and Plaintiff's Request for Production of Documents in the above-captioned matter by first class mail to the following:

Patrick Lavelle, Esquire  
Attorney for Defendants  
25 East Park Avenue, Suite #4  
DuBois, PA 15801

  
\_\_\_\_\_  
Michael P. Yeager, Esquire  
Attorney for Plaintiff

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

Civil Trial Listing/Certificate of Readiness

Plaintiff(s): TREASURE LAKE PROPERTY OWNERS  
ASSOCIATION, INC.

Case Number: 05-106-CD *Original*  
and 09-238-CD

Defendant(s): Mark A. Kane  
Annette M. Kane

**FILED** *RECEIVED*  
*013:276m* *ICC ADA Yeager*  
JUL 09 2010 *(60)*

**To the Prothonotary:**

Arbitration Limit: \$20,000

William A. Shaw  
Prothonotary/Clerk of Courts

Type Trial Requested: Jury

Non-Jury

x Arbitration

Estimated Trial Time: 1 day

Jury Demand Filed By: \_\_\_\_\_

Date Jury Demand Filed: \_\_\_\_\_

Please place the above-captioned case on the trial list. I certify that all discovery in the case has been completed; all necessary parties and witnesses are available; serious settlement negotiations have been conducted; the case is ready in all respects for trial, and a copy of this Certificate has been served upon all counsel of record and upon all parties of record who are not represented by counsel.

  
(Signature)

7/7/10  
(Date)

For the Plaintiff: Michael P. Yeager, Esq. 765-9611 Telephone Number

For the Defendant: Patrick Lavelle, Esq. 371-2232 Telephone Number

For Additional Defendant: \_\_\_\_\_ Telephone Number

Certification of Current Address for all parties or counsel of record:

Name: <u>Michael P. Yeager, Esq.</u>	Address: <u>P.O. Box 752</u>	City/State/Zip: <u>Clearfield, PA 16830</u>
Name: <u>Patrick Lavelle, Esq.</u>	Address: <u>25 East Park Ave.,</u>	City/State/Zip: <u>DuBois, PA 15801</u>
Name: _____	Address: _____	City/State/Zip: _____
Name: _____	Address: _____	City/State/Zip: _____
Name: _____	Address: _____	City/State/Zip: _____
Name: _____	Address: _____	City/State/Zip: _____

CA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

TREASURE LAKE PROPERTY OWNERS  
ASSOCIATION, INC.

Plaintiff

vs.

MARK A. KANE and  
ANNETTE M. KANE

Defendant

No. 2005-0106-CD

No. 2009-0238-CD

*cases are consolidated*

**ORDER**

NOW, this 23 day of August, 2010, it is the ORDER of the Court that the above-captioned matter, previously scheduled for Arbitration on September 21, 2010 is hereby CANCELED due to the filing of a Motion for Continuance by Defendant's counsel, on August 19, 2010.

Arbitration of the above-captioned matter has been **re-scheduled** for **Tuesday, November 16, 2010 beginning at 9:00 A.M in Hearing Room 3.**

A new board of Arbiters will be appointed.

FILED 7CC  
01246304 CIA  
AUG 23 2010

William A. Shaw  
Prothonotary/Clerk of Courts

orig to 09-238-CD

BY THE COURT:

FREDRIC J. AMMERMAN  
President Judge

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

TREASURE LAKE PROPERTY  
OWNERS ASSOCIATION, INC.

vs.

MARK A. KANE  
ANNETTE M. KANE

:  
:  
: No. 2005-106-CD  
: No. 2009-238-CD  
: (cases are consolidated)  
:

**ORDER**

NOW, this 1<sup>st</sup> day of November, 2010, it is the ORDER of the Court  
that the above-captioned matter is scheduled for Arbitration on **Tuesday, November 16, 2010**  
**at 9:00 A.M.** in the Conference/Hearing Room No. 3, 2<sup>nd</sup> Floor, Clearfield County  
Courthouse, Clearfield, PA. The following have been appointed as Arbitrators:


J. Richard Lhota, Esquire, Chairman

Kim C. Kesner, Esquire

Frederick M. Neiswender, Esquire

Pursuant to Local Rule 1306A, you must submit your Pre-Trial Statement seven  
(7) days prior to the scheduled Arbitration. **The original should be forwarded to the Court**  
**Administrator's Office and copies to opposing counsel and each member of the Board of**  
**Arbitrators.** For your convenience, a Pre-Trial (Arbitration) Memorandum Instruction Form  
in enclosed as well as a copy of said Local Rule of Court.

BY THE COURT:

  
FREDRIC J. AMMERMAN  
President Judge

FILED 502  
01/19/55 801 C/A  
2011  
(64)  
Proprietary/Clk of Court

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

TREASURE LAKE PROPERTY OWNERS  
ASSOCIATION, INC.

Plaintiff

vs.

MARK A. KANE and  
ANNETTE M. KANE

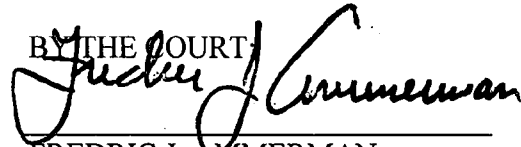
Defendant

No. 2005-0106-CD  
No. 2009-0238-CD  
*cases are consolidated*

**ORDER**

NOW, this 15<sup>th</sup> day of November, 2010, upon consideration of the telephone request by Patrick Lavelle, Esquire, counsel for the Defendants, for a continuance of the Arbitration scheduled on November 16, 2010; it is the ORDER of the Court that said continuance is GRANTED and the Arbitration is **re-scheduled** for **Tuesday, January 11, 2011 beginning at 1:00 P.M. in Hearing Room 3.**

BY THE COURT



FREDRIC J. AMMERMAN  
President Judge

**FILED**

6cc  
0112162010 CIA (will serve)  
NOV 16 2010

William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

TREASURE LAKE PROPERTY OWNERS  
ASSOCIATION, INC.,

Plaintiff

vs

MARK A. KANE and ANNETTE M. KANE,  
Defendants

\* No. 05 - 106 - CD

\*

\*

\* Type of Case: Civil Action

\*

\* Type of Pleading: Praecept to Settle

\* Discontinue & End

\*

\*

TREASURE LAKE PROPERTY OWNERS  
ASSOCIATION, INC.,

Plaintiff

vs

MARK A. KANE and ANNETTE M. KANE,  
Defendants

\*

\* No. 09 - 238 - CD

\*

\* Type of Case: Civil Action

\*

\* Type of Pleading: Praecept to Settle

\* Discontinue & End

\*

\*

FILED

SEP 09 2013

01:30 PM

William A. Shaw  
Prothonotary Clerk of Courts

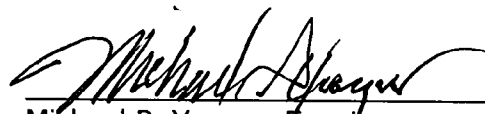
CLERK OF REC.

TO ATTORNEY

**PRAECEPT TO SETTLE, DISCONTINUE & END**

TO WILLIAM A. SHAW, PROTHONOTARY:

Please mark the above-captioned matters settled, discontinued and ended.

  
Michael P. Yeager, Esquire  
Attorney for Plaintiff



**IN THE COURT OF COMMON PLEAS OF  
CLEARFIELD COUNTY, PENNSYLVANIA**

**CIVIL DIVISION**

**Treasure Lake Property Owners Assoc.**

**Vs.**

**No. 2005-00106-CD**

**Mark A Kane**

**Annette M. Kane**

**CERTIFICATE OF DISCONTINUATION**

Commonwealth of PA  
County of Clearfield

I, William A. Shaw, Prothonotary of the Court of Common Pleas in and for the County and Commonwealth aforesaid do hereby certify that the above case was on August 9, 2013, marked:

Settled, discontinue and ended

Record costs in the sum of \$105.00 have been paid in full by Atty. Hicks \$85.00 and Atty. Yeager \$20.00.

IN WITNESS WHEREOF, I have hereunto affixed my hand and seal of this Court at Clearfield, Clearfield County, Pennsylvania this 9th day of August A.D. 2013.

---

William A. Shaw, Prothonotary

*Arbitration Scheduled  
for 11-16-10 @ 9:00 AM*



# Law Office of Patrick Lavelle

25 East Park Avenue Suite #2, DuBois, PA 15801

Phone: (814) 371-2232 Fax: (814) 371-4480

www.plavellelaw.com

Patrick Lavelle, Esq.  
plavelle@plavellelaw.com

Erin Steiner  
esteiner@plavellelaw.com

Adrienne Peters, Esq.  
apeters@plavellelaw.com

*NOV 15 2010*

November 10, 2010

F. Cortez "Chip" Bell  
Office of Court Administrator  
Clearfield County Courthouse  
230 E. Market Street, Suite 228  
Clearfield, PA 16830-2448

Re: TLPOA v. Kane  
05-106-CD & 09-238-CD (Consolidated)

Dear Mr. Bell:

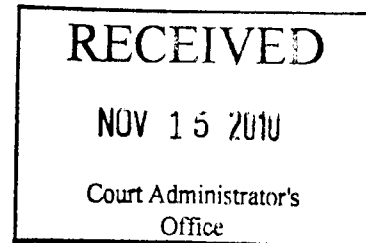
Enclosed please find a copy of the Defendants' Pretrial Memorandum with regards to the above referenced matter, which is scheduled for arbitration on November 16, 2010 at 9:00 am.

Should you have any questions or need any additional information, please don't hesitate to contact me at the office. Thank you for your time and attention to this matter.

Sincerely,

Patrick Lavelle, Esq.

PL/es  
Enclosure



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA  
CIVIL ACTION-LAW

TREASURE LAKE PROPERTY  
OWNERS ASSOCIATION,  
Plaintiffs

v.

MARK A. KANE  
ANNETTE M.KANE

) NO. 05-106-CD  
) 09-238-CD  
) (cases are consolidated)  
)  
)  
) Type of Pleading:  
) DEFENDANT'S AMENDED PRE-  
) TRIAL MEMORANDUM  
)  
)  
) Filed on Behalf of: DEFENDANTS  
)  
)  
) Counsel of Record:  
) PATRICK LAVELLE, ESQ  
) PA ID# 85537  
) 25 East Park Ave.  
) Suite #2  
) DuBois, PA. 15801  
) (814) 371-2232  
) (814) 371-4480 (Fax)

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA  
CIVIL ACTION-LAW

TREASURE LAKE PROPERTY	)	NO. 05-106-CD
OWNERS ASSOCIATION, INC,	)	09-238-CD
Plaintiffs	)	(cases are consolidated)
	)	
	)	
v.	)	
	)	
	)	
MARK A. KANE	)	
ANNETTE M. KANE,	)	
Defendants	)	

**DEFENDANT'S AMENDED PRETRIAL MEMORANDUM**

AND NOW comes the Defendants, **MARK A. KANE and ANNETTE M. KANE**, by and through their attorney, **PATRICK LAVELLE, ESQ**, and submit the following amended pretrial memorandum in the above-captioned matter.

**I. WITNESSES**

Defendants may call the following persons as additional witnesses at the time of hearing:

A. Nancy Gordon, 244 Treasure Lake, DuBois, PA 15801

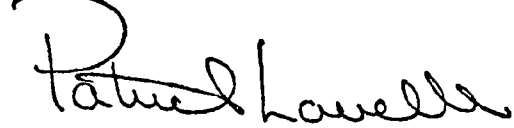
The Defendants reserve the right to supplement this Pre-Trial Memorandum in the event additional witnesses are identified, and the Defendants further reserve the right to call any witness listed in the Plaintiff's Pre-Trial Memorandum.

**IV. ATTORNEY'S FEES**

Defendants enter the attached Statement of Account for Services Rendered as evidence of Attorney's Fees incurred in this matter.

Defendants may offer any or all of the attached documents at the time of trial of this case. Defendants reserve the right to utilize and present any and all of the documents presented by the plaintiff in this case. Defendant's further reserve the right to supplement their document list consistent with applicable rules of Civil Procedure.

RESPECTFULLY SUBMITTED

A handwritten signature in black ink, appearing to read "Patrick Lavelle". The signature is written in a cursive, flowing style with a large initial "P".

---

Patrick Lavelle, Esq.  
Counsel for the Defendants

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA  
CIVIL ACTION-LAW

TREASURE LAKE PROPERTY  
OWNERS ASSOCIATION, INC,  
Plaintiffs

v.

MARK A. KANE  
ANNETTE M. KANE,  
Defendants

) NO. 05-106-CD  
) 09-238-CD  
) (cases are consolidated)  
)  
)  
)  
)  
)  
)  
)  
)

**CERTIFICATE OF SERVICE**

This will certify that the undersigned served a copy of Defendants' Amended Pretrial Memorandum in the above captioned matter on the following individuals at the address shown below by


first-class U.S. Mail on the 12th day of November, 2010.

Michael P. Yeager, Esq.  
P.O. Box 752  
110 North Second St.  
Clearfield, PA 16830

J. Richard Lhota, Esq.  
110 N. 2<sup>nd</sup> St.  
Clearfield, PA 16830

Kim C. Kesner, Esq.  
212 S. 2<sup>nd</sup> St.  
Clearfield, PA 16830

Frederick M. Neiswender, Esq.  
211 N. 2<sup>nd</sup> St.  
Clearfield, PA 16830



Patrick Lavelle, Esq.  
Counsel for the Defendants

Patrick Lavelle, Esq.  
25 East Park Ave. Suite #4  
DuBois, PA. 15801  
Phone: (814) 371-2232  
Fax: (814) 371-4480

November 12, 2010

Mark A. Kane  
571 Treasure Lake  
DuBois, PA 15801

Our File: 053-09.001  
Invoice # 290

RE: CIVIL

Statement of Account for Services Rendered Through November 12, 2010

---

Professional Services

<u>Emp</u>	<u>Description</u>	<u>Hours</u>	<u>Amount</u>
Tuesday, June 16, 2009			
001	Initial office conference with client	0.70	105.00
Wednesday, June 17, 2009			
001	Review Case Filings Re: 03-1892CD & 05-106CD	1.00	150.00
Monday, July 6, 2009			
001	Retrieve Case file @ Prothonotary's office; draft Answer, New Matter, and Counterclaim	1.50	225.00
Tuesday, July 7, 2009			
001	Edit, execute, serve Answer to Complaint; retrieve 09 case files	3.50	525.00
Wednesday, July 8, 2009			
001	File Answer, New Matter, & Counterclaim at Clearfield Co. Courthouse	1.50	225.00
Monday, July 13, 2009			
001	Reproduction costs re: case files case nos 03-1892 CD & 05-106 CD	0.00	56.00
Thursday, July 16, 2009			
001	Phone conference w/ Atty Yeager Re: Settlement	0.40	60.00
Tuesday, August 11, 2009			
001	Review Paintiff's Answer & Response; Review Plaintiff's Motion to Join; Phone conference w/ Clients re: scheduling	1.10	165.00
Thursday, August 13, 2009			
001	Review Motion for Consolidation; Execute consent to same & forward for filing	0.30	45.00

Page two  
November 12, 2010  
Mark A. Kane  
CIVIL  
Our File: 053-09.001  
Invoice # 290

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<u>Emp</u>	<u>Description</u>	<u>Hours</u>	<u>Amount</u>
Thursday, August 27, 2009			
001	Office conference re: Settlement & Discovery Requests	1.00	150.00
Wednesday, September 30, 2009			
001	Prepare, Edit, & File Discovery Responses; Phone conference w/ Atty. Yeager	2.50	375.00
Friday, October 16, 2009			
001	Phone conference w/ Atty. Yeager	0.40	60.00
Thursday, November 19, 2009			
001	Review Responses to Interrogatories; Review Request for Documents; Forward same to Atty. Yeager	1.00	150.00
Friday, January 15, 2010			
001	Office conference w/ Client	1.00	150.00
Thursday, January 21, 2010			
001	Review Documents for Submission; Corr to Attorney Yeager re: Settlement	0.90	135.00
Friday, February 26, 2010			
001	Review Complaint & Calculate Maximum Damages re: Principal & Interest; Review Plaintiff's Counter Demand; Response to Plaintiff's Counter Demand; Corr to Clients	2.50	375.00
Wednesday, April 21, 2010			
001	Phone conference w/ Client	0.30	45.00
Friday, July 30, 2010			
001	Phone conference w/ Clients re Arbitration	0.20	30.00
Friday, August 13, 2010			
001	Office conference w/ Clients; Corr to Ct. Admin re Arbitration Board Members	1.20	180.00
Thursday, August 19, 2010			
001	Prepare, File, & Serve Motion for Continuance	1.00	150.00
Thursday, August 26, 2010			
001	Office conference w/ Client re Landlord/Tenant Issue	0.20	30.00



Page three  
November 12, 2010  
Mark A. Kane  
CIVIL  
Our File: 053-09.001  
Invoice # 290

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<u>Emp</u>	<u>Description</u>	<u>Hours</u>	<u>Amount</u>
Wednesday, November 10, 2010			
001	Case Costs - Subpoena Fee	0.00	9.00
001	Edit, File, & Serve Pre-trial Memo; Review Pleading & Calculate Damages; Conference w/ Plaintiff's Counsel re: Settlement Offer & Evidentiary Issues	2.30	345.00

Summary of Services

001	Patrick Lavelle	24.50 hr @ 150.00	\$ 3675.00
001	Patrick Lavelle	0.00 hr @ 0.00	\$ 65.00

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Total Professional Services	\$ 3,740.00
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TOTAL NEW CHARGES	\$ 3,740.00
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Less Payments and Credits	<u>-3,026.00</u>
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Unpaid Balance of New Charges	\$ 714.00
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Previous Balance Due	\$ 0.00
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PAYMENTS AND CREDITS

06/24/09	Payment Received - Thank You	-2,500.00
03/22/10	Payment Received - Thank You	-80.00
08/23/10	Check No. 1318	<u>-446.00</u>

Total Payments and Credits	\$ -3,026.00
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Page four  
November 12, 2010  
Mark A. Kane  
CIVIL  
Our File: 053-09.001  
Invoice # 290

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SUMMARY OF ACCOUNT

Balance Forward	\$ 0.00
Total New Charges	3,740.00
Payments and Credits	<u>-3,026.00</u>

TOTAL BALANCE DUE \*\*\* PLEASE PAY THIS AMOUNT \*\* \$ 714.00

---

Please make check payable to Patrick Lavelle, Esq.

---



# Law Office of Patrick Lavelle

25 East Park Avenue Suite #2, DuBois, PA 15801

Phone: (814) 371-2232 Fax: (814) 371-4480

[www.plavellelaw.com](http://www.plavellelaw.com)

Patrick Lavelle, Esq.  
[plavelle@plavellelaw.com](mailto:plavelle@plavellelaw.com)

Erin Steiner  
[esteiner@plavellelaw.com](mailto:esteiner@plavellelaw.com)

Adrianne Peters, Esq.  
[apeters@plavellelaw.com](mailto:apeters@plavellelaw.com)

November 12, 2010

F. Cortez "Chip" Bell  
Office of Court Administrator  
Clearfield County Courthouse  
230 E. Market Street, Suite 228  
Clearfield, PA 16830-2448

Re: TLPOA v. Kane  
05-106-CD & 09-238-CD (Consolidated)

Dear Mr. Bell:

Enclosed please find a copy of the Defendants' Amended Pretrial Memorandum with regards to the above referenced matter, which is scheduled for arbitration on November 16, 2010 at 9:00 am.

Should you have any questions or need any additional information, please don't hesitate to contact me at the office. Thank you for your time and attention to this matter.

Sincerely,

Patrick Lavelle, Esq.

PL/jb  
Enclosure

RECEIVED

NOV 15 2010

Court Administrator's  
Office

) NO. 05-106-CD  
) 09-238-CD  
) (cases are consolidated)  
)  
)  
)  
) Type of Pleading:  
) DEFENDANT'S PRE-TRIAL  
) MEMORANDUM  
)  
) Filed on Behalf of: DEFENDANTS  
)  
) Counsel of Record:  
) PATRICK LAVELLE, ESQ  
) PA ID# 85537  
) 25 East Park Ave.  
) Suite #2  
) DuBois, PA. 15801  
) (814) 371-2232  
) (814) 371-4480 (Fax)

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA  
CIVIL ACTION-LAW

TREASURE LAKE PROPERTY  
OWNERS ASSOCIATION, INC,  
Plaintiffs

v.

MARK A. KANE  
ANNETTE M. KANE,  
Defendants

) NO. 05-106-CD  
) 09-238-CD  
) (cases are consolidated)  
)  
)  
)  
)  
)  
)  
)

**DEFENDANT'S PRETRIAL MEMORANDUM**

AND NOW comes the Defendants, **MARK A. KANE and ANNETTE M. KANE**, by and through their attorney, **PATRICK LAVELLE, ESQ**, and submit the following pretrial memorandum in the above-captioned matter.

**I. FACTS OF THE CASE**

These cases arise from two (2) complaints filed by the Plaintiff, Treasure Lake Property Owner's Association, Inc. Other than averments related to the specific relief sought by the plaintiff, the complaints are identical. The Defendants are owners of two lots of real property located at Lots 66 and 91, of Section 8A of Treasure Lake, DuBois, Clearfield County, Pennsylvania. Said Deeds incorporate the Declaration of Restrictions, Treasure Lake, Inc., which includes a provision to pay annual assessments as determined by the Board of Directors of the Treasure Lake Property Owner's Association, Inc.

Plaintiff asserts in its consolidated complaints that the Defendants have failed to pay the annual assessments on both lots for the years 2003, 2004, 2005, 2006, 2007, and 2008, totaling \$7,018.18.

Defendants have made numerous attempts at different times over the years to pay the balance owed to the Plaintiff, with the Plaintiff refusing to accept payment.

Defendants have been, and continue to be suspended from the enjoyment of any amenities and benefits available to property owners by the Plaintiff.

Presently, the Defendants are being charged interest on the balance that is owed for the unpaid assessments, even after the Plaintiff has refused to accept proffered payments. Plaintiff admits that the defendants have proffered payment, yet justifies its refusal to accept payments with obfuscated and technical applications of its rules, and plaintiff may be motivated to refuse such payments by its underlying goal of expelling the defendants from their property in Treasure Lake.

It is the Defendants' position that assessments are due to the Plaintiff, however, interest on such assessments and attorney's fees that are being claimed in this case are not appropriate. Despite the plaintiff's reasoning for failing to accept proffered payments, such refusal is contrary to its obligations under the Declaration of Restrictions. Further, the failure on the part of the plaintiff to accept such payments and credit the defendants' account, even if such payments would not satisfy the defendants' total indebtedness, would amount to the plaintiff's breach of its affirmative duty to mitigate its damages in this case sounding in Breach of Contract. Had the defendants' payments been accepted, the plaintiff would have had the benefit of those payments without undermining their

legal right to collect the total of unpaid assessments, and interest and attorney fees would not accrue on payments proffered and accepted.

## **II. CITATION TO APPLICABLE CASE OR STATUTES**

### **A. Unjust Enrichment.**

See *Safe Auto Ins. Co. v. Berlin* 991 A.2d 327, 336 (Pa.Super.,2010); citing *Stoeckinger v. Presidential Financial Corp.*, 948 A.2d 828, 833 (Pa.Super.2008).

The **elements of unjust enrichment** are benefits conferred on defendant by plaintiff, appreciation of such benefits by defendant, and acceptance and retention of such benefits under such circumstances that it would be inequitable for defendant to retain the benefit without payment of value. Whether the doctrine applies depends on the unique factual circumstances of each case. In determining if the doctrine applies, we focus not on the intention of the parties, but rather on whether the defendant has been unjustly enriched. Moreover, the most significant element of the doctrine is whether the enrichment of the defendant is *unjust*. The doctrine does not apply simply because the defendant may have benefited as a result of the actions of the plaintiff.

The facts of this case would not support the existence of any “Unjust enrichment”.

### **B. Contract Implied in Fact.**

See *American and Foreign Ins. Co. v. Jerry's Sport Center, Inc.* 2 A.3d 526, 534 (Pa.,2010). An implied-in-fact contract is a contract that the parties “presumably intended as their tacit understanding, as inferred from their conduct and other circumstances.” Black's Law Dictionary (8th ed. 2004).

In this case the basis for the plaintiff's cause of action is found in the Declaration of Restrictions. The Court may not infer any new or additional contractual provisions related to an implied contract based upon any action or inaction on the part of either party to this case. To infer a contract in the presence of the Declaration of Restrictions would be tantamount to the Court impermissibly recreating, revising and/or modifying the contract of the parties.

**C. Mitigation of Damages.**

See *Delliponti v. DeAngelis*, 545 Pa. 434, 681 A.2d 1261 (1996); *Toyota Indus. Trucks U. S. A., Inc. v. Citizens Nat. Bank of Evans City*, 611 F.2d 465, (3d Cir. 1979).

A party injured by a breach of contract is under a duty to mitigate the damages. A plaintiff cannot recover from the defendant in default of a contract, damages that the plaintiff could have avoided by the exercise of reasonable care.

The duty to mitigate damages has been interpreted to mean those damages that the plaintiff might have avoided with reasonable effort without undue risk, expense, or humiliation or either not caused by the defendant's wrong or need not have been, and therefore not be charged against the defendant.

**III. WITNESSES**

Defendants may call the following persons at the time of hearing:

- A. Mark A. Kane, 571 Treasure Lake, DuBois, Pennsylvania
- B. Annette M. Kane, 571 Treasure Lake, DuBois, Pennsylvania



The Defendants reserve the right to supplement this Pre-Trial Memorandum in the event additional witnesses are identified, and the Defendants further reserve the right to call any witness listed in the Plaintiff's Pre-Trial Memorandum.

**IV. STATEMENT OF DAMAGES & COPIES OF BILLS**

Plaintiff requested \$7,018.18 for the unpaid assessments for both lots from 2005, 2006, 2007, and 2008. Plaintiff also requests that interest be paid on this balance at a rate of 6% per annum, and reasonable attorney's fees be paid.

Defendants' position is that the Plaintiff is not entitled to receive interest and attorney's fees, as interest would have been eliminated and attorney's fees would not have been incurred had the Plaintiff accepted payment at any one of the multiple times it was proffered.

Defendants may offer any or all of the attached documents at the time of trial of this case. Defendants reserve the right to utilize and present any and all of the documents presented by the plaintiff in this case. Defendant's further reserve the right to supplement their document list consistent with applicable rules of Civil Procedure.

RESPECTFULLY SUBMITTED

A handwritten signature in black ink, appearing to read "Patrick Lavelle", written over a horizontal line.

Patrick Lavelle, Esq.  
Counsel for the Defendants

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA  
CIVIL ACTION-LAW

TREASURE LAKE PROPERTY  
OWNERS ASSOCIATION, INC,  
Plaintiffs

v.

MARK A. KANE  
ANNETTE M. KANE,  
Defendants

) NO. 05-106-CD  
) 09-238-CD  
) (cases are consolidated)  
)  
)  
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**CERTIFICATE OF SERVICE**

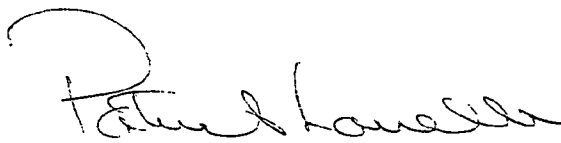
This will certify that the undersigned served a copy of Defendants' Pretrial Memorandum in the above captioned matter on the following individuals at the address shown below by first-class U.S. Mail on the 10th day of November, 2010.

Michael P. Yeager, Esq.  
P.O. Box 752  
110 North Second St.  
Clearfield, PA 16830

J. Richard Lhota, Esq.  
110 N. 2<sup>nd</sup> St.  
Clearfield, PA 16830

Kim C. Kesner, Esq.  
212 S. 2<sup>nd</sup> St.  
Clearfield, PA 16830

Frederick M. Neiswender, Esq.  
211 N. 2<sup>nd</sup> St.  
Clearfield, PA 16830



Patrick Lavelle, Esq.  
Counsel for the Defendants



TREASURE LAKE PROPERTY OWNERS ASSOCIATION, INC.  
13 TREASURE LAKE • DUBOIS, PA 15801-9099  
PHONE: (814) 371-0711 • FAX: (814) 375-9072  
www.treasurelakepca.com

**2005 IDENTIFICATION CARD**

Member In Good Standing

KANE, MARK A & ANNETTE M

Member Name

08A

Section

0066- 1

Lot(s)

05/01/06

Expires

Family Member / Guest



TREASURE LAKE PROPERTY OWNERS ASSOCIATION, INC.  
13 TREASURE LAKE • DUBOIS, PA 15801-9099  
PHONE: (814) 371-0711 • FAX: (814) 375-9072  
www.treasurelakepca.com

**2005 IDENTIFICATION CARD**

Member In Good Standing

KANE, MARK A & ANNETTE M

Member Name

08A

Section

0066- 1

Lot(s)

05/01/06

Expires

Family Member / Guest

**EXHIBIT**

tabbles

A's 1

Mark A. Kane  
Annette M. Kane  
571 Treasure Lake  
DuBois, PA 15801  
Ph. 814-375-0695

663

60-8040/2313

7 8 00  
Date

Pay to the  
Order of

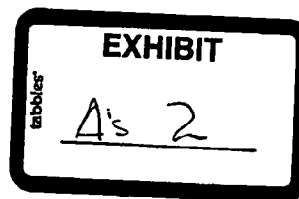
TLPOA \$ 600.00  
Six Hundred and No/100 — Dollars

4 imberland Federal Credit Union  
821 Beaver Drive, DuBois, PA 15801

For

1:231380405: 0052211088 0663

© LIBERTY



Mark A. Kane  
Annette M. Kane  
571 Treasure Lake  
DuBois, PA 15801  
Ph. 814-375-0695

Date Nov 10 05 502

60-8040/2313

Pay to the  
Order of

TLCPOA \$ 1629.45  
Sixteen hundred and twenty nine and 45/100 Dollars

  
Timberland Federal Credit Union  
821 Beaver Drive, DuBois, PA 15801

Memo

MP

⑆231380405⑆ 0052211088⑈ 0502

©2000 LIBERTY ENTERPRISES, INC.

EXHIBIT

tabbies

A's 3

TAX DEDUCTIBLE ITEM - ☐

502

**Account Category**

- ☐ Primary Checking
- ☐ Secondary Checking
- ☐ Money Market Checking
- ☐ Line of Credit
- ☐ Other

**Track Your Expenses**

- ☐ Housing & Utilities
- ☐ Food
- ☐ Transportation
- ☐ Medical & Dental
- ☐ Clothing & Personal
- ☐ Educational & Recreational
- ☐ Contributions & Gifts
- ☐ Credit Payments
- ☐ Savings & Investments
- ☐ Other Expenses

*Handwritten:* T.C. FORD  
Six Year Liberty Line

BAL	
FORD	
ITEM	
AMOUNT	16296
BALANCE	65
DEPOSIT	75
FORD	

Memo

For added security, personal information  
no longer appears on this copy.

0001

**NON-NEGOTIABLE**  
20% post-consumer material

**EXHIBIT**

tabbles

As 4

© LIBERTY ENTERPRISES INC 2004

TAX DEDUCTIBLE ITEM - ☐

501

## Account Category:

- ☐ Primary Checking  
☒ Secondary Checking  
☐ Money Market Checking  
☐ Line of Credit  
☐ Other

## Track Your Expenses

- ☒ Housing & Utilities  
☐ Food  
☐ Transportation  
☐ Medical & Dental  
☐ Clothing & Personal  
☐ Educational & Recreational  
☐ Contributions & Gifts  
☐ Credit Payments  
☐ Savings & Investments  
☐ Other Expenses

BAL  
FOR'D  
ITEM  
AMOUNT

BALANCE

DEPOSIT

FOR'D

1725.00

Memo

For added security, personal information  
 no longer appears on this copy.

050

NON NEGOTIABLE

20% post-consumer material

EXHIBIT

tabbles

A's 5

# Meyer, Unkovic Scott

ATTORNEYS AT LAW

1300 Oliver Building  
Pittsburgh, Pennsylvania 15222-2304  
Tel: 412-456-2800  
Fax: 412-456-2864  
110 East King Street  
Lancaster, Pennsylvania 17602-2832  
Tel: 717-390-4760  
Fax: 717-390-4766  
www.muslaw.com

Writer's direct dial phone number and e-mail address:  
412-456-2837 ~ rlh@muslaw.com

July 9, 2007

Mark A. and Annette M. Kane  
571 Treasure Lake  
Dubois, PA 15801-9012

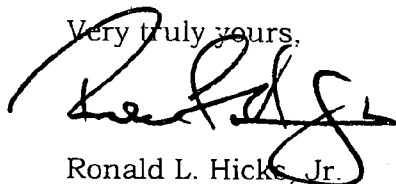
RE: Treasure Lake Property Owners Association, Inc. v. Mark A. Kane, et ux.  
Civil Action No. 05-106-CD (CCP Clearfield Cty., Pa.)

Dear Mark and Annette:

Enclosed is a copy of the letter that I recently received from the attorney representing the Treasure Lake Property Owners Association. As I discussed with Mark this morning, Attorney Yeager has stated that the Association could be interested in settling all of the litigation and other disputes or claims that exist with you under a proposal whereby you would sell your properties and leave Treasure Lake, in exchange for which the Association would forgive all fines and await payment of the assessment arrearages until the lots are sold. Under the proposal, all litigation and claims, including the Association's demand for payment of attorneys' fees and costs, would be eliminated, and you would have to agree not to repurchase or move back into Treasure Lake for a negotiated length of time.

I understand that you are meeting with the Board later this week to discuss settlement. Please let me know how that meeting goes. If an amicable resolution cannot be reached, then we will need to discuss whether I will be able to continue to represent you in these matters.

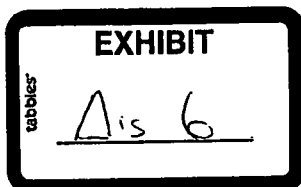
Very truly yours,



Ronald L. Hicks, Jr.

RLHjr/fma  
687607.1

Enclosure







# Law Office of Patrick Lavelle

25 East Park Avenue Suite #2, DuBois, PA 15801

Phone: (814) 371-2232 Fax: (814) 371-4480

www.plavellelaw.com

Patrick Lavelle, Esq.  
plavelle@plavellelaw.com

Erin Steiner  
esteiner@plavellelaw.com

Adrianne Peters, Esq.  
apeters@plavellelaw.com

TRANSMITTED TO FAX NUMBER: 1-814-765-7649

DATE: November 12, 2010

TO: Court Administration

FROM: Erin assistant to Patrick Lavelle, Esq.

SUBJECT: Pre-Trial Memorandum  
Treasure Lake Property Owners Assoc. v. Kane

Attached please find a copy of the Defendants' Amended Pre-trial Memorandum. A hard copy of same has been mailed this date. Also attached is a copy of the Defendants' Pre-trial Memorandum which was mailed earlier this week for your reference.

Should you have any questions or need any additional information, please don't hesitate to contact us at the office. Thank you for your time and attention to this matter.

NUMBER OF PAGES INCLUDING COVER SHEET: 16

*Arbitration  
Scheduled for  
Tues. Nov. 16*

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA  
CIVIL ACTION-LAW

TREASURE LAKE PROPERTY  
OWNERS ASSOCIATION,  
Plaintiffs

v.

MARK A. KANE  
ANNETTE M.KANE

) NO. 05-106-CD  
) 09-238-CD  
) (cases are consolidated)  
)  
)  
)

) Type of Pleading:  
) DEFENDANT'S AMENDED PRE-  
) TRIAL MEMORANDUM  
)  
)

) Filed on Behalf of: DEFENDANTS  
)  
)

) Counsel of Record:  
) PATRICK LAVELLE, ESQ  
) PA ID# 85537  
) 25 East Park Ave.  
) Suite #2  
) DuBois, PA. 15801  
) (814) 371-2232  
) (814) 371-4480 (Fax)

RECEIVED

NOV 12 2010

Court Administrator's  
Office

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA  
CIVIL ACTION-LAW

TREASURE LAKE PROPERTY	)	NO. 05-106-CD
OWNERS ASSOCIATION, INC,	)	09-238-CD
Plaintiffs	)	(cases are consolidated)
	)	
	)	
v.	)	
	)	
	)	
MARK A. KANE	)	
ANNETTE M. KANE,	)	
Defendants	)	

**DEFENDANT'S AMENDED PRETRIAL MEMORANDUM**

AND NOW comes the Defendants, **MARK A. KANE** and **ANNETTE M. KANE**, by and through their attorney, **PATRICK LAVELLE, ESQ.**, and submit the following amended pretrial memorandum in the above-captioned matter.

**I. WITNESSES**

Defendants may call the following persons as additional witnesses at the time of hearing:

A. Nancy Gordon, 244 Treasure Lake, DuBois, PA 15801

The Defendants reserve the right to supplement this Pre-Trial Memorandum in the event additional witnesses are identified, and the Defendants further reserve the right to call any witness listed in the Plaintiff's Pre-Trial Memorandum.

**IV. ATTORNEY'S FEES**

Defendants enter the attached Statement of Account for Services Rendered as evidence of Attorney's Fees incurred in this matter.

Defendants may offer any or all of the attached documents at the time of trial of this case. Defendants reserve the right to utilize and present any and all of the documents presented by the plaintiff in this case. Defendant's further reserve the right to supplement their document list consistent with applicable rules of Civil Procedure.

RESPECTFULLY SUBMITTED

A handwritten signature in black ink, appearing to read "Patrick Lavelle", written over a horizontal line.

Patrick Lavelle, Esq.  
Counsel for the Defendants

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA  
CIVIL ACTION-LAW

TREASURE LAKE PROPERTY  
OWNERS ASSOCIATION, INC.,  
Plaintiffs

v.

MARK A. KANE  
ANNETTE M. KANE,  
Defendants

) NO. 05-106-CD  
) 09-238-CD  
) (cases are consolidated)  
)  
)  
)  
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**CERTIFICATE OF SERVICE**

This will certify that the undersigned served a copy of Defendants' Amended Pretrial Memorandum in the above captioned matter on the following individuals at the address shown below by

first-class U.S. Mail on the 12th day of November, 2010.

Michael P. Yeager, Esq.  
P.O. Box 752  
110 North Second St.  
Clearfield, PA 16830

J. Richard Lhota, Esq.  
110 N. 2<sup>nd</sup> St.  
Clearfield, PA 16830

Kim C. Kesner, Esq.  
212 S. 2<sup>nd</sup> St.  
Clearfield, PA 16830

Frederick M. Neiswender, Esq.  
211 N. 2<sup>nd</sup> St.  
Clearfield, PA 16830



Patrick Lavelle, Esq.  
Counsel for the Defendants

**Patrick Lavelle, Esq.**  
**25 East Park Ave. Suite #4**  
**DuBois, PA. 15801**  
**Phone: (814) 371-2232**  
**Fax: (814) 371-4480**

November 12, 2010

Mark A. Kane  
571 Treasure Lake  
DuBois, PA 15801

Our File: 053-09.001  
Invoice # 290

RE: CIVIL

Statement of Account for Services Rendered Through November 12, 2010

---

Professional Services

<u>Emp</u>	<u>Description</u>	<u>Hours</u>	<u>Amount</u>
Tuesday, June 16, 2009			
001	Initial office conference with client	0.70	105.00
Wednesday, June 17, 2009			
001	Review Case Filings Re: 03-1892CD & 05-106CD	1.00	150.00
Monday, July 6, 2009			
001	Retrieve Case file @ Prothonotary's office; draft Answer, New Matter, and Counterclaim	1.50	225.00
Tuesday, July 7, 2009			
001	Edit, execute, serve Answer to Complaint; retrieve 09 case files	3.50	525.00
Wednesday, July 8, 2009			
001	File Answer, New Matter, & Counterclaim at Clearfield Co. Courthouse	1.50	225.00
Monday, July 13, 2009			
001	Reproduction costs re: case files case nos 03-1892 CD & 05-106 CD	0.00	56.00
Thursday, July 16, 2009			
001	Phone conference w/ Atty Yeager Re: Settlement	0.40	60.00
Tuesday, August 11, 2009			
001	Review Plaintiff's Answer & Response; Review Plaintiff's Motion to Join; Phone conference w/ Clients re: scheduling	1.10	165.00
Thursday, August 13, 2009			
001	Review Motion for Consolidation; Execute consent to same & forward for filing	0.30	45.00

Page two  
November 12, 2010  
Mark A. Kane  
CIVIL  
Our File: 053-09.001  
Invoice # 290

---

<u>Emp</u>	<u>Description</u>	<u>Hours</u>	<u>Amount</u>
Thursday, August 27, 2009			
001	Office conference re: Settlement & Discovery Requests	1.00	150.00
Wednesday, September 30, 2009			
001	Prepare, Edit, & File Discovery Responses; Phone conference w/ Atty. Yeager	2.50	375.00
Friday, October 16, 2009			
001	Phone conference w/ Atty. Yeager	0.40	60.00
Thursday, November 19, 2009			
001	Review Responses to Interrogatories; Review Request for Documents; Forward same to Atty. Yeager	1.00	150.00
Friday, January 15, 2010			
001	Office conference w/ Client	1.00	150.00
Thursday, January 21, 2010			
001	Review Documents for Submission; Corr to Attorney Yeager re: Settlement	0.90	135.00
Friday, February 26, 2010			
001	Review Complaint & Calculate Maximum Damages re: Principal & Interest; Review Plaintiff's Counter Demand; Response to Plaintiff's Counter Demand; Corr to Clients	2.50	375.00
Wednesday, April 21, 2010			
001	Phone conference w/ Client	0.30	45.00
Friday, July 30, 2010			
001	Phone conference w/ Clients re Arbitration	0.20	30.00
Friday, August 13, 2010			
001	Office conference w/ Clients; Corr to Ct. Admin re Arbitration Board Members	1.20	180.00
Thursday, August 19, 2010			
001	Prepare, File, & Serve Motion for Continuance	1.00	150.00
Thursday, August 26, 2010			
001	Office conference w/ Client re Landlord/Tenant Issue	0.20	30.00

Page three  
November 12, 2010  
Mark A. Kane  
CIVIL  
Our File: 053-09.001  
Invoice # 290

---

<u>Emp</u>	<u>Description</u>	<u>Hours</u>	<u>Amount</u>
Wednesday, November 10, 2010			
001	Case Costs - Subpoena Fee	0.00	9.00
001	Edit, File, & Serve Pre-trial Memo; Review Pleading & Calculate Damages; Conference w/ Plaintiff's Counsel re; Settlement Offer & Evidentiary Issues	2.30	345.00

Summary of Services

001	Patrick Lavelle	24.50 hr @ 150.00	\$ 3675.00
001	Patrick Lavelle	0.00 hr @ 0.00	\$ 65.00

Total Professional Services

\$ 3,740.00

---

TOTAL NEW CHARGES

\$ 3,740.00

Less Payments and Credits

-3,026.00

Unpaid Balance of New Charges

\$ 714.00

---

Previous Balance Due

\$ 0.00

---

PAYMENTS AND CREDITS

06/24/09	Payment Received - Thank You	-2,500.00
03/22/10	Payment Received - Thank You	-80.00
08/23/10	Check No. 1318	<u>-446.00</u>
Total Payments and Credits		\$ -3,026.00

---



Page four  
November 12, 2010  
Mark A. Kane  
CIVIL  
Our File: 053-09.001  
Invoice # 290

---

**SUMMARY OF ACCOUNT**

Balance Forward	\$ 0.00
Total New Charges	3,740.00
Payments and Credits	<u>-3,026.00</u>

**TOTAL BALANCE DUE \*\*\* PLEASE PAY THIS AMOUNT \*\*** \$ 714.00

---

Please make check payable to Patrick Lavelle, Esq.

---

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA  
CIVIL ACTION-LAW

TREASURE LAKE PROPERTY  
OWNERS ASSOCIATION,  
Plaintiffs

v.

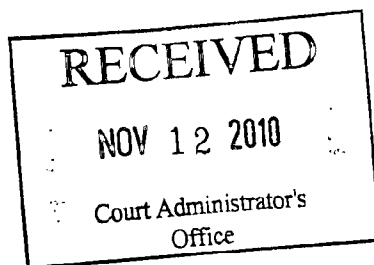
MARK A. KANE  
ANNETTE M.KANE

) NO. 05-106-CD  
) 09-238-CD  
) (cases are consolidated)  
)  
)  
)

) Type of Pleading:  
) DEFENDANT'S PRE-TRIAL  
) MEMORANDUM  
)

) Filed on Behalf of: DEFENDANTS  
)  
)

) Counsel of Record:  
) PATRICK LAVELLE, ESQ  
) PA ID# 85537  
) 25 East Park Ave.  
) Suite #2  
) DuBois, PA. 15801  
) (814) 371-2232  
) (814) 371-4480 (Fax)



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA  
CIVIL ACTION-LAW

TREASURE LAKE PROPERTY  
OWNERS ASSOCIATION, INC.,  
Plaintiffs

v.

MARK A. KANE  
ANNETTE M. KANE,  
Defendants

) NO. 05-106-CD  
) 09-238-CD  
) (cases are consolidated)  
)  
)  
)  
)  
)  
)  
)

**DEFENDANT'S PRETRIAL MEMORANDUM**

AND NOW comes the Defendants, **MARK A. KANE and ANNETTE M. KANE**, by and through their attorney, **PATRICK LAVELLE, ESQ.**, and submit the following pretrial memorandum in the above-captioned matter.

**I. FACTS OF THE CASE**

These cases arise from two (2) complaints filed by the Plaintiff, Treasure Lake Property Owner's Association, Inc. Other than averments related to the specific relief sought by the plaintiff, the complaints are identical. The Defendants are owners of two lots of real property located at Lots 66 and 91, of Section 8A of Treasure Lake, DuBois, Clearfield County, Pennsylvania. Said Deeds incorporate the Declaration of Restrictions, Treasure Lake, Inc., which includes a provision to pay annual assessments as determined by the Board of Directors of the Treasure Lake Property Owner's Association, Inc.

Plaintiff asserts in its consolidated complaints that the Defendants have failed to pay the annual assessments on both lots for the years 2003, 2004, 2005, 2006, 2007, and 2008, totaling \$7,018.18.

Defendants have made numerous attempts at different times over the years to pay the balance owed to the Plaintiff, with the Plaintiff refusing to accept payment. Defendants have been, and continue to be suspended from the enjoyment of any amenities and benefits available to property owners by the Plaintiff.

Presently, the Defendants are being charged interest on the balance that is owed for the unpaid assessments, even after the Plaintiff has refused to accept proffered payments. Plaintiff admits that the defendants have proffered payment, yet justifies its refusal to accept payments with obfuscated and technical applications of its rules, and plaintiff may be motivated to refuse such payments by its underlying goal of expelling the defendants from their property in Treasure Lake.

It is the Defendants' position that assessments are due to the Plaintiff, however, interest on such assessments and attorney's fees that are being claimed in this case are not appropriate. Despite the plaintiff's reasoning for failing to accept proffered payments, such refusal is contrary to its obligations under the Declaration of Restrictions. Further, the failure on the part of the plaintiff to accept such payments and credit the defendants' account, even if such payments would not satisfy the defendants' total indebtedness, would amount to the plaintiff's breach of its affirmative duty to mitigate its damages in this case sounding in Breach of Contract. Had the defendants' payments been accepted, the plaintiff would have had the benefit of those payments without undermining their

legal right to collect the total of unpaid assessments, and interest and attorney fees would not accrue on payments proffered and accepted.

## **II. CITATION TO APPLICABLE CASE OR STATUTES**

### **A. Unjust Enrichment.**

See *Safc Auto Ins. Co. v. Berlin* 991 A.2d 327, 336 (Pa.Super.,2010); citing *Stoeckinger v. Presidential Financial Corp.*, 948 A.2d 828, 833 (Pa.Super.2008).

The elements of unjust enrichment are benefits conferred on defendant by plaintiff, appreciation of such benefits by defendant, and acceptance and retention of such benefits under such circumstances that it would be inequitable for defendant to retain the benefit without payment of value. Whether the doctrine applies depends on the unique factual circumstances of each case. In determining if the doctrine applies, we focus not on the intention of the parties, but rather on whether the defendant has been unjustly enriched. Moreover, the most significant element of the doctrine is whether the enrichment of the defendant is *unjust*. The doctrine does not apply simply because the defendant may have benefited as a result of the actions of the plaintiff.

The facts of this case would not support the existence of any "Unjust enrichment".

### **B. Contract Implied in Fact.**

See *American and Foreign Ins. Co. v. Jerry's Sport Center, Inc.* 2 A.3d 526, 534 (Pa.,2010). An implied-in-fact contract is a contract that the parties "presumably intended as their tacit understanding, as inferred from their conduct and other circumstances." Black's Law Dictionary (8th ed. 2004).

In this case the basis for the plaintiff's cause of action is found in the Declaration of Restrictions. The Court may not infer any new or additional contractual provisions related to an implied contract based upon any action or inaction on the part of either party to this case. To infer a contract in the presence of the Declaration of Restrictions would be tantamount to the Court impermissibly recreating, revising and/or modifying the contract of the parties.

**C. Mitigation of Damages.**

See *Delliponti v. DeAngelis*, 545 Pa. 434, 681 A.2d 1261 (1996); *Toyota Indus. Trucks U. S. A., Inc. v. Citizens Nat. Bank of Evans City*, 611 F.2d 465, (3d Cir. 1979).

A party injured by a breach of contract is under a duty to mitigate the damages. A plaintiff cannot recover from the defendant in default of a contract, damages that the plaintiff could have avoided by the exercise of reasonable care.

The duty to mitigate damages has been interpreted to mean those damages that the plaintiff might have avoided with reasonable effort without undue risk, expense, or humiliation or either not caused by the defendant's wrong or need not have been, and therefore not be charged against the defendant.

**III. WITNESSES**

Defendants may call the following persons at the time of hearing:

A. Mark A. Kane, 571 Treasure Lake, DuBois, Pennsylvania

B. Annette M. Kane, 571 Treasure Lake, DuBois, Pennsylvania

The Defendants reserve the right to supplement this Pre-Trial Memorandum in the event additional witnesses are identified, and the Defendants further reserve the right to call any witness listed in the Plaintiff's Pre-Trial Memorandum.

**IV. STATEMENT OF DAMAGES & COPIES OF BILLS**

Plaintiff requested \$7,018.18 for the unpaid assessments for both lots from 2005, 2006, 2007, and 2008. Plaintiff also requests that interest be paid on this balance at a rate of 6% per annum, and reasonable attorney's fees be paid.

Defendants' position is that the Plaintiff is not entitled to receive interest and attorney's fees, as interest would have been eliminated and attorney's fees would not have been incurred had the Plaintiff accepted payment at any one of the multiple times it was proffered.

Defendants may offer any or all of the attached documents at the time of trial of this case. Defendants reserve the right to utilize and present any and all of the documents presented by the plaintiff in this case. Defendant's further reserve the right to supplement their document list consistent with applicable rules of Civil Procedure.

**RESPECTFULLY SUBMITTED**

---

Patrick Lavelle, Esq.  
Counsel for the Defendants

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA  
CIVIL ACTION-LAW

TREASURE LAKE PROPERTY	)	NO. 05-106-CD
OWNERS ASSOCIATION, INC,	)	09-238-CD
Plaintiffs	)	(cases are consolidated)
	)	
v.	)	
	)	
MARK A. KANE	)	
ANNETTE M. KANE,	)	
Defendants	)	
	)	

**CERTIFICATE OF SERVICE**

This will certify that the undersigned served a copy of Defendants' Pretrial Memorandum in the above captioned matter on the following individuals at the address shown below by first-class U.S. Mail on the 10th day of November, 2010.

Michael P. Yeager, Esq.  
P.O. Box 752  
110 North Second St.  
Clearfield, PA 16830

J. Richard Lhota, Esq.  
110 N. 2<sup>nd</sup> St.  
Clearfield, PA 16830

Kim C. Kesner, Esq.  
212 S. 2<sup>nd</sup> St.  
Clearfield, PA 16830

Frederick M. Neiswender, Esq.  
211 N. 2<sup>nd</sup> St.  
Clearfield, PA 16830

---

Patrick Lavelle, Esq.  
Counsel for the Defendants



Original  
to Ch. Adm.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION - LAW

TREASURE LAKE PROPERTY OWNERS  
ASSOCIATION, INC.,  
Plaintiff

vs

MARK A. KANE and ANNETTE M. KANE,  
Defendants

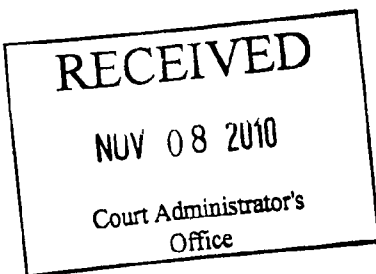
\* No. 05 - 106 - CD  
\*  
\*  
\* Type of Case: Civil Action  
\*  
\* Type of Pleading:  
\* Pre-Trial Memorandum  
\*  
\*  
\*

TREASURE LAKE PROPERTY OWNERS  
ASSOCIATION, INC.,  
Plaintiff

vs

MARK A. KANE and ANNETTE M. KANE,  
Defendants

\*  
\* No. 09 - 238 - CD  
\*  
\* Type of Case: Civil Action  
\*  
\* Type of Pleading:  
\* Pre-Trial Memorandum  
\*  
\*  
\* Filed on Behalf of: Plaintiff  
\*  
\* Counsel of Record for this Party:  
\*  
\* Michael P. Yeager, Esq.  
\* Supreme Court No.: 15587  
\*  
\* P.O. Box 752  
\* 110 North Second Street  
\* Clearfield, PA 16830  
\* (814) 765-9611



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION - LAW

TREASURE LAKE PROPERTY OWNERS	*	
ASSOCIATION, INC.,	*	
Plaintiff	*	
	*	No. 05 - 106 - CD
vs	*	
	*	
	*	
MARK A. KANE and ANNETTE M. KANE,	*	
Defendants	*	
TREASURE LAKE PROPERTY OWNERS	*	
ASSOCIATION, INC.,	*	
Plaintiff	*	
	*	
vs	*	No. 09 - 238 - CD
	*	
	*	
MARK A. KANE and ANNETTE M. KANE,	*	
Defendants	*	

**PRE-TRIAL MEMORANDUM**

**A. BRIEF STATEMENT OF THE CASE:**

The claims arise as a result of nonpayment on the part of the Defendants of the annual assessment fees imposed upon owners of single-family residential lots within the Treasure Lake Subdivision of Sandy Township, Clearfield County, PA by virtue of deeds to those lots and the Declaration of Restrictions regarding said lots.

The Plaintiff is a nonprofit entity composed of property owners within Treasure Lake Subdivision, Sandy Township, Clearfield County, Pennsylvania. Defendants are adult individuals who are the named Grantees of Deeds dated April 1, 1992 and March

22, 1996 and recorded in Clearfield County Deed Book Volumes 1456 at page 239 and 1751 at page 379. Said Deeds describe the Defendants' interest therein to Lot 66 in Section 8A and Lot 91 in Section 8A all within the Treasure Lake Subdivision, Sandy Township, Clearfield County, Pennsylvania.

The Deeds to the single family lots indicate that the lots conveyed therein are otherwise subject to the Declaration of Restrictions, Treasure Lake, Inc., recorded in Clearfield County Misc. Book Volume 146, page 476 ("Restrictions"); and further states that "...all of said Restrictions being covenants which run with the land".

Under and by virtue of Paragraph 12.D. of the aforesaid Restrictions, Plaintiff has imposed annual charges or assessments per single family lot within the Treasure Lake Subdivision as annually determined by the Board of Directors of the Plaintiff.

To date, Defendants have failed and otherwise refused to pay any of said annual assessment fee amounts. Accordingly, the delinquent assessments for Lot 66, Section 8A and Lot 91, Section 8A are as follows:

Lot 66, Section 8A

2003	\$ 488.00	
2004	493.00	
2005	535.04	
2006	580.00	
2007	634.00	
2008	<u>692.00</u>	<b>\$ 3,422.04</b>

Lot 91, Section 8A

2003	\$ 488.00	
2004	493.00	
2005	535.04	
2006	580.00	
2007	634.00	
2008	<u>692.00</u>	<b>\$ 3,422.04</b>

**Total Assessments Due** **\$ 6,844.08**

Plaintiff initiated suits in these cases by filing Complaints at the above-captioned numbers and terms. Those Complaints include claims for the annual assessment fee

amounts described above together with continuing interest, reasonable attorneys fees and additional costs of suit as also provided in the aforesaid Restrictions.

**B. ARGUMENT AND CITATIONS TO APPLICABLE CASES OR STATUTES:**

The aforesaid Restrictions constitute covenants which run with the applicable ownership interests in single-family residential lots in Treasure Lake including the interest owned by the Defendants.

**(1) Covenants running with the land.**

Defendants may argue that if a covenant "runs with the land", then it may only be enforced as an in rem action against the land. That argument is entirely misplaced. A covenant that "runs with the land" results only in the conclusion that it is enforceable as against any owner and subsequent owners of that land. See Birchwood Lakes Community Association, Inc., v. Comis, 442 A.2d 304, (1982) where the Court noted:

"...the covenants here at issue were clearly intended to bind the successors in interest of all grantees and therefore were intended to follow the title or in other words run with the land..." (emphasis supplied).

Accordingly, you should initially direct your attention to Paragraph 12.D of the Declaration of Restrictions 146/476 which state that "...all of said Restrictions being covenants which run with the land".

The covenants in the Restrictions would therefore bind the Defendants as owners of the lots in question

**(2) Contractual Liability.**

Please note that the Complaint in the instant case is fashioned as a suit based upon a contract with alternatives in Quasi-Contract and Contract Implied in Fact. See also Birchwood, *supra.*, at 308, 309. In the case at hand, Defendants are liable based upon the expressed contract created by taking title to the single

family lots which are subject to the Restrictions. Those Restrictions provide the authorization to:

(a) Determine and impose assessments;

(b) Pursue any other remedy ""...against any owner owing money to it which is available to it by law or equity for the collection of debt."

(c) Collect interest and attorney's fees (Restrictions Paragraph 12.D.).

See also Wild Acres Lakes Property and Home Owners Association v. Christopher Coroneos, Superior Court 690 A.2d 794 (1997); Fawn Lake Forest Association v. Tusse, 24 D&C 4th 70 (1995); Meadow Run and Mountain Lake Park Association v. Berkel, 598 A.2d 1024 (1991); Spinnler Point Colony Association v. Nash, 689 A.2d 1026 (1997); and Wrenfield Homeowners Association v. DeYoung, 600 A.2d 960 (1991).

**(3) Interest, Costs of Collection & Attorney's Fees.**

The Restrictions also provide that the Plaintiff may seek and recover interest and attorney's fees. Please see Paragraph 12.D. of those Restrictions indicating that:

"...the amount of such maintenance fees, plus such interest from the date of delinquency thereon and costs of collection thereof, including attorney's fees, if any shall constitute and become a lien on the undivided interest so assessed..."

Paragraph 12.D(b) then notes that remedies at law or equity can be pursued in addition to lien foreclosure. Please also see Wrenfield and Wild Acres Lakes, supra.

**C. LIST OF WITNESSES:**

- (1) Daniel L. Johnston  
TREASURE LAKE PROPERTY OWNERS ASSOCIATION, INC.  
13 Treasure Lake  
DuBois, PA 15801

- (2) Possible witnesses with bookkeeping and records responsibilities
- (3) Interrogatories were propounded to the Defendant Mark A. Kane and responses were received.
- (4) Michael P. Yeager  
P.O. Box 752  
Clearfield, PA 16830
- (5) Exhibits: Plaintiff will present copies of the following:
  - (a) Deeds
  - (b) Declaration of Restrictions (146/476)
  - (c) Exhibits as to assessment arrearages
  - (d) Interrogatories with responses of Mark A. Kane
  - (e) Copies of sanitized attorney's fees billing statements reflecting the time and charges
  - (f) Plaintiff's Trial Memorandum (Enforceability of Assessment)
  - (g) Plaintiff's Trial Memorandum (Lawyer as a Witness)
  - (h) Plaintiff's Trial Memorandum (Membership/Ownership & Change)
- (6) Plaintiff reserves the right to supplement this list

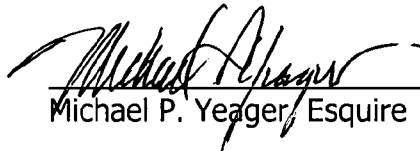
**D. STATEMENT OF DAMAGES OR CLAIM:**

Balance of annual assessments or charges:	\$ 6,844.08
Attorneys fees paid through 10/30/10	15,500.50
Attorney's fees accrued 11/1/10 to 11/8/10	455.00
Estimated fees for hearing 2.5 hours @ \$175/hr.	437.50
Costs:	
Magistrate filing fees	192.00
Prothonotary filing fees	200.00
Sheriff (service fees)	<u>155.86</u>

**TOTAL \$ 23,784.94**

Together with continuing interest and additional costs of suit.

Respectfully submitted:

  
 \_\_\_\_\_  
 Michael P. Yeager, Esquire

Dated: November 8, 2010

County Parcel No. \_\_\_\_\_

© 1980

## This Deed,

MADE the First day of April  
in the year nineteen hundred and ninety-two

BETWEEN DUBOIS LITTLE LEAGUE, INC., a Pennsylvania non-profit corporation with an office located P. O. Box 71, DuBois, Pennsylvania, party of the first part, hereinafter referred to as the Grantor

A N D

MARK A. KANE and ANNETTE M. KANE, husband and wife, of the City of DuBois, Clearfield County, Pennsylvania, parties of the second part, hereinafter referred to as the Grantees

WITNESSETH, That in consideration of

Two Thousand (\$2,000.00) ----- Dollars,

in hand paid, the receipt whereof is hereby acknowledged, the said grantor does hereby grant and convey to the said grantees,

ALL that certain tract of land designated as Lot No. 65, Section 8A "Barbuda" in the Treasure Lake Subdivision in Sandy Township, Clearfield County, Pennsylvania, recorded in Misc. Docket Map File No. 25. Excepting and reserving therefrom and subject to:

1. All easements, rights of way, reservations, restrictions and limitations shown or contained in prior instruments of record and in the aforesaid recorded plan.
2. The Declaration of Restrictions, Treasure Lake, Inc., recorded in Misc. Book Vol. 146, page 476; all of said restrictions being covenants which run with the land.
3. All minerals and mining rights of every kind and nature.
4. A lien for all unpaid charges or assessments as may be made by Treasure Lake, Inc., its successors, or Treasure Lake Property Owners Association, Inc.; which lien shall run with the land and be an encumbrance against it.

ALSO ALL that certain tract of land designated as Lot No. 66, Section 8A "Barbuda" in the Treasure Lake Subdivision in Sandy

EXHIBIT

a



Township, Clearfield County, Pennsylvania, recorded in Misc. Docket Map File No. 25. Excepting and reserving therefrom and subject to:

1. All easements, rights of way, reservations, restrictions and limitations shown or contained in prior instruments of record and in the aforesaid recorded plan.
2. The Declaration of Restrictions, Treasure Lake, Inc., recorded in Misc. Book Vol. 146, page 476; all of said restrictions being covenants which run with the land.
3. All minerals and mining rights of every kind and nature.
4. A lien for all unpaid charges or assessments as may be made by Treasure Lake, Inc., its successors, or Treasure Lake Property Owners Association, Inc., which lien shall run with the land and be an encumbrance against it.

BEING the same premises which became vested in the Grantor herein and Patricia S. Ebaugh by deed of Treasure Lake Inc., dated January 6, 1992, and recorded in Clearfield County Deed Book 1439, page 241.

## NOTICE

In accordance with the provisions of "The Bituminous Mine Subsidence and Land Conservation Act of 1966", I/we, the undersigned grantee/grantees, hereby certify that I/we know and understand that I/we may not be obtaining the right of protection against subsidence resulting from coal mining operations and that the purchased property may be protected from damage due to mine subsidence by a private contract with the owners of the economic interest in the coal. I/we further certify that this certification is in a color contrasting with that in the deed proper and is printed in twelve point type preceded by the word "notice" printed in twenty-four point type.

Witness:

*Susan M. Hartzfeld*

*Mark A. Kane*  
Annette M. Kane

This 6th day of April 1992

AND the said grantor will GENERALLY WARRANT AND FOREVER DEFEND the property hereby conveyed.

IN WITNESS WHEREOF, the said Grantor has caused this Deed to be signed by its President or a Vice President, and also by its Secretary, or by an Assistant Secretary, or by its Treasurer, or by an Assistant Treasurer, and its Corporate Seal to be hereunto affixed, the day and year first above written.

Attest:

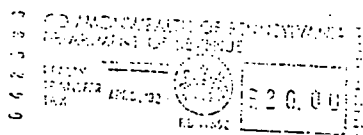
*Joseph D. Shick*  
Secretary

DUBOIS LITTLE LEAGUE, INC.

By

*Ronald H. Guthridge*  
President

(CORPORATE SEAL)



DUBOIS AREA SCHOOL DISTRICT  
1% REALTY TR. REFER TAX

AMOUNT \$ 20.00

PAID 4-30-92 KAREN L. STARCK  
Date Agent

## CERTIFICATE OF RESIDENCE

I hereby certify, that the precise residence of the grantees herein is as follows:  
6-1/2 South Main Street  
DuBois, PA 15801

*[Signature]*  
Attorney or Agent for Grantee

Commonwealth of Pennsylvania

County of Clearfield

ss.

On this, the 30th day of April, 1992, before me, the undersigned officer, personally appeared Ronald H. Guthridge, who acknowledged himself to be the President of DUBOIS LITTLE LEAGUE, INC. the foregoing corporation, and that as such, he, being authorized by such corporation to do so, executed the foregoing deed for the purpose therein contained by signing his name thereon as such.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

*Susan M. Hartz*  
My Commission Expires  
NOTARY SEAL  
SUSAN M. HARTZ, NOTARY PUBLIC  
City of DuBois, Clearfield County  
My Commission Expires August 16, 1993

Commonwealth of Pennsylvania

County of \_\_\_\_\_ } ss.

VOL 1457 PAGE 242

I HEREBY CERTIFY that on this \_\_\_\_\_

day of \_\_\_\_\_

A.D. 19 \_\_\_\_\_, before me, the subscriber, a  
Notary Public in and for said Commonwealth and County, personally appeared \_\_\_\_\_  
the attorney named in the foregoing Indenture,  
and by virtue and in pursuance of the authority therein conferred upon him, acknowledged the said  
INDENTURE to be the act and deed of the said  
to the intent that the same may be duly recorded.

WITNESS my hand and Notarial Seal the day and year aforesaid.

My Commission Expires \_\_\_\_\_

Notary Public

I HEREBY CERTIFY, that the precise address of the grantee herein is \_\_\_\_\_

CLEARFIELD COUNTY  
DEED BOOK OF RECORD  
TIME 10:51 AM 4-30-92  
BY Blakley & Jones  
Fees 13.50  
Karen L. Starck, Recorder

Commonwealth of Pennsylvania

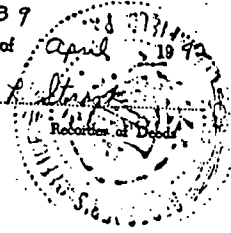
County of Clearfield } ss.

RECORDED in the Office for Recording of Deeds, etc., in and for said County, in  
Deed Book No. 1457 Vol \_\_\_\_\_, Page 239

WITNESS my Hand and Official Seal this 30th day of April 1992

My Commission Expires \_\_\_\_\_  
First Monday in January, 1996

Karen L. Starck



State Tax 20.00  
Dubois Adm 10.00  
Landy Sp 10.00

BLAKLEY & JONES  
ATTORNEYS AT LAW  
90 BEAVER DRIVE, BOX 6  
DUBOIS, PENNSYLVANIA 15801

Entered of Record 4-30 1992, 10:51 AM Karen L. Starck, Recorder

## This Indenture

VOL 1751 PAGE 379

Made the 22ND day of MARCH in the year of our Lord one thousand nine hundred and 96

Between Recreation Land Corporation, a Pennsylvania corporation (hereinafter called "Grantor"), and

MARK A. KANE AND ANNETTE M. KANE

TENANCY BY ENTIRETY

(hereinafter called "Grantee")

Witnesseth, That the Grantor, for and in consideration of the sum of TWO THOUSAND NINE HUNDRED AND 00/100

Dollars, receipt of which is hereby acknowledged,

does grant, bargain, sell, release, convey and confirm, unto the Grantee his heirs and assigns, forever,

All that certain tract of land designated as Lot No. 91 Section No. BA in the Treasure Lake Subdivision in

Sandy Township, Clearfield County, Pennsylvania recorded in the Recorder of Deeds office in Misc. Docket Map File No. 25

Excepting and reserving therefrom and subject to:

1. All easements, rights of way, reservations, restrictions and limitations shown or contained in prior instruments of record and in the aforesaid recorded plan.
  2. The Declaration of Restrictions, Treasure Lake of Pennsylvania, Inc. recorded in Misc Book Vol. 146 p. 476 as amended, Misc. Book Vol. p. and Misc. Book Vol. p. all of said restrictions being covenants which run with the land.
  3. All minerals and mining rights of every kind and nature.
  4. A lien for all unpaid charges or assessments as may be made by Grantor or Treasure Lake Property Owners' Association, Inc., which lien shall run with the land and be an encumbrance against it.
  5. The right of the owner and/or operator of any recreational facilities within the said Treasure Lake Subdivision to assess fees and charges against Grantee, its heirs, administrators, executors, successors and assigns for the use and/or maintenance of any such facilities which if unpaid, shall become a lien upon the land and be an encumbrance against it.
- Being a portion of the premises which became vested in the Grantor by deed of Treasure Lake of Pennsylvania, Inc. and dated November 28, 1979 and recorded in Clearfield County Deed Book Volume 790, page 450.

To have and to hold the premises hereby conveyed to the Grantee's own use.

The Grantor warrants generally the property hereby conveyed to the Grantee, his heirs, executors and administrators.

NOTICE - THIS DOCUMENT DOES NOT SELL, CONVEY, TRANSFER, INCLUDE OR INSURE THE TITLE TO THE COAL AND RIGHT OF SUPPORT UNDERNEATH THE SURFACE LAND DESCRIBED OR REFERRED TO HEREIN, AND THE OWNER OR OWNERS OF SUCH COAL MAY HAVE THE COMPLETE LEGAL RIGHT TO REMOVE ALL OF SUCH COAL AND, IN THAT CONNECTION, DAMAGE MAY RESULT TO THE SURFACE OF THE LAND AND ANY HOUSE, BUILDING OR OTHER STRUCTURE ON OR IN SUCH LAND. THE INCLUSION OF THIS NOTICE DOES NOT ENLARGE, RESTRICT OR MODIFY ANY LEGAL RIGHTS OR ESTATES OTHERWISE CREATED, TRANSFERRED, EXCEPTED OR RESERVED BY THIS INSTRUMENT. (This notice is set forth in the manner provided in Section 1 of the Act of July 17, 1957, P.L. 984, as amended.)

**NOTICE** THE UNDERSIGNED, AS EVIDENCED BY THE SIGNATURE(S) TO THIS NOTICE AND THE ACCEPTANCE AND RECORDING OF THIS DEED, (IS, ARE) FULLY COGNIZANT OF THE FACT THAT THE UNDERSIGNED MAY NOT BE OBTAINING THE RIGHT OF PROTECTION AGAINST SUBSIDENCE, AS TO THE PROPERTY HEREIN CONVEYED, RESULTING FROM COAL MINING OPERATIONS AND THAT THE PURCHASED PROPERTY, HEREIN CONVEYED, MAY BE PROTECTED FROM DAMAGE DUE TO MINE SUBSIDENCE BY A PRIVATE CONTRACT WITH THE OWNERS OF THE ECONOMIC INTEREST IN THE COAL. THIS NOTICE IS INSERTED HEREIN TO COMPLY WITH THE BITUMINOUS MINE SUBSIDENCE AND LAND CONSERVATION ACT OF 1966.

WITNESS:

*Frank Taylor*

*Mark A. Kane*  
Grantee  
*Annette M. Kane*  
Grantee

VOL 1751 PAGE 380

This Deed is made under and by virtue of a Resolution of the Board of Directors of the Grantor duly passed at a regular meeting thereof, held on the 3rd day of March, A.D., 1980, a full quorum being present, authorizing and directing the same to be done.  
In Witness Whereof, The said Corporation, Grantor, has caused its common and corporate seal to be affixed to these presents by the hand of its Vice President, and the same to be duly attested by its Assistant Secretary. Dated the day of \_\_\_\_\_, 1980.

(CORPORATE SEAL) and year first above written.  
Attest:  
RECREATION LAND CORPORATION  
Kenneth E. Hendryck Vice President  
Assistant Secretary  
State of Mississippi  
County of Jackson

On this, the 3rd day of April, 1996, before me, a notary public, the undersigned officer, personally appeared Kenneth E. Hendryck, who acknowledged himself to be the Vice President of Recreation Land Corporation, a corporation, and that he as such Vice President, being authorized to do so, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation by himself as Vice President.  
In witness whereof, I hereunto set my hand and official seal at Large.  
My Commission expires Jan. 21, 1998.  
BONDED THRU NOTARY PUBLIC UNDERWRITERS  
Notary Public  
JACKSON, MISSISSIPPI

### Certificate of Residence

I hereby certify that the precise residence of the grantee herein is  
571 TREASURE LAKE  
Street/Route  
DUBOIS, PA 15801  
City State Zip  
(For Grantee)  
(For Grantee)

CLEARFIELD COUNTY 4/11/96  
ENTERED OF RECORD  
TIME 12:36 PM  
BY Karen L. Starck  
FEES 13.30  
KAREN L. STARCK, Recorder  
PAID 4/19/96  
AMOUNT \$ 29.00  
KAREN L. STARCK  
Agent  
Data

Deed

RECREATION LAND CORPORATION

To

FEES \$ 13.30

APR 19 1996

PS. 11352

20.00

RECREATION LAND CORP.  
P.O. BOX 687  
DUBOIS, PA 15801

Commonwealth of Pennsylvania, ss:  
County of Clearfield  
Recorded on this 15th day of April, A.D. 1996, in the Recorder's Office of the said County in Deed Book, Vol. 1751, page 379.

Given under my hand and the seal of the said office the day and year aforesaid.

My Commission Expires  
First Monday in January, 2000

Karen L. Starck  
Recorder.

Entered of Record April 19, 1996, 12:36 PM Karen L. Starck, Recorder

143 130  
12. TREASURE LAKE PROPERTY OWNERS ASSOCIATION, INC.

A. Every person before acquiring title, legal or equitable, to any lot in the Subdivisions must be a member of the Treasure Lake Property Owners Association, Inc., a Pennsylvania non-profit corporation, herein referred to as "Association", and no such person shall acquire such title until he has been approved for membership in the Association, nor shall the owner of a lot or lots in the Subdivisions convey title to said lot or lots to any person who has not been approved in writing for membership in the Association, provided, however, that such membership is not intended to apply to those persons who hold an interest in any such lot merely as security for the performance of an obligation to pay money, e.g., mortgages, deeds of trust or real estate contract purchases. However, if such a person should realize upon his security and become the real owner of a lot, he will then be subject to all the requirements and limitations imposed in these Restrictions on owners of lots within the Subdivision and on members of the Association, including those provisions with respect to alienation and the payment of an annual charge.

B. The general purpose of the Association is to further and promote the community welfare of property owners in the Subdivisions.

C. The Association shall be responsible for the maintenance, repair and upkeep of the private streets and parks owned by it within the Subdivisions. The Association shall also promulgate and enforce all regulations necessary for the use and enjoyment of such streets and parks and such other properties as it may from time to time own.

D. The Association shall have all the powers that are set out in its Articles of Incorporation and all other powers that belong to it by operation of law, including (but not limited to) the power to levy against every member of the Association a uniform annual charge per single-family residential

EXHIBIT

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lot within the Subdivisions, the amount of said charge to be determined by the Board of Directors of the Association after consideration of current maintenance needs and future needs of the Association, for the purposes set forth in its Articles of Incorporation; provided, however, that the uniform annual charge shall in no event be less than \$30.00 per year for road maintenance and after a clubhouse is built, \$7.50 per month for membership in the club. No such charge shall ever be made against, or be payable by, the Declarant, the Association itself, or any corporation or corporations that may be created to acquire title to, and operate, the water or sewer utilities serving the area, or any lakes, dams, beaches, lake access tracts, marinas, golf courses, tennis courts, swimming pools, clubhouse grounds, campgrounds, or other like recreational facilities.

- (a) Every such charge so made shall be paid by the member to the Association or its designee on or before the first day of May of each year, for the ensuing year. The Board of Directors of the Association shall fix the amount of the annual charge per lot on or before the first day of April of each year, and written notice of the charge so fixed shall be sent to each member.
- (b) If any such charge shall not be paid when due, it shall bear interest from the date of delinquency at the rate of six per cent (6%) per annum. The annual charge shall, if unpaid within 30 days of its due date, become a lien or encumbrance upon the land and acceptance of each deed, not including acceptance by a mortgagee, shall be construed to be a covenant to pay the charge. The

Association may publish the names of the delinquent members, and may record a lien to secure payment of the unpaid charges, plus costs and reasonable attorneys' fees. Every such lien may be foreclosed at any time. In addition to the remedy of lien foreclosure, the Association shall have the right to sue for such unpaid charges, interest costs, and reasonable attorneys' fees, in any court of competent jurisdiction as for a debt owed by any delinquent member to the Association. Every person who shall become the owner of the title (legal or equitable) to any lot in the Subdivisions by any means shall be conclusively held to have consented to pay the Association or its designees all charges that the Association shall make pursuant to any paragraph or subparagraph of these Restrictions or its By-laws. Any lot acquired is taken subject to the lien for any prior unpaid charges.

- (c) The Association shall upon demand at any time furnish a certificate in writing, signed by an officer of the Association certifying that the charges on a specified lot have been paid or that certain charges against said lot remain unpaid, as the case may be. A reasonable charge may be made by the Board or Directors of the Association for the issuance of these certificates. Such certificate shall be conclusive evidence of payment of any charges that have been paid.



E. The fund accumulated as the result of the charges levied by the Association shall be used exclusively to promote the recreational facilities of, and the health, safety and welfare of the members of the Association and in particular for the improvement and maintenance of the streets, those areas designated as parks, and other property within the Subdivisions which shall have been conveyed to or acquired by the Association.

F. The lien of a mortgage or deed of trust representing a first lien placed upon any lot for the purpose of permanent financing and/or constructing a residence or other improvement thereon recorded in accordance with the laws of Pennsylvania, shall be, from the date of recordation, superior to any and all such liens provided for herein.

G. The Board of Directors of the Association shall have the right to suspend the voting rights (if any) and the right to use of the recreational facilities of the Association or of Declarant of any member:

- (a) For any period during which any Association charge (including the charges and the fines, if any, assessed under paragraphs 12-D, 13 and 14 of these Restrictions) owed by the member remains unpaid;
- (b) During the period of any continuing violation of the restrictive covenants for the Subdivision, after the existence of the violation shall have been declared by the Board of Directors of the Association;
- (c) During the period that any utility bill for water or sewer service rendered to the member or associate member shall remain unpaid.



STATEMENT  
**TREASURE LAKE PROPERTY OWNERS ASSOCIATION, INC.**

13 TREASURE LAKE • DuBOIS, PA 15801-9099  
PHONE: (814) 371-0711 • FAX: (814) 375-9072 • www.treasurelakepoa.com

SECTION NO. & LOT

8A/66 & 8A/91

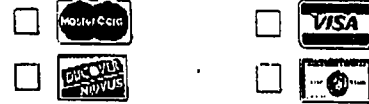
DATE OCT. 19, 2004

INDICATE AMOUNT PAID \$ \_\_\_\_\_

PAYMENT METHOD: ☐ CASH ☐ CHECK ☐ CREDIT CARD  
(Complete information below)

0: [

KANE, MARK A & ANNETTE M  
571 TREASURE LAKE  
DUBOIS, PA. 15801



CARD # \_\_\_\_\_

EXPIRATION DATE \_\_\_\_\_

SIGNATURE \_\_\_\_\_

DETACH AND RETURN THIS PORTION WITH YOUR REMITTANCE

DATE	EXPLANATION	REFERENCE	AMOUNT
8A/66	2003 ASSESSMENT		\$ 488.00
	2004 ASSESSMENT		493.00
	interest		39.10
	BALANCE		\$1020.10
8A/91	2003 ASSESSMENT		\$ 488.00
	2004 ASSESSMENT		493.00
	interest		39.00
	BALANCE		\$1020.10
	fees		96.00
	TOTAL BALANCE		\$2136.20

THE DECLARATION OF RESTRICTIONS PROVIDE FOR COLLECTION OF ASSESSMENTS.

ANNUAL ASSESSMENT DUE ON OR BEFORE MAY 1.

INTEREST ADDED, ON UNPAID BALANCE, AT RATE OF 1/2% PER MONTH (NOT TO EXCEED 6% PER ANNUM).

TREASURE LAKE PROPERTY OWNERS ASSOCIATION • 13 TREASURE LAKE • DuBOIS, PA 15801-9099

PHONE: (814) 371-0711 • FAX: (814) 375-9072 • www.treasurelakepoa.com



**TREASURE LAKE PROPERTY OWNERS ASSOCIATION, INC.  
MARK A. KANE & ANNETTE M. KANE  
ASSESSMENTS DUE**

**Lot 66, Section 8A**

<b><u>Year</u></b>	<b><u>Annual Assessment</u></b>
2005	\$ 535.04
2006	580.00
2007	634.00
2008	<u>692.00</u>
<b>TOTAL AMOUNT DUE LOT 66, SECTION 8A</b>	
	<b>\$ 2,441.04</b>

**Lot 91, Section 8A**

<b><u>Year</u></b>	<b><u>Annual Assessment</u></b>
2005	\$ 535.04
2006	580.00
2007	634.00
2008	<u>692.00</u>
<b>TOTAL AMOUNT DUE LOT 91, SECTION 8A</b>	
	<b><u>2,441.04</u></b>
<b>TOTAL AMOUNT DUE BOTH LOTS</b>	
	<b>\$ 4,882.08</b>

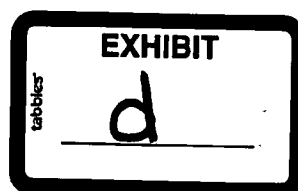
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION - LAW

TREASURE LAKE PROPERTY OWNERS	*	
ASSOCIATION, INC.,	*	
Plaintiff	*	
	*	No. 05 - 106 - CD
vs	*	
	*	
	*	
MARK A. KANE and ANNETTE M. KANE,	*	
Defendants	*	
TREASURE LAKE PROPERTY OWNERS	*	
ASSOCIATION, INC.,	*	
Plaintiff	*	
	*	
vs	*	No. 09 - 238 - CD
	*	
	*	
MARK A. KANE and ANNETTE M. KANE,	*	
Defendants	*	

**INTERROGATORIES TO DEFENDANTS**

**TO: Mark A. Kane  
Annette M. Kane  
571 Treasure Lake  
DuBois, PA 15801**

TAKE NOTICE that you are hereby required, pursuant to the Pennsylvania Rules of Civil Procedure, Rules 4005 and 4006, to file with the Court and serve upon the undersigned, within thirty (30) days after services of these Interrogatories, your full and complete Answers under oath.



These shall be deemed to be continuing Interrogatories. If, between the time of your answers and the time of trial of this case, you or anyone acting on your behalf learn of any further information not contained in your Answers, you shall promptly furnish said information to the undersigned by supplemental Answers.

Failure to provide the requested information and/or documents or to make objections within the term specified may subject you to sanctions under Rule 4019 of the Pennsylvania Rules of Civil Procedure.

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Michael P. Yeager, Esquire

Attorney for Plaintiff

## **DEFINITIONS**

As used in the following Interrogatories, the following defined terms have the meaning ascribed to them:

(a) "Person" and "Party" shall refer to any individual, partnership, corporation, or other entity, and any director, officer, employee, agent, representative, or other person acting or purporting to act for any of them.

(b) "You" and/or "Your" means Defendants, Mark A. Kane and/or Annette M. Kane, your agents and employees and others acting on your behalf or in furtherance of your position with regard to the claims and causes of action at issue in this case.

(c) "Document" shall mean any written, printed, typed, and/or other graphic material of any kind or nature, and all mechanical and electronic sound recordings or transcripts thereof, however produced or reproduced, or whether sent, received and/or either, including but not limited to: letters and other correspondence; memoranda; notes; work papers; transcripts, policies and contracts of insurance; claim notices and information forms; minutes or reports of meeting; telephone or other conversations; interviews or conferences; reports; legal documents; financial records; invoices; statistical records; appointment books and diaries; charts; graphs; designs; drawings and blueprints; maps; plans or surveys; computer cards; information which is preserved or stored in or on any type of recording, tape, film or electronic memory device; tapes or printouts; films or videotapes; microfilm or microfiche reports, opinions; messages; objects, papers, books and anything similar to any of the foregoing however designated or denominated by the party to whom these Interrogatories are propounded, in possession and/or control of such party of his/her/their/its officers, employees, agents or representatives or known by the party to whom these Interrogatories are propounded to exist. It shall also mean all copies of documents by whatever means made, and all drafts whether or not later finalized, including any marginal notes or other markings appearing on any such "document" or "writing". The term also includes photographs (see Pa. R.C.P. No. 4009 (a)(l)).

(d) "Identify", when used in reference to an individual person, means to state his full name and present address; his present, or last known position and business affiliation; his positions and business affiliation at the time in question; his educational background; his experience working, for or on behalf of the party to whom these Interrogatories are propounded and/or other companies; his area of responsibility and title at the time in question.

(e) "Identify", when used in reference to a corporation, or other business entity, means to state its full name, principal place of business or corporate headquarters and the type of business in which it is engaged or otherwise conducted by it.

(f) "Identify" or "Identity", when used elsewhere herein, means to state your total knowledge and information concerning the subject matter.

(g) "Identify", when used in reference to a document or writing, means to state the date and author; type of document (e.g., letter, memorandum, report, chart, etc.) title or some other means of identification; its proprietary classification; if a drawing or blue print, its drawing number, revision date, and number of sheets; its present location and custodian, and to identify each person who presently, and at all relevant times, had custody, control or access. If a copy of the document will be provided voluntarily, its should be attached and/or included with the Answers to these Interrogatories it is provided in answer to should be identified. If any such document was, but is no longer in your possession or subject to your control, state what disposition was made of it.

(h) "Written statement" shall mean: (1) a written statement signed or otherwise adopted or approved by the person making it, or (2) a stenographic, mechanical, electrical or other recording or a transcript thereof, which is a substantially verbatim recital of an oral statement given by the person making it and contemporaneously recorded or preserved or stored in or on any type of recording, tape, film or electronic memory device.

(i) "Oral statement" shall mean an oral utterance made by any person, at any time, concerning the liability arising out of the subject matter of this action.

#### **FURTHER INSTRUCTION**

(a) In the event that exact information requested in any of these Interrogatories is not available or cannot be ascertained at this time, please answer such Interrogatory with the information available, using estimates or approximations where necessary, and indicate that such estimates or approximations have been used.

(b) In the event that information requested in these Interrogatories is not available or cannot be ascertained at the time of answering these Interrogatories, but such information becomes available or is ascertained thereafter and prior to trial of this case, please submit Supplemental Answers hereto upon such occurrence.

(c) The party propounding these Interrogatories reserves the right to serve further Interrogatories or sets of Interrogatories dealing with subjects covered herein or with subjects not covered herein.

(d) If the information furnished herein is not within the personal knowledge of the person who signs the Affidavit under oath answering these Interrogatories, then and in that event, identify each such other person who assisted and participated in preparing or supplying any of the information given in the Answers to or replied upon in preparing the Answers to these Interrogatories.

(e) Attention is directed to the fact that a copy of the "Notice of Service of Interrogatories", which was filed with the Prothonotary, has been mailed to all other counsel of record in this case.

(f) All Interrogatories which request that you attach copies of statements or documents (including photographs) with your Answers are a request for production of documents under the provisions of Pa. R.C.P. No. 4009.

(g) Number. Gender. Tense. The singular shall include the plural, and the plural, the singular. Words used in the masculine gender shall include the feminine and neuter. Words used in the past or present tense shall include the future. [See Pa. R.C.P. No. 102].



## **INTERROGATORIES**

1. Defendants claim to have made numerous attempts to satisfy assessment obligations but have been thwarted by Plaintiff's refusal to accept the same. Please provide the following with regard to those attempts:

(a) The date(s) upon which attempts were made.

Answer:

- July 3, 2003 paid lot 8A66 assessments and boat fee \$593.00
- November 2005 paid POA office two checks
- May 2006 paid POA office two check
- July 2006 meeting 2006, 2007 denied
- November 2008 meeting denied

(b) The manner and form of any attempted payment relative to satisfaction of assessment obligations.

Answer:

- Defendant offered check then asked for explanation of resistance, reply every time has been: don't know, don't care, if you don't like it move

(c) The individual(s) employed by or affiliated with Plaintiff to which the attempts to satisfy were directed.

Answer:

- Matt Begley
- Mrs. Gordon
- Paul Miller
- George Tuttur
- Steve Tuller
- Dan Flanders
- T.L. Security Department

(d) The specific manner in which a refusal to accept the same was communicated.

Answer:

- All employees responded with: cannot help because of litigation

2. If payment as aforesaid was made by check, please provide information as to whether Plaintiff accepted the check and deposited the proceeds (as noted from any cancelled check information).

Answer:

- Checks were written by the defendant, accepted, then disposed of by agents for the Plaintiff, receipts were received

3. State with particularity what benefits of membership in Plaintiff, the Treasure Lake Property Owners Association, Inc. that Defendants have been denied.

Answer:

- The Defendant was denied benefits including, driving, use of amenities such as golf, boating, campgrounds, swimming, and use of the beach. Everything that assessments pay for was denied.

4. Describe what responsibilities and requirements Plaintiff might have imposed on the Defendants which have made performance of their various obligations to pay assessments otherwise impossible.

Answer:

- In April 2000 Property control stopped construction and denied trees already approved. As a result construction could not resume until lot was cleared. POA denied

construction and started to fine Kane's 2003 offered permit to complete construction. Fines were enforced without explanation. Additionally Mark lost his job and income while expenses tripled. These problems continue today.

5. Describe the conduct Plaintiff has exhibited that has resulted in the unanticipated change in the ability of Defendants to perform and to otherwise make performance with regard to payment of assessment obligations impracticable.

Answer:

- The Plaintiff has denied all privileges to the Defendants since 2003 but has continued to charge assessments. Every time Defendant attempts to resolve the problem POA refuses to answer. The Defendants have continued to offer payment at least 3 times per year.

6. Describe how Plaintiff has created a perceived atmosphere of exclusion and to otherwise engage in conduct designed to result in the actual exclusion of the Defendants with regard to their membership rights in the Plaintiff?

Answer:

- When the Defendant has called Security they have refused to respond. Security officer told the Kane's to "go to Hell." Plaintiff denied payments

7. Defendants have claimed damages relative to deprivation of beneficial and peaceful use of their property and amenities of the Plaintiff that have otherwise caused them to expend additional sums of money in seeking living quarters and replacement activity outlets. With regard to expenditure of such additional monies, living quarters and replacement activity outlets, please provide specific information as follows:

(a) Please provide the specific additional sums of money

Defendants have been required to make relative to seeking living quarters and to otherwise replace activity outlets supposedly guaranteed by the Plaintiff.

Answer:

- Doctor bills due to poor health and loss of income.
- Cost to boat elsewhere caused by loss of boat privileges
- Cost to golf elsewhere caused by loss of golf privileges
- Denied wood cutting permits resulted in extra heating bills
- Complaints by security with zero citations causing undue stress, anxiety, and uncomfortable living conditions

(b) Please provide the name and location of any living quarters

on which Defendants were obligated to expend additional money.

Answer:

- Caymon landing storage \$3,000.00
- Sam Stanton \$2,500.00
- Nancy Dukes \$1,000.00
- 8A 66 Liens denied Garage 1994-1996

(c) Please provide the name and location of any replacement

activity outlets on which Defendants were obligated to expend additional money.

Answer:

- Jim Delp excavation
- Olin Tucker Tree removal
- Norman Miller excavation

(d) Please provide the dates and amounts of all funds made in connection in with seeking living quarters and replacing activity outlets as aforesaid.

Answer:

- Provided in (b)

8. Defendants have also claimed that they and their invited guests have been prevented from using and enjoying the private streets and parks of the Treasure Lake Subdivision and otherwise peacefully accessing their property. In connection with those claims, please provide the following information:

(a) Describe how Defendants and/or their invited guests prevented from using and enjoying the private streets and parks of the Treasure Lake Subdivision and peacefully accessing their property.

Answer:

- Denied back gate card, beach use, golfing, boating membership, driving, wood cutting privileges

(b) The dates when Defendants and their invited guests were otherwise prevented from using and enjoying the private streets and parks of the Treasure Lake Subdivision.

Answer:

- 2003 thru 2009

(c) The dates on which Defendants have otherwise been denied peaceful access to their property.

Answer:

- Provided in (b)

(d) The names and addresses of any witnesses as to the denial of Defendants' right to use and enjoy the private streets and parks of Treasure Lake.

Answer:

- George Tuttur
- Steve Tuller
- Matt Begely
- Cheryl Adams
- Paul Miller

(e) The names and addresses of any witnesses as to the denial of Defendants' peaceful access to their property.

Answer:

- Sandy Township Police attempted arrest at front gate for receiving POA sticker

9. Please provide the names and addresses of all witnesses Defendants plan to utilize at the trial of this case.

Answer:

- George Tuttor
- Olin Tucker
- Paul Miller
- Matt Begely
- Cheryle Adams
- Dan Flanders
- Joe Kane
- Ron Hicks

Respectfully submitted:

---

Michael P. Yeager, Esquire  
Attorney for Plaintiff

*Law Office*  
**MICHAEL P. YEAGER**  
P. O. Box 752  
110 NORTH SECOND STREET  
CLEARFIELD, PENNSYLVANIA 16830  
(814) 765-9611  
FAX (814) 765-9503

February 1, 2005

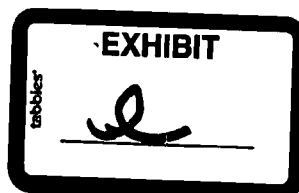
TREASURE LAKE PROPERTY OWNERS  
ASSOCIATION, INC.  
13 Treasure Lake  
DuBois, PA 15801

## **STATEMENT**

### **FOR PROFESSIONAL SERVICES RENDERED:**

#### **Miscellaneous Matters**

1/3/05	Travel to and attend DuBois Magistrate hearing (Kane) conference with Matt Begley;	
	Total time 2.6 hours @ \$275/	\$ 455.00





*Law Office*  
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(814) 765-9811  
FAX (814) 765-9503  
March 1, 2005

TREASURE LAKE PROPERTY OWNERS  
ASSOCIATION, INC.  
13 Treasure Lake  
DuBois, PA 15801

**STATEMENT**

**FOR PROFESSIONAL SERVICES RENDERED:**

**Mark Kane Lawsuit**

2/4/05      Review appeal, draft Complaint;  
2/9/05      Continued draft of Complaint, etc., review exhibits;  
**Total time 1.7 hours @ \$115/hr.**

**195.50**

*Law Office*  
**MICHAEL P. YEAGER**  
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(814) 765-9811  
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April 1, 2005

TREASURE LAKE PROPERTY OWNERS  
ASSOCIATION, INC.  
13 Treasure Lake  
DuBois, PA 15801

## **STATEMENT**

### **FOR PROFESSIONAL SERVICES RENDERED:**

#### **Miscellaneous**

3/3/05	Correspondence to Andy Gates re: Gillman Release;	
3/7/05	Calls Lori Corcoran & Dave Andrews, correspondence to Dave Andrews;	
3/11/05	File & serve Amended Kane Complaint;	n/c
3/17/05	Receive & review re: Francie light, call Matt Begley;	
<b>Total time 2.5 hours @ \$115/hr.</b>		

**287.50**

*Law Office*  
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May 2, 2005

TREASURE LAKE PROPERTY OWNERS  
ASSOCIATION, INC.  
13 Treasure Lake  
DuBois, PA 15801

## **STATEMENT**

### **FOR PROFESSIONAL SERVICES RENDERED:**

#### **Kane Lawsuit**

4/4/05      Calls R. Hicks (Kane atty) re: Response to  
Complaint;  
4/19/05      Review & correspondence to Kane attorney re:  
response;  
4/20/05      Receive & review Answer, New Matter & Counterclaim,  
begin draft of Reply, correspondence M. Begley;  
4/25/05      Call M. Begley;  
4/29/05      Conference with M. Begley re: responses;  
**Total time 11.9 hours @ \$115/hr.**

**1,368.50**

*Law Office*  
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June 1, 2005

TREASURE LAKE PROPERTY OWNERS  
ASSOCIATION, INC.  
13 Treasure Lake  
DuBois, PA 15801

## **STATEMENT**

### **FOR PROFESSIONAL SERVICES RENDERED:**

#### **Mark Kane Lawsuit**

5/2/05	Continued review, calls R. Hicks, correspondence, calls Matt Begley;
5/9/05	Call Matt Begley;
5/16/05	Review Bylaws & continued draft of Reply;
5/17/05	Continued review & preparation of Reply to New Matter;
5/19/05	Review & draft, calls Matt Begley, continued draft of Reply;
5/20/05	Continued review & research re: Rules & Regulations/fines;
5/23/05	Continued review of violations, etc.;
5/24/05	Call & conference with M. Begley;
5/25/05	Continued review, draft Reply;
5/26/05	Continued review, call & correspondence with Matt Begley;
5/31/05	Calls re: filing & service, courthouse re: filing;
	<b>Total time 13.1 hours @ \$150/hr.</b>

**\$ 1,965.00**

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May 1, 2007

TREASURE LAKE PROPERTY OWNERS  
ASSOCIATION, INC.  
13 Treasure Lake  
DuBois, PA 15801

## **STATEMENT**

### **FOR PROFESSIONAL SERVICES RENDERED:**

#### **Kane Lawsuit**

4/6/07	Review file information, call Matt Begley;
4/9/07	Continued review of file, call & conference with Matt Begley, review re: status, default, service, etc.;
4/25/07	Review re: status/history;
<b>Total time 2.6 hours @ \$160/hr.</b>	

**416.00**

*Law Office*  
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FAX (814) 765-9503

December 3, 2007

TREASURE LAKE PROPERTY OWNERS  
ASSOCIATION, INC.  
13 Treasure Lake  
DuBois, PA 15801

## **STATEMENT**

### **FOR PROFESSIONAL SERVICES RENDERED:**

#### **Kane Lawsuit**

11/5/07	Call & conference with Ron Hicks;	
11/6/07	Review, draft Notice & correspondence re: Default, call Matt Begley, draft Notice of Intent;	
11/7/07	Courthouse review re: filing Declaration (n/c), complete correspondence & service;	
11/15/07	Prepare and send default notices;	n/c
11/19/07	Review re: Procedure for Default & relief;	
11/26/07	Research re: timing, courthouse review re: status, prepare for filing;	
11/29/07	Courthouse filing of Praeipce for Default Judgment, call Matt Begley;	

**Total 3.8 hours @ \$160/hr.**

**\$ 608.00**

*Law Office*  
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FAX (814) 765-9503

January 2, 2008

TREASURE LAKE PROPERTY OWNERS  
ASSOCIATION, INC.  
13 Treasure Lake  
DuBois, PA 15801

## **STATEMENT**

### **FOR PROFESSIONAL SERVICES RENDERED:**

#### **Kane Lawsuit**

12/10/07 Receive & review Petition, Answer, New Matter & Counterclaim,  
research, calls, courthouse review re: filing information &  
scheduling, correspondence to Matt Begley;  
12/11/07 Continued review re: procedure & response;  
12/12/07 Calls Ron Hicks & Matt Begley, review re: settlement,  
correspondence to Ron Hicks;  
12/14/07 Call & conference with Matt Begley;  
12/17/07 Review re: settlement;  
12/18/07 Calls Matt Begley & R. Hicks, review re: settlement;  
**Total time 6.1 hours @ \$160/hr.**

**\$ 976.00**

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FAX (814) 765-9503

January 31, 2008

TREASURE LAKE PROPERTY OWNERS  
ASSOCIATION, INC.  
13 Treasure Lake  
DuBois, PA 1580

## **STATEMENT**

### **FOR PROFESSIONAL SERVICES RENDERED:**

#### **Kane Lawsuit**

1/15/08	Calls Ron Hicks & Matt Begley;
1/16/08	Call Matt Begley re: status;
1/21/08	Review re: status;
1/22/08	Review, calls R. Hicks, M. Kane & M. Begley;
1/23/08	Attend Hearing conference, conference with M. & A. Kane, call & conference with M. Begley, draft Reply to New Matter & Counterclaim, correspondence M. Begley, draft correspondence M. Kane re: garage;
1/24/08	Continued draft of misc. correspondence;
	<b>Total time 4.7 hours @ \$160/hr.</b>

**752.00**



*Law Office*  
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FAX (814) 765-9503

March 3, 2008

TREASURE LAKE PROPERTY OWNERS  
ASSOCIATION, INC.  
13 Treasure Lake  
DuBois, PA 15801

## **STATEMENT**

### **FOR PROFESSIONAL SERVICES RENDERED:**

#### **Kane Lawsuit**

2/8/08 Review, continued draft of Reply;  
2/12/08 Continued draft of Reply, calls M. Begley &  
correspondence, courthouse filing of Reply &  
service;  
2/13/08 Correspondence Mr. & Mrs. Kane & Ron Hicks;  
2/14/08 Call M. Begley re: contact;  
**Total time 3.1 hours @ \$160/hr.**

**496.00**

*Law Office*  
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FAX (814) 765-9503

April 1, 2008

TREASURE LAKE PROPERTY OWNERS  
ASSOCIATION, INC.  
13 Treasure Lake  
DuBois, PA 15801

**STATEMENT**

**FOR PROFESSIONAL SERVICES RENDERED:**

**Kane Lawsuit**

3/17/08      Receive & review proposal, call & conference with Matt  
                 Begley, draft response to Ron Hicks proposal;  
3/18/08      Continued draft & correspondence to Ron Hicks;  
3/19/08      Complete correspondence, call Matt Begley;  
                 **Total time 1.8 hours @ \$160/hr.**

**\$ 288.00**

*Law Office*  
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FAX (814) 765-9503

June 2, 2008

TREASURE LAKE PROPERTY OWNERS  
ASSOCIATION, INC.  
13 Treasure Lake  
DuBois, PA 15801

## **S T A T E M E N T**

### **FOR PROFESSIONAL SERVICES RENDERED:**

#### **Kane Lawsuit**

5/7/08	Review & correspondence with attorney;
5/8/08	Correspondence attorney for Kane re: status & timing;
5/28/08	Calls & conference with M. Begley, receive & review file, correspondence;
5/29/08	Review, call M. Begley;
5/30/08	Call & conference with M. Begley, receive & review information re: shed, set back & garage, draft correspondence Kane attorney;
<b>Total time 2.8 hours @ \$160/hr.</b>	

**\$ 448.00**

*Law Office*  
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FAX (814) 765-9503

June 27, 2008

TREASURE LAKE PROPERTY OWNERS  
ASSOCIATION, INC.  
13 Treasure Lake  
DuBois, PA 15801

**STATEMENT**

**FOR PROFESSIONAL SERVICES RENDERED:**

**Kane Lawsuit**

6/16/08	Receive & review response, review Restrictions, correspondence Matt Begley;
6/17/08	Review correspondence, courthouse review map & photo, call & conference with M. Begley, review & draft correspondence R. Hicks;
6/18/08	Continued review, call M. Begley & draft correspondence;
	<b>Total time 3.4 hours @ \$175/hr.</b>

**595.00**

*Law Office*  
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P. O. Box 752  
110 NORTH SECOND STREET  
CLEARFIELD, PENNSYLVANIA 16830  
(814) 765-9611  
FAX (814) 765-9503

August 1, 2008

TREASURE LAKE PROPERTY OWNERS  
ASSOCIATION, INC.  
13 Treasure Lake  
DuBois, PA 15801

## **S T A T E M E N T**

### **FOR PROFESSIONAL SERVICES RENDERED:**

#### **Kane Lawsuit**

6/30/08      Calls & conference with R. Hicks & M. Begley;  
7/15/08      Call M. Begley, draft status, correspondence;  
**Total time 1.1 hours @ \$175/hr.**

**192.50**

*Law Office*  
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P. O. Box 752  
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(814) 765-9811  
FAX (814) 765-9303

February 2, 2009

TREASURE LAKE PROPERTY OWNERS  
ASSOCIATION, INC.  
13 Treasure Lake  
DuBois, PA 15801

**STATEMENT:**

**FOR PROFESSIONAL SERVICES RENDERED:**

**Kane Assessment Lawsuit**

1/6/09      Review re: Complaint & assessments;  
1/12/09      Continued review re: amounts due, redraft Complaint  
                 & correspondence;  
1/13/09      Correspondence & complete draft, review for Exhibits;  
**Total time 2.1 hours @ \$175/hr.**

**367.50**

*Law Office*  
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P. O. Box 752  
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(814) 765-9811  
FAX (814) 765-9503

April 1, 2009

TREASURE LAKE PROPERTY OWNERS  
ASSOCIATION, INC.  
13 Treasure Lake  
DuBois, PA 15801

**STATEMENT:**

**FOR PROFESSIONAL SERVICES RENDERED:**

**Kane Lawsuit**

3/3/09      Calls Matt Begley, review Complaints;  
3/12/09      Call & conference with Jim Naddeo, review file  
                 information;  
4/13/09      Review, call Matt Begley re: offer;  
3/17/09      Call & conference with Matt Begley, review, calls Jim  
                 Naddeo re: offer parameters;  
3/31/09      Call & conference with Matt Begley, draft responses re:  
                 settlement;

**Total time 2.9 hours @ \$175/hr.**

**507.50**

*Law Office*  
**MICHAEL P. YEAGER**  
P. O. Box 752  
110 NORTH SECOND STREET  
CLEARFIELD, PENNSYLVANIA 16830  
(814) 765-9611  
FAX (814) 765-9503

May 1, 2009

TREASURE LAKE PROPERTY OWNERS  
ASSOCIATION, INC.  
13 Treasure Lake  
DuBois, PA 15801

**STATEMENT:**

**FOR PROFESSIONAL SERVICES RENDERED:**

**Kane Lawsuit**

4/22/09 Call Matt Begley re: settlement, correspondence re:  
recent offer & response;  
4/23/09 Calls Matt Begley & Jim Naddeo re: current assessment  
totals & non-inclusion in settlement discussions;  
4/24/09 Calls Jim Naddeo & Matt Begley, draft correspondence  
re: assessment;  
4/20/09 Calls Matt Begley & Jim Naddeo, correspondence re:  
settlement;

**Total time 3.2 hours @ \$175/hr.**

**\$ 560.00**



*Law Office*  
**MICHAEL P. YEAGER**  
P. O. Box 752  
110 NORTH SECOND STREET  
CLEARFIELD, PENNSYLVANIA 16830  
(814) 765-9611  
FAX (814) 765-9503

June 1, 2009

TREASURE LAKE PROPERTY OWNERS  
ASSOCIATION, INC.  
13 Treasure Lake  
DuBois, PA 15801

**STATEMENT:**

**FOR PROFESSIONAL SERVICES RENDERED:**

**Kane Lawsuit**

5/4/09 Call & correspondence to Matt Begley re: settlement;  
5/7/09 Calls Matt Begley & Jim Naddeo, draft correspondence  
re: incident & settlement;  
5/11/09 Calls Matt Begley & courthouse review re: liens;  
5/12/09 Call Matt Begley, correspondence Jim Naddeo;  
**Total time 2.2 hours @ \$175/hr.**

**385.00**

*Law Office*  
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FAX (814) 765-9503

July 1, 2009

TREASURE LAKE PROPERTY OWNERS  
ASSOCIATION, INC.  
13 Treasure Lake  
DuBois, PA 15801

**STATEMENT:**

**FOR PROFESSIONAL SERVICES RENDERED:**

**Kane Lawsuit**

6/1/09	Calls M. Begley & J. Naddeo, review re: status & Notice & correspondence;	n/c
6/8/09	Review correspondence, correspondence re: time;	
	<b>Total time 1.2 hours @ \$175/hr.</b>	<b>\$ 210.00</b>

*Law Office*  
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FAX (814) 765-9503

August 3, 2009

TREASURE LAKE PROPERTY OWNERS  
ASSOCIATION, INC.  
13 Treasure Lake  
DuBois, PA 15801

**STATEMENT:**

**FOR PROFESSIONAL SERVICES RENDERED:**

**Kane Lawsuit**

7/13/09	Courthouse re: possible default, review docket & Answers, New Matter & Counterclaim, call Dan Johnston, review file information re: payment;
7/14/09	Call Dan Johnston;
7/16/09	Call & conference with Pat Lavbelle, receive documents from courthouse, draft Reply to New Matter & Counterclaim;
7/27/09	Continued draft of Reply;
7/28/09	Complete draft of Reply, correspondence to Dan Johnston, prepare for filing & service;
7/24/09	Review & forward;
7/31/09	Call Pat Lavelle, courthouse filing & service of Reply;
	<b>Total time 5.2 hours @ \$175/hr.</b>

**910.00**

*Law Office*  
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FAX (814) 765-9503

August 31, 2009

TREASURE LAKE PROPERTY OWNERS  
ASSOCIATION, INC.  
13 Treasure Lake  
DuBois, PA 15801

**STATEMENT:**

**FOR PROFESSIONAL SERVICES RENDERED:**

**Kane Lawsuit**

8/7/09	Review, draft Motion & Order for Consolidation, correspondence;	
8/d13/09	Call Dan Johnston;	
8/14/09	Calls re: Motion, verification;	n/c
8/17/09	Review re: procedure, conference with Dan Johnston re: Interrogatories;	
8/18/09	Review Reply & Counterclaim, draft Interrogatories & Motion for Production, correspondence re: Consolidation;	
8/19/09	Continued review & draft Interrogatories & Motion for Production;	
<b>Total time 5.6 hours @ \$175/hr.</b>		<b>\$ 980.00</b>

*Law Office*  
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FAX (814) 765-9503

November 2, 2009

TREASURE LAKE PROPERTY OWNERS  
ASSOCIATION, INC.  
13 Treasure Lake  
DuBois, PA 15801

**STATEMENT:**

**Kane Lawsuit**

10/7/09	Review re: status, Motion for Sanctions;		
10/9/09	Correspondence Pat Lavelle re: Sanctions;		
10/15/09	Calls Pat Lavelle, review re: assets due/claims;		
10/16/09	Call & conference with Pat Lavelle re: discovery & claims;		
10/26/09	Call Dan Johnston;	n/c	
	<b>Total time 2.0 hours @ \$175/hr.</b>		<b>350.00</b>

*Law Office*  
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FAX (814) 765-9503

December 1, 2009

TREASURE LAKE PROPERTY OWNERS  
ASSOCIATION, INC.  
13 Treasure Lake  
DuBois, PA 15801

**STATEMENT:**

**FOR PROFESSIONAL SERVICES RENDERED:**

**Kane Lawsuit**

11/6/09	Correspondence to Kane attorney;	
11/16/09	Review re: status, calls Don Johnston & Pat Lavelle, review & research re: Sanctions;	
11/18/09	Continued review & research re: Sanctions;	n/c
11/20/09	Call Dan Johnston, review re: discover;	
11/23/09	Receive & review Answers, research re: verification; prepare for deposition, additional information request;	
<b>Total time 3.1 hours @ \$175/hr.</b>		<b>\$ 542.50</b>

*Law Office*  
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FAX (814) 765-9503

January 4, 2010

TREASURE LAKE PROPERTY OWNERS  
ASSOCIATION, INC.  
13 Treasure Lake  
DuBois, PA 15801

**STATEMENT:**

**FOR PROFESSIONAL SERVICES RENDERED:**

**Miscellaneous matters**

12/1/09	Call & conference with P. Lavelle re: discovery status & possible Kane lawsuit settlement; Total time .2 hour @ \$175/hr.	\$ 35.00
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*Law Office*  
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(814) 765-9811  
FAX (814) 765-9503

February 1, 2010

TREASURE LAKE PROPERTY OWNERS  
ASSOCIATION, INC.  
13 Treasure Lake  
DuBois, PA 15801

**STATEMENT:**

**FOR PROFESSIONAL SERVICES RENDERED:**

**Kane Lawsuit**

1/12/10      Review re: status, call Pat Lavelle re: status  
                 verification;  
1/25/10      Review information, correspondence with Pat  
                 Lavelle & Dan Johnston;  
                 **Total time 1.2 hours @ \$175/hr.**

**210.00**



*Law Office*  
**MICHAEL P. YEAGER**  
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(814) 765-9611  
FAX (814) 765-9503

March 1, 2010

TREASURE LAKE PROPERTY OWNERS  
ASSOCIATION, INC.  
13 Treasure Lake  
DuBois, PA 15801

**STATEMENT:**

**FOR PROFESSIONAL SERVICES RENDERED:**

**Kane Lawsuit**

2/2/10      Calls Dan Johnston re: deposits, call attorney re:  
check endorsements, copies & affidavit, review  
file re: settlement information;  
2/3/10      Call Dan Johnston, correspondence Pat Lavelle;  
2/24/10     Call Dan Johnston, draft correspondence re: settlement  
demand;  
2/25/10     Continued review & correspondence re: settlement,  
review & prepare Certificate of Readiness, review re:  
arbitration;  
**Total time 3.5 hours @ \$175/hr.**

**\$ 612.50**

*Law Office*  
**MICHAEL P. YEAGER**  
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(814) 765-9611  
FAX (814) 765-9503  
April 1, 2010

TREASURE LAKE PROPERTY OWNERS  
ASSOCIATION, INC.  
13 Treasure Lake  
DuBois, PA 15801

**STATEMENT:**

**FOR PROFESSIONAL SERVICES RENDERED:**

**Kane Lawsuit**

3/5/10 Review re: assessment amounts;  
3/9/10 Review & correspondence to Dan Johnston;  
3/25/10 Call Dan Johnston, review re: amount due & correspondence;  
**Total time 1.5 hours @ \$175/hr.**

**\$ 262.50**

*Law Office*  
**MICHAEL P. YEAGER**  
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FAX (814) 765-9503

June 1, 2010

TREASURE LAKE PROPERTY OWNERS  
ASSOCIATION, INC.  
13 Treasure Lake  
DuBois, PA 15801

**STATEMENT:**

**FOR PROFESSIONAL SERVICES RENDERED:**

**Kane Lawsuit**

5/6/10      Review & call P. Lavelle re: discovery status;  
7/27/10      Conference with P. Lavelle re: status/counter-offer;  
**Total time .2 hours @ \$175/hr.**

n/c  
**\$ 35.00**

*Law Office*  
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(814) 765-9611  
FAX (814) 765-9503

August 2, 2010

TREASURE LAKE PROPERTY OWNERS  
ASSOCIATION, INC.  
13 Treasure Lake  
DuBois, PA 15801

**STATEMENT:**

**FOR PROFESSIONAL SERVICES RENDERED:**

**Miscellaneous Matters**

7/2/10 Call Dan Johnston, review & prepare for scheduling  
Kane arbitration;

TOTAL TIME .3 hour @ \$175/hr.

\$ 52.50

*Law Office*  
**MICHAEL P. YEAGER**  
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FAX (814) 765-9503

September 1, 2010

TREASURE LAKE PROPERTY OWNERS  
ASSOCIATION, INC.  
13 Treasure Lake  
DuBois, PA 15801

**STATEMENT:**

**FOR PROFESSIONAL SERVICES RENDERED:**

**Kane Lawsuit**

8/12/10 Receive & review correspondence & correspondence re:  
arbitration;  
8/16/10 Call Pat Lavelle re: hearing;  
8/24/10 Correspondence re: hearing rescheduling;  
**Total time 1.1 hours @ \$175/hr.**

**\$ 192.50**

*Law Office*  
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FAX (814) 765-9503

November 1, 2010

TREASURE LAKE PROPERTY OWNERS  
ASSOCIATION, INC.  
13 Treasure Lake  
DuBois, PA 15801

**STATEMENT:**

**FOR PROFESSIONAL SERVICES RENDERED:**

**Kane Lawsuit**

10/22/10      Review re: evidence & testimony for hearing;  
10/25/10      Review & prepare for hearing;  
**Total time 1.4 hours @ \$175/hr.**

**\$ 245.00**

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION - LAW

TREASURE LAKE PROPERTY OWNERS  
ASSOCIATION, INC., \*

Plaintiff

vs

MARK A. KANE and ANNETTE M. KANE,  
Defendants

No. 05 - 106 - CD

TREASURE LAKE PROPERTY OWNERS  
ASSOCIATION, INC.,

Plaintiff

vs

MARK A. KANE and ANNETTE M. KANE,  
Defendants

No. 09 - 238 - CD

PLAINTIFF'S TRIAL MEMORANDUM  
(ENFORCEABILITY OF ASSESSMENT)

REAL AND PERSONAL COVENANTS

Covenants as they relate to real estate can be either personal or real covenants. Personal covenants are restricted by the people affected in that they are those between people who agreed to them; and are enforceable as between those parties, their successors or assignees. However, other covenants are more than "personal" in application but are equally enforceable, even to current parties in interest.



### REAL COVENANTS

Real covenants are those so closely connected with the realty that their benefits or burdens pass with the real estate to subsequent owners or current parties in interest. DeSanno v. Earle, 117 A. 200, 273 Pa. 265 (1922); P.L.E. Covenants, Section 18; Black's Law Dictionary, 294.

Courts have repeatedly looked to the intention of the parties from the wording of the covenants to determine whether such a covenant runs with the land to such subsequent owners. In DeSanno, supra, the Pennsylvania Supreme Court described the test for determining whether covenants run with the land as follows:

"The test in determining whether a particular covenant runs with the land is the intention of the parties and to ascertain such intent resort may be had to the words of the covenant read in the light of the surroundings of the parties and the subject of the grant." 273 Pa. at 270.

Additionally, there appears to be no special method of creation. The Court in McCloskey v. Kirk, 243 Pa. 319, 90 A. 73 (1914) outlined the possibilities as to formation as follows:

"The manner in which restrictions limiting the use of land is created may be by reservation in the deed, by a condition annexed to a grant, by a covenant, or even by parol agreement of the grantees. When created by covenant it runs with the land." 243 Pa. at 323.

See also Adams v. Field, 297 Pa. 247, 146 A. 889 (1929) and J. C. Grille, Inc. Liquor License Case, 181 Pa. Super. 456, 124 A.2d 659 (1956).



The classic requirements for covenants that run with the land have been developed through a long history of case law and summarizations thereof. Initially, some "privity of estate" must exist to bring the rights and responsibilities of the covenants through time from the original parties to the lot owners as they currently exist. There is no question in the instant case but that the Plaintiff is the Treasure Lake Property Owners Association, Inc. described in the Declaration of Restrictions; and the Defendants are current lot owners within the area affected by those Restrictions. The Restrictions create and otherwise describe the functions of the Plaintiff in this action in Paragraph 12 thereof. All of the individual lot owners, and particularly the Defendants, represent successors in interest to individuals who may have originally purchased lots from the Declarant or Developer at Treasure Lake.

Secondly, the benefit of use of the land as described or as enforced in the covenant must clearly touch or concern the land. There is very little question but that the Declaration of Restrictions, for the most part, describe protections that touch and concern the land in question and its continuing and future characterization. Finally, the language in the covenant must refer to and ultimately apply to successors in interest. The Declaration of Restrictions clearly indicate that the intention was for the covenants to run with the land. Paragraph 3 indicates that the same were made for the mutual and reciprocal benefit of each and every lot and were intended to create mutual, equitable servitudes upon each of said lots in favor of each and all of the other lots, to create reciprocal rights, create privity of contract and estate and were intended to "...operate as covenants running with the land...".

### COVENANTS/CHARGES/LIENS

Unfortunately, there are few Pennsylvania cases which appear to construe real covenants running with the land which impose a charge or lien against the realty. In Bellevue Park Association v. Snyder, 35 Dauphin 360 (1931), the Dauphin County Court dealt with a situation similar to that at hand and concluded that the covenants in that case ran with the land and included yearly upkeep charges to be used for improvements and upkeep of land and streets in the development area. The Court then permitted the third party entitled to the yearly charge to enforce the same as against a current owner and ultimately collect the same. See also P.L.E. Covenants, Section 18, footnote "Upkeep Charges".

The Pennsylvania Supreme Court then went to some lengths in reviewing this concept of a covenant imposing a charge or a lien in Birchwood Lake Community Association, Inc. v. Comis, 442 A.2d 304 (1982). Initially, the Court specifically held that such a covenant imposing a lien or charge is not technically a "restrictive" covenant and therefore not one that must, in its interpretation, be strictly construed against the grantor. On the contrary, the Court felt it more appropriate to give effect to the intention of the parties as expressed at the time. That language should be interpreted in the light of the subject matter, the apparent object or purpose of the parties, and the conditions existing when it was made. Birchwood, supra. at 307, quoting Parker v. Hough, 420 Pa. 7, 12-13 215 A.2d 667, 670 (1966).

The Court then went on to describe that such covenants imposing charges could run with the land, bind subsequent owners and be collected therefrom.


In relating this analysis to the present case, it must

initially be remembered that every deed to every lot owned by the Defendants contains language referring to the fact that the sales were subject to the Declaration of Restrictions and to the further possibility of liens for the assessment charges. Otherwise, as indicated before, the Declarations themselves were clearly intended to run with the land; and that therefore, the charge imposed by the Plaintiff pursuant to those Restrictions is collectible from the present owner Defendants.

#### CONCLUSION

Therefore, Plaintiff argues that the assessment charges in question arose from covenants that ran with the land and can be collected from current parties in interest of lots within the Treasure Lake Subdivision. Comparing the charges to the analysis of the Supreme Court in Birchwood Lakes, supra, such charges can also be enforced as contracts both expressed in the documentation and implied from the circumstances in question.

Respectfully submitted:

  
\_\_\_\_\_  
Michael P. Yeager, Esquire  
Attorney for Plaintiff

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION - LAW

TREASURE LAKE PROPERTY OWNERS  
ASSOCIATION, INC.,

Plaintiff

vs

MARK A. KANE and ANNETTE M. KANE,  
Defendants

No. 05 - 106 - CD

TREASURE LAKE PROPERTY OWNERS  
ASSOCIATION, INC.,

Plaintiff

vs

MARK A. KANE and ANNETTE M. KANE,  
Defendants

No. 09 - 238 - CD

PLAINTIFF'S TRIAL MEMORANDUM  
(LAWYER AS A WITNESS)

HISTORY

On October 16, 1987, the Supreme Court of Pennsylvania entered an Order adopting and promulgating the Rules of Professional Conduct (hereinafter the "Rules"). Accordingly, the Rules then became effective on April 1, 1988.

The Rules followed adoption of the Model Rules of Professional Conduct promulgated by the American Bar Association by more than four years. Prior to the adoption of the Rules, Pennsylvania lawyers were governed by the Pennsylvania Code of Professional Responsibility.

RULE 3.7  
LAWYER AS WITNESS

(a) A lawyer shall not act as advocate at a trial in which the lawyer is likely to be a necessary witness except where:

(1) The testimony relates to an uncontested issue;



(2) The testimony relates to the nature and value of legal services rendered in the case;

(3) Disqualification of the lawyer would work substantial hardship on the client.

(b) A lawyer may act as advocate in a trial in which another lawyer in the lawyer's firm is likely to be called as a witness unless precluded from doing so by Rule 1.7 or Rule 1.9.

### DISCUSSION

Certainly, prohibiting lawyers as witnesses is often debated; and various theories have been offered to continue the prohibition. Among these theories are confusion of the Court in separating the attorney's advocacy from his testimony, the semblance of impropriety, the inability of the lawyer to isolate the two roles respectively, and potential ineffectiveness of the lawyer because his testimony is impeachable. However, even though the ethical constraint appears to remain, the same has been modified to provide for exceptions as indicated above in Rule 3.7. See Weiherer v. Werley, 422 Pa. 18, 221 A.2d 133 (1966) and Commonwealth v. Turner, 390 Pa. Super. 216, 568 A.2d 622 (1989), appeal denied, 527 Pa. 645, 593 A.2d 418 (1990).

Certainly, Rule 3.7 does not present an absolute prohibition on the attorney's ability to assume the dual role as advocate and witness. The language clearly carves out exceptions which include situations in which testimony would relate to the nature and value of the legal services rendered by the lawyer in that case.

Furthermore, the Supreme Court of Pennsylvania has held that such testimony can be acceptable in certain circumstances and that the question as to whether an attorney can so act is within the

discretion of the trial court and the professional conscience of the attorney. See Security Trust Co. v. Stapp, 332 Pa. 9, 1 A.2d 236 (1938).

#### CONCLUSION

Therefore, in view of the fact that reasonableness of attorney's fees and recovery of the same are issues before this Court in this case, it would seem entirely consistent and appropriate to permit the lawyer who performed the services giving rise to the fees to testify as to the basics of those services and the charges therefor; even though the issue as to "reasonableness" is purely for the Court to determine.

Respectfully submitted:

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Michael P. Yeager, Esquire  
Attorney for Plaintiff

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL ACTION - LAW

TREASURE LAKE PROPERTY OWNERS	*	
ASSOCIATION, INC.,	*	
Plaintiff	*	No. 05 - 106 - CD
vs	*	
	*	
MARK A. KANE and ANNETTE M. KANE,	*	
Defendants	*	
TREASURE LAKE PROPERTY OWNERS	*	
ASSOCIATION, INC.,	*	
Plaintiff	*	No. 09 - 238 - CD
vs	*	
	*	
MARK A. KANE and ANNETTE M. KANE,	*	
Defendants	*	

PLAINTIFF'S TRIAL MEMORANDUM  
(MEMBERSHIP/OWNERSHIP & CHARGE)

Defendants may argue that they may somehow not be considered members of the Plaintiff, Treasure Lake Property Owners Association, Inc. and accordingly are not responsible for the annual charge. However, the evidence will clearly indicate that Defendants continue to be considered members. They became owners and paid assessments until the years involved in this controversy, appeared and participated at meetings and otherwise enjoyed the benefits of membership and ownership at Treasure Lake.

They argue that because they were not recognized at a meeting in view of their non-payment of annual assessment charges, that they were no longer members. However, they never received any written indication as to removal of membership rights. At best, they were simply not recognized at a meeting and any votes submitted by them were not tabulated in view of the continuing non-payment of assessments. They continued to be members but not in good standing.



Plaintiff argues that it had the right to fail to recognize and suspend voting rights. Paragraph 12.G. of the Declaration of Restrictions provides as follows:


"G. The Board of Directors of the Association shall have the right to suspend the voting rights (if any) and the right to use of the recreational facilities of the Association or of Declarant of any member

"(a) For any period during which any Association charge (including the charges and the fines, if any, assessed under Paragraph 12.D., 13 and 14 of these Restrictions owed by the member remains unpaid..." (emphasis supplied).

Furthermore, Plaintiff argues that the charge in question is more property construed as being a responsibility of ownership of a lot within the Subdivision rather than necessarily one of membership. The deeds as aforesaid clearly advise purchasers of lots as to the imposition of said charge.

Even though the Declaration of Restrictions speaks to approval as to membership, actual practice at the Treasure Lake Subdivision has been for both the Plaintiff and owners of the lots to consider purchasers of lots within the Treasure Lake Subdivision as automatically becoming members of the Treasure Lake Property Owners Association, Inc. There is no advanced process as to approval and Plaintiff simply accepts all owners as members. Furthermore, such an assessment charge appears to have been construed by Pennsylvania courts as more appropriately a covenant as to ownership rather than membership. See Indian Mountain Lake Civic Association v. Coyle, 422 A.2 698 and 424 A.2 943 (1981).

Respectfully submitted:

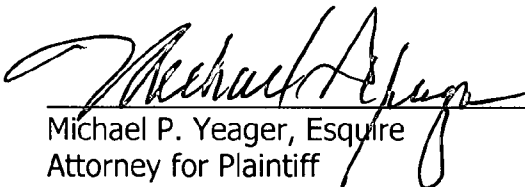
  
Michael P. Yeager, Esquire  
Attorney for Plaintiff



### **CERTIFICATE OF SERVICE**

I, Michael P. Yeager, Esquire, hereby certify that I served a true and correct copy of the foregoing Pre-Trial Memorandum by first class mail, this 8th day of November, 2010 to the following:

Patrick Lavelle, Esquire  
Attorney for Defendants  
25 East Park Avenue, Suite #4  
DuBois, PA 15801

  
Michael P. Yeager, Esquire  
Attorney for Plaintiff