

NO. CV14,902

WATERWOOD IMPROVEMENT  
ASSOCIATION, INC.

VS.

GEORGE H. RUSSELL and  
UNIVERSAL ETHICIAN CHURCH

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IN THE DISTRICT COURT OF

SAN JACINTO COUNTY, TEXAS

258<sup>TH</sup> JUDICIAL DISTRICT

**PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT**

TO THE HONORABLE JUDGE OF THE COURT:

Pursuant to Tex. R. Civ. P. 166(a) and (c) and 166a(i), WATERWOOD IMPROVEMENT ASSOCIATION, INC., ("Plaintiff" and/or "WIA"), files this Motion for Summary Judgment ("Motion), and respectfully shows the Court as follows:

**I. SUMMARY OF THE ARGUMENT**

The parties previously entered into Mediation Settlement Agreements ("MSA") to resolve disputes between the parties. These disputes and MSAs are identified in more detail below.

There are no disputed or genuine issues of material fact existing in the case, and the only issues are legal issues. Accordingly, this case can and should be decided on summary judgment.

Defendants have raised several affirmative defenses of "waiver, laches and estoppel, along with unclean hands, the parole (sic) evidence rule, statute of frauds, and necessity." Those affirmative defenses can all be disposed of by summary judgment because the evidence defeats such defenses as a matter of law, or there is no evidence sufficient to raise a genuine issue of material fact with respect to one or more elements of the defenses.

Pursuant to Texas Rule of Civil Procedure 166a, Plaintiff moves for summary judgment on (a) its claim that Russell violated the permanent injunction in the 2016 Agreed Final Judgment;

Plaintiff's Motion for Summary Judgment

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(b) their claim of breach of contract of the January 2016 MSA, the August 2016 MSA and the 2016 Agreed Final Judgment; (c) their application for a permanent injunction based on Defendants' continued breach, repudiation and violation of the 2016 Agreed Final Judgment, the January 2016 MSA and the August 2016 MSA; and (d) Plaintiff's request for attorney's fees.

Also pursuant to Texas Rules of Civil Procedure 166a and 166a(i), Plaintiff moves for summary judgment on Defendants' affirmative defenses of "waiver, laches and estoppel, along with unclean hands, the parole (sic) evidence rule, statute of frauds, and necessity" and Defendants' counterclaims of "A. Frivolous Lawsuit", alleging that "Texas law differentiates between signs and purple marks, making this action frivolous in law, particularly given that Texas' trespass law prescribes the use of purple paint markings to provide notice to potential trespassers" and "B. Abuse of Process", alleging that "[t]he bringing of this action and the initial TRO obtained constitute the tort of abuse of process as it is legal process brought for a subversive and nefarious reason – to extort additional funds from Collins (sic??)." <sup>1</sup>

As a matter of law, Plaintiff is entitled to summary judgment on its claims and on the Defendants' affirmative defenses and counterclaims outlined above and discussed in more detail herein.

## II. SUMMARY JUDGMENT EVIDENCE

Plaintiff incorporates by reference, the same as if fully copied and set forth at length herein, the Plaintiff's Exhibits identified by Appendix A hereto, all filed contemporaneously with this Plaintiff's Motion for Summary Judgment in support of this Motion for Summary Judgment and Plaintiff's Second Amended Petition For Enforcement by Contempt, For Injunctive Relief and

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<sup>1</sup> Defendant's Original Answer and Counterclaim – Plaintiff's Exhibit No. 44.

Declaratory Judgment.

### III. STATEMENT OF FACTS

#### Parties and Definitions

1. WATERWOOD IMPROVEMENT ASSOCIATION, INC., ("Plaintiff" and/or "WIA"), is a Texas Non-Profit Corporation and is the property owners association for the Waterwood development subdivision in San Jacinto County, Texas, as said subdivision is depicted upon plats thereof recorded in the Plat Records of San Jacinto County, Texas.<sup>2</sup>
2. GEORGE H. RUSSELL, ("George Russell"), with a mailing address of 1401 19<sup>th</sup> Street, Huntsville, Texas 77340, has previously been served with citation and is represented by attorneys Lanny Ray and Hans Barcus with the law firm of Cantrell, Ray and Barcus, LLP, of Huntsville, Texas.
3. The UNIVERSAL ETHICIAN CHURCH (the "UEC"), is a Texas non-profit corporation. Defendant UEC has appeared and is represented by attorneys Lanny Ray and Hans Barcus with the law firm of Cantrell, Ray and Barcus, LLP, of Huntsville, Texas.
4. "Russell" and/or "Defendants" refers collectively to George H. Russell, Suzanne B. Russell, The Universal Ethician Church and The Ethician Foundation.
5. "First Russell Lawsuit" refers to Cause No. CV13,114, entitled "Waterwood Improvement Association, Inc. vs. George H. Russell and Suzanne B. Russell", in the 411<sup>th</sup> Judicial District Court of San Jacinto County, Texas, filed June 14, 2011.<sup>3</sup>

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<sup>2</sup> See 2004 Management Certificate for list of sections and plat information – Plaintiff's Exhibit No. 3.

<sup>3</sup> Plaintiff's Exhibit No. 6.

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6. "Second Russell Lawsuit" refers to Cause No. CV13,946, entitled "Waterwood Improvement Association, Inc. vs. George H. Russell and Suzanne B. Russell", in the 411<sup>th</sup> Judicial District Court, filed July 14, 2014.<sup>4</sup>
  7. "2016 Agreed Final Judgment" refers to the Judgment signed and filed on March 14, 2016, settling the Second Russell Lawsuit.<sup>5</sup>
  8. "Third Russell Lawsuit" refers to Cause No. CV14,606, entitled "George Russell and Universal Ethician Church v. Waterwood Improvement Association, Inc.", in the 258<sup>th</sup> Judicial District Court of San Jacinto County, Texas, filed April 25, 2016.<sup>6</sup>
  9. "Fourth Russell Lawsuit" refers to Cause No. CV14,902, entitled "Waterwood Improvement Association, Inc. vs. George H. Russell and Universal Ethician Church," in the 258<sup>th</sup> Judicial District Court, San Jacinto County, Texas, filed February 23, 2017.<sup>7</sup>
  10. "May 2012 MSA" refers to the May 22, 2012 Mediation Settlement Agreement in *First Russell Lawsuit*.<sup>8</sup>
  11. "January 2016 MSA" refers to the January 18, 2016 Mediation Settlement Agreement in *Second Russell Lawsuit*.<sup>9</sup>

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<sup>4</sup> Plaintiff's Exhibit No. 9.

<sup>5</sup> Plaintiff's Exhibit No. 1.

<sup>6</sup> Plaintiff's Exhibit Nos. 14, 15.

<sup>7</sup> Plaintiff's Exhibit No. 39.

<sup>8</sup> Plaintiff's Exhibit No. 9 (1A).

<sup>9</sup> Plaintiff's Exhibit No. 11.



12. "August 2016 MSA" refers to the August 25, 2016 Mediation Settlement Agreement in *First Russell Lawsuit*.<sup>10</sup>
13. "Waterwood Parkway" and/or "Parkway" refers to the road and property conveyed to WIA from Russell on March 14, 2016, comprised by two tracts of land described as (a) 18.104 acres of land (also referenced herein as the US 190 Parkway)<sup>11</sup> and (b) 24.73 acres of land (also referenced herein as the FM980 Parkway).<sup>12</sup>
14. "Waterwood Streets" and/or "Waterwood Roads" refers to the following streets described in the 2016 Agreed Final Judgment: "...and any street in Waterwood that borders on property owned by Russell, shall include, but not be limited to, Texas Farm-to-Market 980, the Marina Access Road, together with any roads or streets in the following subdivisions of the Waterwood Community: Augusta Estates, Bass Boat Village A, Bass Boat Village B, Bay Hill, Bay Hill Point, Country Club Estates I, Country Club Estates II, Country Club Estates III, Fairway One, Fairway Village, Greentree Village XI-A, Lakeview Estates, Park Forest, Piney Point, Putters Point, The Beach, The Villas, Tournament Village, Whispering Pines Village 1, and Whispering Pines Village 2."
15. "Exclusion Zone" refers to the 200 feet bordering the Waterwood Parkway and/or Waterwood Streets, as defined and set forth in the 2016 Agreed Final Judgment.<sup>13</sup>

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<sup>10</sup> Plaintiff's Exhibit No. 2.

<sup>11</sup> Special Warranty Deed from The Ethician Foundation to WIA – Plaintiff's Exhibit No. 13.

<sup>12</sup> Special Warranty Deed from The Universal Ethician Church, to WIA – Plaintiff's Exhibit No. 12.

<sup>13</sup> Plaintiff's Exhibit No. 1.

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16. "Sign" means (a) "a mark having a conventional meaning and used in place of words or to represent a complex notion;" (b) "a posted command, warning, or direction;" (c) a piece of paper, wood, etc., with words or pictures on it that gives information about something;" and/or a "posted notice bearing a designation, direction, or command."<sup>14</sup>
  17. "Item" means (a) "warning;" (b) "an object of attention, concern, or interest;" (c) "a single article or unit in a collection, enumeration, or series;" (d) "a bit of information; a detail;" and/or (e) "a piece of information, detail, or note."<sup>15</sup>
  18. "No Trespassing sign(s)" refers to the signs purchased by WIA pursuant to the August 2016 MSA.<sup>16</sup>
  19. "Veterans Cemetery sign" refers to the wrought iron sign designed by WIA pursuant to the August 2016 MSA.<sup>17</sup>
  20. "Plaintiff's Exhibit No. \_\_\_\_" refers to the Exhibit identified by the "Index to Plaintiffs' Exhibits", attached hereto as Appendix "A".

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<sup>14</sup> Plaintiff's Exhibit No. 48 - Excerpts of definitions of "sign" and "item" from Merriam-Webster and Free Dictionaries.

<sup>15</sup> Plaintiff's Exhibit No. 48 - Excerpts of definitions of "sign" and "item" from Merriam-Webster and Free Dictionaries.

<sup>16</sup> Plaintiff's Exhibit No. 20.

<sup>17</sup> Plaintiff's Exhibit Nos. 25, 28.

The Waterwood Development

21. The Waterwood Community ("Waterwood") is a planned residential real estate development that is composed of sections with a main road called the Waterwood Parkway. The original developer was Horizon Properties Corporation and Horizon Development Corporation (referred to herein as "Developer" and/or "Horizon").<sup>18</sup>
22. During the development of Waterwood, on July 26, 1973, the Developer created a non-profit property owners association named "Horizon Villages Improvement Association, Inc." evidenced by the filing of Articles of Incorporation with the Secretary of State for the State of Texas. On March 16, 1973, the name of the Association was changed to Waterwood Improvement Association, Inc., per Articles of Amendment to Articles of Incorporation filed with the Secretary of State.<sup>19</sup>
23. By General Warranty Deed and Declaration of Covenants ("GWD") dated May 14, 1974, and filed May 20, 1974, the Association was established and covenants and restrictions were established. The GWD was eventually impressed on all of the sections that comprise Waterwood.<sup>20</sup>

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<sup>18</sup> 2004 Management Certificate, listing various sections which comprise Waterwood, filed - May 17, 2004 - Plaintiff's Exhibit 3.

<sup>19</sup> Articles of Incorporation, filed July 26, 1973 and Articles of Amendment of Name, filed March 16, 1973 - Plaintiff's Exhibit 4;

<sup>20</sup> General Warranty Deed and Declaration of Covenants, dated May 14, 1974, and filed Vol. 141, pages 802, et seq., on May 20, 1974 - Plaintiff's Exhibit 5.

The Waterwood Parkway

24. On February 13, 1978, the Developer filed plats for Fairway One – Block 1 at Vol. 5, pages 32 and 33 with the San Jacinto County, Texas Clerk. Page 33 of the Plat sets forth the roadway from US Highway 190 (referred to herein separately as the “US190 Parkway”) and from Farm-to-Market 980 to the East end of the Parkways (referred to herein separately as “FM980 Parkway”). US 190 Parkway and FM980 Parkway collectively comprise the Waterwood Parkway.<sup>21</sup>
25. On May 30, 1979, the Developer executed an “Easement” dated May 30, 1979, from Horizon Properties Corporation and Horizon Development Corporation (referred to herein as “Developer”) to the County of San Jacinto, State of Texas, filed at Vol. 185, page 161, Deed Records, San Jacinto County, Texas (referred to herein as “Easement”).<sup>22</sup>
26. On June 11, 1979, the San Jacinto County, Texas Commissioner’s Court accepted the Easement. The Minutes of “Commissioners’ Court Docket”, Regular June 11, 1979, evidenced the acceptance by the County of the Easement concerning the Parkway.<sup>23</sup>
27. After the Developer conveyed the Parkway to Alfred Lethtonen and his wife, a dispute arose concerning the Easement. On January 28, 1983, a Summary Judgment was granted to the Developer, against Lethtonen, in Cause No. 6768, entitled “Horizon Development

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<sup>21</sup> The Parkway was re-surveyed in 2016 as part of the settlement of the *Second Russell Lawsuit*. This survey is part of the Special Warranty Deed from Defendants to W1A – Plaintiff’s Exhibit Nos. 12, 13.

<sup>22</sup> This Easement was filed as Plaintiff’s Exhibit No. 2 in the *First Russell Lawsuit*, which is discussed in more detail below. Plaintiff’s Exhibit No. 6 to Plaintiff’s Original Petition in the *First Russell Lawsuit*.

<sup>23</sup> These Minutes were filed as Plaintiff’s Exhibit No. 3 in the *First Russell Lawsuit*, which is discussed in more detail below. Plaintiff’s Exhibit No. 6 to Plaintiff’s Original Petition in the *First Russell Lawsuit*.



Corporation, et al vs. Alfred Lehtonen, et ux", in the 2<sup>nd</sup> 9<sup>th</sup> Judicial District Court of San Jacinto County, Texas.<sup>24</sup> This decision judicially recognized the rights of San Jacinto County to the Easement and its authority and right to maintain the Parkway.

28. On August 31, 2000, a "Deed Without Warranty" from Horizon Properties Corporation to George H. Russell and Suzanne B. Russell, was filed at Vol. 2000-5582, pages 18791, et seq., Official Public Records, San Jacinto County, Texas. This Deed Without Warranty concerned, in part, the property that comprises the FM980 Parkway.<sup>25</sup>
29. On February 24, 2004, a "General Warranty Deed (With Vendor's Lien Retained)", from Lehtonen Investments II, Ltd., to George H. Russell and Suzanne B. Russell, was filed at Vol. 2004-1305, pages 5908 et seq., Official Public Records, San Jacinto County, Texas. This conveyance concerned, in part, the conveyance of the US190 Parkway.<sup>26</sup>
30. On July 22, 2009, an "Agreement to Maintain Waterwood Parkway" was entered into between Waterwood Improvement Association and San Jacinto County, Texas, and filed at Vol. 09-4818, pages 18604, et seq., Official Public Records, San Jacinto County, Texas.<sup>27</sup>

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<sup>24</sup> This Summary Judgment was filed as Plaintiff's Exhibit No. 4 in the *First Russell Lawsuit*, which is discussed in more detail below. Plaintiff's Exhibit No. 6 to Plaintiff's Original Petition in the *First Russell Lawsuit*.

<sup>25</sup> This Deed Without Warranty was filed as Plaintiff's Exhibit No. 5 in the *First Russell Lawsuit*, which is discussed in more detail below. Plaintiff's Exhibit No. 6 to Plaintiff's Original Petition in the *First Russell Lawsuit*.

<sup>26</sup> This General Warranty Deed was filed as Plaintiff's Exhibit No. 6 in the *First Russell Lawsuit*, which is discussed in more detail below. Plaintiff's Exhibit No. 6 to Plaintiff's Original Petition in the *First Russell Lawsuit*.

<sup>27</sup> This Agreement to Maintain Waterwood Parkway was filed as Plaintiff's Exhibit No. 7 in the *First Russell Lawsuit*, which is discussed in more detail below. Plaintiff's Exhibit No. 6 to Plaintiff's Original Petition in the *First Russell Lawsuit*.

31. On July 22, 2009, the San Jacinto County Commissioner's Court approved the Agreement to Maintain Waterwood Parkway.<sup>28</sup>

*First Russell Lawsuit*

32. After the sale of the Parkway, disputes arose between Russell and WIA over the maintenance of the Parkway, under the Agreement to Maintain Waterwood Parkway between WIA and San Jacinto County, Texas.<sup>29</sup>
33. On July 28, 2009 a letter was sent by WIA's lawyer to George Russell concerning maintenance of the Parkway. Russell was given notice of the agreement between WIA and San Jacinto County, Texas, approved by the Commissioner's Court on July 22, 2009.<sup>30</sup>
34. Unhappy with WIA's maintenance of the Parkway, George Russell started putting signs and other offensive items on the Parkway.<sup>31</sup> Ultimately George Russell, and his wife, Suzanne, began interfering with the maintenance of the Parkway by WIA.<sup>32</sup>
35. On June 14, 2011, Plaintiff filed a lawsuit against the Russells, in Cause No. CV13,114, entitled "Waterwood Improvement Association, Inc. vs. George H. Russell and Suzanne B.

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<sup>28</sup> The Minutes of the Commissioner's Court for July 22, 2009 was filed as Plaintiff's Exhibit No. 8 in the *First Russell Lawsuit*, which is discussed in more detail below. Plaintiff's Exhibit No. 6 to Plaintiff's Original Petition in the *First Russell Lawsuit*.

<sup>29</sup> Agreement to Maintain Waterwood Parkway, filed as Plaintiff's Exhibit No. 7 in the *First Russell Lawsuit*, which is discussed in more detail below. Plaintiff's Exhibit No. 6 to Plaintiff's Original Petition in the *First Russell Lawsuit*.

<sup>30</sup> This Letter was filed as Plaintiff's Exhibit No. 9 in the *First Russell Lawsuit*, which is discussed in more detail below. Plaintiff's Exhibit No. 6 to Plaintiff's Original Petition in the *First Russell Lawsuit*.

<sup>31</sup> Some evidence of this action by Russell was filed as Plaintiff's Exhibit No. 10 in the *First Russell Lawsuit*, which is discussed in more detail below. Plaintiff's Exhibit No. 6 to Plaintiff's Original Petition in the *First Russell Lawsuit*.

<sup>32</sup> Plaintiff's Original Petition, *First Russell Lawsuit* – Plaintiff's Exhibit No. 6.

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Russell,” in the 411<sup>th</sup> Judicial District Court of San Jacinto County, Texas (“*First Russell Lawsuit*”).<sup>33</sup>

36. On June 30, 2011, a hearing was held on WIA’s request for a temporary injunction. After hearing, the trial court granted a temporary injunction, which was signed on July 21, 2011. The Temporary Injunction and Writ was issued prohibiting Russell from interfering with the maintenance of the Roadway. The Temporary Injunction provided, in pertinent part:

12. Notwithstanding the Agreement, Defendants have set upon a course of action to interfere with the rights of WIA under the Agreement. These have included interfering with employees of WIA and contractors for WIA. Most recently Defendants interfered with WIA’s mowing of the Parkway, pursuant to the Agreement.
13. The Court further finds that unless Defendants are restrained from interfering with the rights of Plaintiff under its Agreement with San Jacinto County, Texas, that Plaintiff will suffer irreparable injury, to wit: interference by Defendants resulting in Plaintiff’s breach of its Agreement with San Jacinto County, Texas to maintain the Waterwood Parkway.

Temporary Injunction

Based on the evidence, the Court finds that the following temporary injunction is necessary while this case is pending.

It is therefore ordered that the temporary injunction requested be and is granted as requested, and that the clerk of this court issue a writ of injunction, pending final hearing and determination of this case, restraining and enjoining defendant from interfering with the rights of Plaintiff, and those persons acting under the direction of Plaintiff, in performance of Plaintiff’s duties under its Agreement with San Jacinto County, identified above, and Defendants are ordered not to interfere with Plaintiff’s mowing of the Waterwood Parkway, including but limited to the mowing of the right of ways which are part of the easement of San Jacinto County, as set forth above. The Defendants are ENJOINED from physically going on the Waterwood Parkway easement while the Waterwood Improvement Association, Inc. is fulfilling its contractual

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<sup>33</sup> Plaintiff’s Exhibit No. 6 to Plaintiff’s Original Petition, with exhibits, in the *First Russell Lawsuit*.



obligations.

The temporary injunction granted herein shall be effective immediately and shall be binding on Defendants; on their agents, servants, employees, and attorneys; and on those persons in active concert or participation with them who receive actual notice of this order by personal service or otherwise.<sup>34</sup>

37. Russell appealed the Temporary Injunction to the Ninth Court of Appeals in Beaumont. By opinion delivered November 17, 2011, the Court of Appeals rejected Russell's three issues:

This is an appeal from the trial court's grant of a temporary injunction restraining George and Suzanne Russell from interfering with the Waterwood Improvement Association's ("WIA") maintenance of Waterwood Parkway. Appellants argue that the trial court erred in finding that WIA established a probable right to recovery, in improperly restricting their right to free speech, and in drafting the temporary injunction order. We affirm the order of the trial court.

In affirming the trial court's order, the Court of Appeals rejected "Russell's argument that there was not sufficient evidence in the record to support the trial court's finding that WIA established a probable right to the relief sought. We overrule issue one." It also rejected Russell's argument that "the injunction could be interpreted as a restriction of protective speech, we conclude that it is a reasonable restriction on the time, place and manner of such speech. *See id.* We overrule issue two." It further rejected Russell's argument that:

...the temporary injunction order sets forth an overbroad remedy because it prohibits the Russells from being physically present on the Waterwood Parkway easement during mowing. The Russells contend that they have a right to use their property in any manner which does not interfere with the use and maintenance of the Parkway as a public roadway. However, evidence was presented at the temporary injunction hearing that supports WIA's claim that the Russells were using their property in a manner that does interfere with the maintenance of the

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<sup>34</sup>

Order Granting Temporary Injunction – Plaintiff's Exhibit No. 7.



Parkway. We conclude the temporary injunction order is not void for being vague or over broad. We hold the temporary injunction order meets the requirements of Rule 683. *See* Tex. R. Civ. P. 683. We overrule issue three.<sup>35</sup>

38. The parties went to mediation ("First Mediation") in the *First Russell Lawsuit* on May 22, 2012. Bennie Rush (the "Mediator") of Huntsville, Texas was the agreed upon mediator. A Mediated Settlement Agreement ("May 2012 MSA") was reached to lease and maintain the Waterwood Parkway. This agreement was evidenced by that certain "Agreement to Lease and Maintain Waterwood Parkway" ("2012 MSA"). The 2012 MSA was filed at Vol. 2012-003345, pages 13041, et seq., Official Public Records of San Jacinto County, Texas.<sup>36</sup> At this mediation, the following persons were present on behalf of WIA: Joe Moore, WIA Executive Director; Jack Zimmermann, Earl McVay, and Thomas Readal. Also present was George Russell and his lawyers from the Cantrell, Ray and Barcus, LLP law firm of Huntsville, Texas.
39. On June 20, 2012, an "Agreed Final Judgment" was signed and filed in the *First Russell Lawsuit*. This Agreed Final Judgment incorporated the 2012 MSA and approved the same.<sup>37</sup>

#### Second Russell Lawsuit

40. After entering into the 2012 Agreement, more issues arose between WIA and Russell concerning the maintenance of the Waterwood Parkway and the placement of signs and other

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<sup>35</sup> Memorandum Opinion, November 17, 2011 – Plaintiff's Exhibit No. 8.

<sup>36</sup> This 2012 MSA was filed as Plaintiff's Exhibit No. 1A in the *Second Russell Lawsuit*, which is discussed in more detail below. Plaintiff's Original Petition in the *Second Russell Lawsuit* is attached as Plaintiff's Exhibit No. 9.

<sup>37</sup> This Agreed Final Judgment was filed at Plaintiff's Exhibit No. 1 in the *First Russell Lawsuit*, which is discussed in more detail below. Plaintiff's Original Petition in the *First Russell Lawsuit* is attached as Plaintiff's Exhibit No. 9.

items on the Parkway by Russell.

41. These issues resulted in the filing of a lawsuit, on July 14, 2014, in Cause No. CV13,946, entitled "Waterwood Improvement Association, Inc. vs. George H. Russell and Suzanne B. Russell," in the 411<sup>th</sup> Judicial District Court ("*Second Russell Lawsuit*"). WIA complained in the lawsuit about several signs on the Parkway, including the painting of signs on many of the trees within the Parkway.<sup>38</sup>
42. An Agreed Temporary Order was entered into by the parties, which provided in pertinent part:

The Court having acknowledged that the parties have agreed to enter into an Agreed Temporary Injunction pending trial, ORDERS as follows:

It is ORDERED, ADJUDGED AND DECREED that Mr. Russell will not conduct any controlled burns on any of his properties within the Waterwood Subdivision unless notice is given by his attorneys' office, Cantrell, Ray & Barcus, LLP to the attorney for Plaintiff, Travis Kitchens, at least five (5) days in advance of any controlled burns, as required by Section 5(d) of the Agreement to Lease and Maintain Waterwood Parkway. Notice will be written and will outline the date and area to be burned.

It is further ORDERED, ADJUDGED AND DECREED that the mowing and maintenance of the Waterwood Parkway as provided for by the Agreed Final Judgment in No. CV13,114 and the Agreement to Lease and Maintain the Waterwood Parkway, approved in No. CV13,114, shall proceed upon notice as required by the Agreed Final Judgment and the Agreement to Lease and Maintain the Waterwood Parkway, and during such mowing neither George H. Russell nor Suzanne B. Russell shall be closer than one hundred feet of any Waterwood Improvement Association maintenance contractors while they are in the process of performing any maintenance operations, including mowing, on the Waterwood parkway.

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<sup>38</sup>

Plaintiff's Original Petition in the *Second Russell Lawsuit* is attached as Plaintiff's Exhibit No. 9.

IT IS FURTHER ORDERED, that based upon the agreement of the parties, that the above injunction shall not prohibit neither George H. Russell nor Suzanne B. Russell from driving down the Parkway when maintenance operations are being performed, provided that neither George H. Russell nor Suzanne B. Russell stop and interfere with the maintenance operations.

It is further ORDERED, ADJUDGED AND DECREED that this order does not relieve or modify the parties of their obligations with regard to the previous Agreed Final Judgment. All other obligations contained within the previous Agreed Final Judgment remain in effect.

The temporary injunction granted below shall be effective immediately and shall be binding on the Defendants; on their agents, servants, employees, and attorneys; and on those persons in active concert or participation with them who receive actual notice of this order by personal service or otherwise. The requirement of a bond is waived.<sup>39</sup>

43. Once again, the parties went to mediation (*"Second Mediation"*) and on January 18, 2016, entered into a Mediation Settlement Agreement (*"January 2016 MSA"*).<sup>40</sup> Bennie Rush of Huntsville, Texas was again the agreed upon mediator. At this mediation, the following persons were present on behalf of WIA: Joe Moore, WIA Executive Director; Jack Zimmermann, Earl McVay, Donald Marshall, Thomas Readal, and John Charlton. Also present was George Russell and his lawyers from the Cantrell, Ray and Barcus, LLP law firm of Huntsville, Texas.
44. The January 2016 MSA was confirmed and approved by the 411<sup>th</sup> Judicial District Court on March 14, 2016. An Agreed Final Judgment (*"2016 Agreed Final Judgment"*) was entered

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<sup>39</sup> Agreed Temporary Order *Second Russell Lawsuit* – Plaintiff's Exhibit 10.

<sup>40</sup> This January 2016 MSA was filed at Plaintiff's Exhibit No. 1 in the *Fourth Russell Lawsuit*, which is discussed in more detail below. Plaintiff's Original Counterclaim in the *Third Russell Lawsuit* is attached as Plaintiff's Exhibit No. 15.



in the *Second Russell Lawsuit*.<sup>41</sup>

45. The January 2016 MSA provided for the purchase of the Waterwood Parkway, (both the US 190 Parkway and the FM 980 Parkway), together with a small strip of property across US Highway 190 from the Parkway (the Billboard property), together with an "Exclusion Zone" of 200 feet from the Parkway, within which Exclusion Zone WIA was granted authority to approve any placement of signs or other items.<sup>42</sup>
46. The 2016 Agreed Final Judgment, confirming the January 2016 MSA, in the *Second Russell Lawsuit* provided the following concerning the placement of signs on the Waterwood Parkway:

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that, based on the 2016 Mediated Settlement Agreement, that Defendants will not put up any signs, toilets, hearses, cars or other items within 200 feet from the boundary of any right of way of the Waterwood Parkway nor any street in Waterwood that borders on property owned by Russell, unless approved in advance by WIA; such approval shall not be unreasonably withheld. As used herein "any street in Waterwood that borders on property owned by Russell" shall include, but not be limited to, Texas Farm-to-Market 980, the Marina Access Road, together with any roads or streets in the following subdivisions of the Waterwood Community: Augusta Estates, Bass Boat Village A, Bass Boat Village B, Bay Hill, Bay Hill Point, Country Club Estates I, Country Club Estates II, Country Club Estates III, Fairway One, Fairway Village, Greentree Village XI-A, Lakeview Estates, Park Forest, Piney Point, Putters Point, The Beach, The Villas, Tournament Village, Whispering Pines Village 1, and Whispering Pines Village 2.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that, based on the 2016 Mediated Settlement Agreement, and as between the parties to this

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<sup>41</sup> This 2016 Agreed Final Judgment was filed at Plaintiff's Exhibit No. 1 in the *Fourth Russell Lawsuit*, which is discussed in more detail below. Plaintiff's Original Petition in the *Third Russell Lawsuit* is attached as Plaintiff's Exhibit No. 14.

<sup>42</sup> 2016 MSA, Plaintiff's Exhibit No. 11



litigation, that WIA will have total control over the Waterwood Parkway and Defendants will not interfere with WIA's use of the Waterwood Parkway.

The Court finds that, based on the 2016 Mediated Settlement Agreement, that the following permanent injunction should be entered, and that the clerk of this court issue a writ of injunction, restraining and enjoining Defendants, GEORGE H. RUSSELL, SUZANNE B. RUSSELL, THE ETHICIAN FOUNDATION, and the UNIVERSAL ETHICIAN CHURCH, from interfering with the rights of the Plaintiff, WATERWOOD IMPROVEMENT ASSOCIATION, INC., and those persons acting under the direction of Plaintiff, in performance of Plaintiff's mowing and maintenance of the Waterwood Parkway, including but not limited to the mowing and maintenance of the Waterwood Parkway, and further the Defendants are ENJOINED from putting up any signs, toilets, hearses, cars or other items within 200 feet from the boundary of any right of way of the Waterwood Parkway nor any street in Waterwood that borders on property owned by Russell, (as defined herein), unless approved in advance by WIA.<sup>43</sup>

This permanent injunction granted herein shall be effective immediately and shall be binding on Defendants; on their agents, servants, employees, and attorneys; and on those persons in active concert or participation with them who receive actual notice of this order by personal service or otherwise.

47. Under the January 2016 MSA, approved by the 411<sup>th</sup> Judicial District Court on March 14, 2016, WIA paid to Russell \$1 million for approximately 44 acres of land, a billboard, and the 200 foot wide Exclusion Zone which prohibited Russell from placing "signs, toilets, hearses, cars or other items within 200 feet" of the Parkway or the Waterwood Streets, (the "Exclusion Zone"), without WIA's approval.
48. On March 14, 2016, the closing on the conveyances, contemplated by the January 2016 MSA, was conducted, during which Russell received \$1 million and conveyed three tracts of land to WIA: the Billboard property (0.127 acres) and the US 190 Parkway (18.104

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<sup>43</sup> This 200 feet is referenced as the "Exclusion Zone"; the Streets identified are reference as "Waterwood Streets".

acres),<sup>44</sup> and the FM980 Parkway (24.73 acres) for a total of 43.834 acres.<sup>45</sup> During the closing, Russell was cooperative and called and had most of the objectionable signs removed from the Parkway, but some signs remained, including several “no trespassing signs” and the “Wounded Warrior Cemetery Sign”, all of which were objected to by WIA. After the closing, WIA removed the “paint signs” that Russell has placed on the trees. After the closing, WIA removed the signs that Russell has placed on over 50 trees on the Parkway. These included signs (bullseyes, circles, rectangles, etc.) and various colors (magenta, purple, yellow, etc.).<sup>46</sup>

*Third Russell Lawsuit*

49. Disputes concerning the above January 2016 MSA and the placement of signs in the Exclusion Zone on the Parkway and other streets in Waterwood continued after the January 2016 MSA, the closing on March 14, 2016, and the entry of the 2016 Agreed Final Judgment.
50. Russell filed, on April 25, 2016, a lawsuit in the 258<sup>th</sup> Judicial District Court of San Jacinto County, in Cause No. CV14.606, entitled “George Russell and Universal Ethician Church v. Waterwood Improvement Association, Inc.” (“*Third Russell Lawsuit*”).<sup>47</sup>

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<sup>44</sup> Special Warranty Deed from The Ethician Foundation to WIA – Plaintiff’s Exhibit No. 13.

<sup>45</sup> Special Warranty Deed from The Universal Ethician Church, to WIA – Plaintiff’s Exhibit No. 12.

<sup>46</sup> Affidavit of Thomas Readal, May 8, 2017 – Plaintiff’s Exhibit No. 49.

<sup>47</sup> Russell’s Original Petition is attached hereto as Plaintiff’s Exhibit No. 14.

51. On May 5, 2016, WIA filed its "Original Counterclaim for Breach of Contract, Enforcement of 2016 Agreed Final Judgment, Declaratory Judgment, and Injunctive Relief" in the *Third Russell Lawsuit*.<sup>48</sup> Part of this latest dispute concerned the refusal of Russell to remove all of the signs within 200 feet of the Parkway and Waterwood Streets, including the Wounded Warrior Cemetery Sign and approximately 22 no trespassing signs, that had not been approved by WIA.
52. The parties, once again, went to mediation ("*Third Mediation*") to try and resolve the lawsuit. Bennie Rush of Huntsville, Texas, was again the agreed upon mediator. At this mediation, the following persons were present on behalf of WIA: Joe Moore, WIA Executive Director; Jack Zimmermann, Earl McVay, Thomas Readal, and John Charlton. Also present was George Russell and his lawyers from the Cantrell, Ray and Barcus, LLP law firm of Huntsville, Texas.
53. On August 24 2016, another Mediation Settlement Agreement was entered into in resolution of the *Third Russell Lawsuit*, ("*August 2016 MSA*").<sup>49</sup>
54. One of the issues addressed at the mediation was Russell's concerns about giving a trespass notice, as authorized by Section 30.05, Texas Penal Code, to the public at large, and imagined enemies in particular. Section 30.05 provides, in relevant part, as follows:

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<sup>48</sup> WIA's Original Counterclaim in the *Third Russell Lawsuit* is attached hereto as Plaintiff's Exhibit No. 15.

<sup>49</sup> Plaintiff's Exhibit 2.



Sec. 30.05. CRIMINAL TRESPASS.

- (a) A person commits an offense if the person enters or remains on or in property of another, including residential land, agricultural land, a recreational vehicle park, a building, or an aircraft or other vehicle, without effective consent and the person:
- (1) had notice that the entry was forbidden; or
  - (2) received notice to depart but failed to do so.
- (b) For purposes of this section:

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(2) "Notice" means:

- (A) oral or written communication by the owner or someone with apparent authority to act for the owner;
- (B) fencing or other enclosure obviously designed to exclude intruders or to contain livestock;
- (C) a sign or signs posted on the property or at the entrance to the building, reasonably likely to come to the attention of intruders, indicating that entry is forbidden;
- (D) the placement of identifying purple paint marks on trees or posts on the property, provided that the marks are:
  - (i) vertical lines of not less than eight inches in length and not less than one inch in width;
  - (ii) placed so that the bottom of the mark is not less than three feet from the ground or more than five feet from the ground; and
  - (iii) placed at locations that are readily visible to any person approaching the property and no more than:
    - (a) 100 feet apart on forest land; or
    - (b) 1,000 feet apart on land other than forest land; or
- (E) the visible presence on the property of a crop grown for human consumption that is under cultivation, in the process of being harvested, or marketable if harvested at the time of entry.

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- (4) "Forest land" means land on which the trees are potentially valuable for timber products.
- (5) "Agricultural land" has the meaning assigned by Section



75.001, Civil Practice and Remedies Code.<sup>50</sup>

55. The August 2016 MSA reflected the negotiations to address Russell's concerns with the agreed upon locations for 30.05 notice along the Parkway. WIA believed that the remaining issues concerning the Parkway were resolved by the resulting August 2016 MSA, which provided, in pertinent part:

3. The consideration to be given for this settlement is as follows: The above entitled and numbered pending lawsuit will be settled upon the following terms and conditions:
  - A. The prior Mediation Settlement Agreement of January 18, 2016 in Cause No. CV13,946 shall remain in full force and effect;
  - B. Russell will nonsuit all claims alleged in their lawsuit without prejudice against WIA. WIA will nonsuit all claims alleged in this lawsuit without prejudice against Russell.
  - C. The current Wounded Warrior Cemetery Sign, ("WWCS"), will be removed contemporaneously with the installment of the new sign;
  - D. The WWCS will be replaced with a WIA designed wrought iron sign with letters of comparable (sic) size. The new sign will have the wording "Veterans Cemetery";
  - E. Russell agrees to contribute up to \$1,000.00 for the cost of the wrought iron sign and WIA will pay any additional amount, if any, over \$1,000.00.
  - F. *WIA will purchase 11 "no trespassing / private property signs" sized 10" x 14" and shall have permission of Russell to enter the property to install the signs on property of Russell bordering Waterwood Parkway in the approximate location shown by Exhibit "A" attached hereto.*
  - G. *WIA will purchase "no trespassing / private property signs" sized 10" x 14" and shall replace the approximately 22 signs in the Waterwood neighborhoods and shall have permission of Russell to enter the property to install the signs. (Emphasis added).*

33 Signs

56. On August 30, 2016, WIA's attorney forwarded to Russell's attorney, via email, a proposed Joint Motion for Nonsuit and proposed Order on Joint Motion for Nonsuit. Follow-up emails were sent on September 19, 2016 and September 23, 2016.<sup>51</sup> On September 26, 2017, a response to the emails was received and on September 27, 2017, the approved Joint Motion for Nonsuit and proposed Order on Joint Motion for Nonsuit were filed with the Court.<sup>52</sup>
57. On September 23, 2016, by email timed at 9:48 p.m., George Russell published the following:

From: George H Russell<sup>53</sup>

Sent: Friday, September 23, 2016 9:48 PM

To: Waterwood WIA; Jack Zimmermann; George Russell; Sue Ann Delk; Hans Barcus; 'Lanny Ray'; Sue Ann Delk

Subject: INTIMIDATION AND THREATS

Today I received a THREAT about the equipment that we were using to take care of my seriously crippled and handicapped 70 year old senior citizen wife that was apparently coming from the female that started the threat to dig up and destroy our 360 rare blooming native orchids on our 2.2 miles of parkway that we owned BEFORE we were intimidated into selling our parkway to WIA for a quarter million dollar loss. 100% OF THE RATE ORCHIDS WERE DESTROYED AS WELL AS 130 NATIVE SPECIES. The trucks, trailers etc. that were the basis of the THREATS were parked in front of one of our worker's homes "off the beaten tract" while we were working on providing HANDICAPPED FACILITIES FOR MY CRIPPLED WIFE, unlike other trailer that cause a public danger on major

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<sup>51</sup> Email string August 30, 2016 through September 26, 2016 - Plaintiff's Exhibit No. 17.

<sup>52</sup> September 27, 2016 Letter to Clerk filing approved Joint Motion for Nonsuit and proposed Order on Joint Motion for Nonsuit - Plaintiff's Exhibit No. 18.

<sup>53</sup> For privacy purposes, the emails addresses referenced in the emails have been redacted.

roads.

We MOVED THEM TODAY as we were threatened with LEGAL ACTION against us in a CORRUPT COURT dating from THE TERROR ON HIGHWAY 59 gang of thugs.

As it is transparently obvious that WIA has paid off the corrupt officials we have no way to defend ourselves against corruption.

We do have a \$5,000 reward for the arrest, conviction and incarceration of the corrupt JP that WIA is threatening us with as well as other CORRUPT officials in San Jac Cty.

THIS TARGETED HARASSMENT BY ZIMMERMAN AND HIS GANG OF WIA THUGS pisses me off.

Zimmerman has ZERO KNOWLEDGE OF HISTORY. When we say that we are treated like JEWS IN NAZI GERMANY IN 1936 we are telling the TRUTH!!!

Hello Zimmerman, your IGNORANCE of Nazi History is disgusting and disturbing.

I gave you our video productions about the holocaust and you NEVER EVEN THANKS US.

Yes, it is true that corrupt evil HITLER worked to destroy Jews AT A LATER DATE THAN 1936.

How do you think it feels to be harassed, intimidated, and threatened by WIA in 2016? When I feel like WIA has made me and my wife feel as if we were Jews in Nazi Germany in 1936 HAVING BEEN THREATENED BY WIA OPERATIVES SINCE WE REFUSED TO SELLOUT TO THE ARAB MUSLIMS, that feeling is based on FACTS AND HISTORY.

WIA hates AMERICAN WOUNDED WARRIOR VETERANS, has cost us many thousands of dollars in legal expenses to defend our NON- PROFIT that has expended at least \$20 MILLION on behalf of Waterwood's future AND REFUSES TO WORK WITH THE RUSSELL FAMILY AND/OR THE ETHICIAN FOUNDATION.

WIA's TERRORIST THREATS AGAINST MY CRIPPLED HANDICAPPED WIFE, in my opinion is a SERIOUS VIOLATION OF THE US CONSTITUTION AS WELL AS AN OFFENSE AGAINST A CRIPPLED SENIOR CITIZEN.

Does WIA really want to MOVE THIS HARASSMENT FROM THE PAID FOR LOCAL JP to FEDERAL COURT?

ghr



This email was forwarded to Russell's attorney Hans Barcus on September 26, 2017.  
 at 3:23 p.m.; George Russell further responded to this email at 9:31 p.m.. by publishing the  
 following:

From: George H Russell  
 Sent: Monday, September 26, 2016 9:32 PM  
 To: Hanis CRB ; George Russell ; Sue Ann Delk ; 'Lanny Ray'; Travis  
 Kitchens; Jack Zimmermann ; Waterwood WIA ; Charles Bordo ; Tito  
 Estrada; bill haveron  
 Subject: Re: FW: INTIMIDATION AND THREATS

I have lived with and been personal friends with ACTUAL victims of  
 Nazis unlike Zimmerman. The only other Jew that lives in Waterwood  
 is my best best friend who cannot stand Zimmerman's lies. He resigned  
 from the WIA Board because Zimmerman et al required that he hate  
 me to be a Board Member.

I have produced two educational videos about the Jewish Holocaust as  
 well as one about Anne Frank and the Holocaust.

Zimmerman has NEVER done anything to educate the public about the  
 Jewish Holocaust which was incidental to the hundreds of holocausts  
 including that holocaust that murdered the Branch Dividian children  
 who were his clients.

What has Zimmerman done to expose the evils of Janet Reno and the  
 other mass murderers in violation of Freedom of Religion in America?

How many Jews BEFORE the "holocaust campaign" EVER suffered  
 from the campaign of hate that I have experienced at Waterwood after  
 REFUSING TO SELL OUT TO THE MUSLIMS?

Being falsely arrested and prosecuted more than once. Being shot at  
 several times. Being held hostage more than once. Having multiple  
 incidents of criminal trespass and vandalism. Being assaulted multiple  
 times.

Let Zimmerman show me proof that individual targeted Jews in  
 Germany before 1933 suffered at the hands of the Nazis more than my  
 crippled handicapped wife and I have suffered at the hands of  
 Zimmerman and his WIA goon squads.

On October 1st we will open our ETHICIAN MUSEUM OF  
 GENOCIDE (AKA HOLOCAUST) AGAINST NATIVE



AMERICAN INDIANS AND ATROCITIES AGAINST OTHER  
NATIVE PEOPLES on Columbus Day on October 10th.

Zimmerman is welcome to attend and learn that Christopher Columbus was responsible for PERSONALLY murdering more innocent Native Americans than Adolf Hitler murdered Jews.

He may also learn that Jewish Zionist Terrorists committed atrocities against Christians in Palestine before and after 1948 including my roommate at LSU.

I would welcome a debate between ignorant Zimmerman and me at the Grand Opening of the Genocide Museum.

I have spent hundreds of thousands of personal dollars to EXPOSE NAZI ATROCITIES AGAINST JEWS AND OTHERS and I have asked Zimmerman to donate to help our Church and Foundation and he has refused to donate even one red cent yet has invaded our private property and attempted to adverse over 50 feet of our waterfront property.

His hatred of our Veteran's Cemetery has cost us great stress and thousands of dollars. My years of active military duty obviously mean nothing to Zimmerman and WIA.

After we were forced to sell our natural areas on our parkway at a quarter million dollar loss after the malicious destruction of over 131 native species including the digging up and destroying of 360 blooming native orchids on 2.2 miles of our private properties, we conceded defeat and allowed WIA to violate ALL OF THE ORIGINAL PROTECTIVE COVENANTS OF HORIZON CORPORATION WHEN WATERWOOD WAS CREATED.

TRAVIS KITCHENS SHOULD BE DISBARRED DUE TO HIS HATE MAIL AND PSYCHO THREATS AGAINST ME AND MY CRIPPLED WIFE WHO HAVE DONE MORE TO HELP JEWS, BLACKS, NATIVE AMERICANS AND OTHER DOWNTRODDEN PEOPLES THAN 99% OF THE CITIZENS OF THIS PLANET.

1. Did Travis live in the Hood in Baton Rouge in the '60's and fight for civil rights as I did?
2. Did Travis live with the Black Caribs in Central America and the Mayan Indians and help them overcome discrimination?
3. Did Travis produce educational videos about the Jewish Holocaust to help children learn about how hate and discrimination is evil?
4. Did Travis spend millions of personal dollars to educate children

about art, culture and how millions of Native Americans and other native peoples were MURDERED by not only Christopher Columbus and his followers and other genocidal maniacs such as Miradeau B. Lamar who has a university and other streets, schools, and monuments dedicated to his mass murder of Sam Houston's Indian friends?

I plan on filing a BAR COMPLAINT AGAINST TRAVIS DUE TO HIS CONTINUED HATE AND UNETHICAL BEHAVIOR AGAINST ME AND OUR PHILANTHROPIES.

ghr <sup>54</sup>

58. As part of the August 2016 MSA, the replacement of the 22 Russell's no trespassing signs that were objected to by WIA, together with the locations for further no trespassing signs, on the Parkway and the Waterwood Streets, was agreed upon by the parties. Relying on that agreement, and the signs that would be posted to give notice under Section 30.05, Texas Penal Code, WIA had printed 33 no trespassing signs ("No Trespassing signs"), in compliance with the terms of the August 2016 MSA, that said: "NO TRESPASSING PRIVATE PROPERTY" with white letterings on a green background.<sup>55</sup>
59. The design of the proposed No Trespassing signs was first sent to the Mediator on October 12, 2016. On October 19, 2016, the Mediator advised that he had no objection to the No Trespassing signs. The proposed sign was then sent to Russell's attorney.<sup>56</sup>
60. After giving notice on October 29, 2016 that the 22 signs were going to be replaced, WIA removed the 22 red on white "no trespassing" signs on Russell properties bordering other

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<sup>54</sup> Email String September 23, 2016 to September 26, 2016 - Plaintiff's Exhibit No. 19.

<sup>55</sup> "No Trespassing" sign - Plaintiff's Exhibit No. 20.

<sup>56</sup> Email string October 12, 2016 through October 19, 2016 - Plaintiff's Exhibit No. 21.

streets in Waterwood, and replaced those 22 signs with the new signs printed by WIA. WIA also placed 11 new signs on the Waterwood Parkway, at the locations agreed upon by the parties and set forth in the August 2016 MSA, to give 30.05 Notice.<sup>57</sup>

61. On October 19, 2016, the drawing for the Veterans Cemetery sign was forwarded to the Mediator for review.<sup>58</sup> Follow-up emails of October 20, 2016 and October 25, 2016 were sent to the Mediator seeking input on the sign. By email of October 25, 2016, the mediator advised that he had "no objection. See what changes if any George wants and let me know."<sup>59</sup>
62. On October 25, 2016, the drawing for the Veterans Cemetery sign was forwarded to Russell's attorney, Hans Barcus. Follow up emails on November 1, 2016 and November 7, 2016 resulted in no contact from Russell or his attorneys.<sup>60</sup>
63. On November 2, 2016, the invoice for the Veterans Cemetery sign was emailed to Russell's attorney, Hans Barcus.<sup>61</sup>
64. On November 10, 2016, a letter was sent to Russell's attorney by certified mail asking about the status of any issues with the Veterans Cemetery sign.<sup>62</sup>

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<sup>57</sup> Affidavit of Joe Moore, May 8, 2017 - Plaintiff's Exhibit No. 51.

<sup>58</sup> Drawing of Veterans Cemetery sign - Plaintiff's Exhibit No. 22.

<sup>59</sup> Email string October 19, 2016 through October 25, 2016 - Plaintiff's Exhibit No. 23.

<sup>60</sup> Email string October 25, 2016 through November 7 - Plaintiff's Exhibit No. 24.

<sup>61</sup> Email November 2, 2016 and Invoice - Plaintiff's Exhibit No. 25.

<sup>62</sup> November 10, 2016 Letter to Russell - Plaintiff's Exhibit No. 26.



65. On November 17, 2016, another letter, via email, was sent to Russell's attorney concerning the Veterans Cemetery sign.<sup>63</sup>
66. Another copy of the drawing of the Veterans Cemetery sign was emailed to the Mediator and Russell's attorney, with a revised invoice, on November 30, 2016. The revised invoice reflected that the sign was wrought iron and the letters (per the sign drawing) comparable to the size of the letters on the current sign. A follow-up email was sent on December 5, 2016.<sup>64</sup>
67. On December 10, 2016, by email at 9:07 a.m., George Russell published the following:

From: George H Russell  
 Date: December 10, 2016 at 9:07:17 AM CST  
 To: Waterwood WIA, Jack Zimmermann, George Russell, Sue Ann Delk ,  
 'Lanny Ray', Hans Barcus, Carter Helm, Charles Bordo, Ruth Massingill , moo

Subject: MEMO FOR RECORD

10 December 2016

MEMO FOR RECORD

Last week I visited with our County Judge about a couple of issues that have had a negative impact on our personal safety and our property.

1. In regard to the criminal trespass and vandalism on our Longleaf Pine Sanctuary he said that he had visited with the DA and the DA said that since we did not have our property properly posted as it had been in the past, there was nothing that he could do about the damages.

2. In regard to the stolen 4X4 steel posts that Mark Nettuno admits that he has in his possession, the judge said that Nettuno refuses to return the posts to

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<sup>63</sup> Email November 17, 2016 and letter – Plaintiff's Exhibit No. 27.

<sup>64</sup> Email string November 30, 2016 through December 5, 2016 with copy of sign and revised invoice – Plaintiff's Exhibit No. 28.

their rightful owner. Nettuno said that I could purchase the stolen posts from him.

3. In regard to the assault of this senior citizen and also Chuck Bordo, the DA said that unless the sheriff asks the DA to prosecute he will do nothing.

4. My agreement with Zimmerman was that I would take down the posted signs along the parkway ONLY and that the others, if they were on areas where we had experienced trespass and/or vandalism, could stay. However, I did not see the hidden item on a different page in our last formal agreement and we NEVER discussed anything other than the COMMERCIAL POSTED SIGNS FROM HOME DEPOT to be erected along the parkway, which was never done, but instead teeny tiny almost impossible to read in the dark signs were nailed up.

5. In recent weeks we have had a break-in and theft in front of the 1845 log cabin and someone entered the chapel and shattered the plexiglass. The alarm sounded for nearly half an hour according to residents living nearby yet Waterwood Security never showed up. In the past, Waterwood Security parked in front of the elephant statue where they could observe both sides of 980. It is obvious that once again security has been ordered to refrain from protecting both our persons and our properties. Yesterday we were forced to take action to protect our properties and purchased a Prevost Motor Home whereby we can station a guard and operate a security system.

6. By placing our professionally designed custom posted signs and TPWD signs this year in areas that have had extreme poaching ever since we purchased the properties in 1998, we have made great strides in keeping poachers out of our duck and alligator sanctuaries and also around the infamous Fritz Faulkner poacher camp where our mother eagle had her head and feet cut off while she had two baby eagles in the nest as punishment for us refusing to sell out to the Arabs to turn Waterwood into a Muslim Disneyland.

7. WIA has historically failed to live up to his verbal commitments and legal commitments and in the last mediation we were DUPED just one more time which in my opinion nullifies that insanity.

Based on the documented facts, WIA has proven to be dishonest and has made Waterwood an unsafe environment for senior citizens to retire to. I believe that all realtors should be informed that they have a legal obligation to inform potential property buyers of the dangers and hazards in purchasing property in Waterwood.

The realtors should state that in Waterwood one should be alert to the following:

1. No protection for senior citizens from crime including multiple assaults.  
(Waterwood Security is a joke)
2. Country Club DEMOLISHED.
3. Tennis Courts ABANDONED
4. Marina Store DEMOLISHED.
5. Cabanas DEMOLISHED
6. Pool Creek Hotel DEMOLISHED
7. Pool Creek Swimming Pool DEMOLISHED
8. Pool Creek Restaurant DEMOLISHED
9. Gas Pumps for both cars and boats ABANDONED along with the RV Park.
10. Dangerous wash outs in Park Forest
11. Rare orchids on parkway DESTROYED
12. Bullying of Senior Citizens.
13. Shooting at Senior Citizens.
14. Vandalism of trees, bulkheads, chapels, wild flowers etc.
15. Fire bombing of a senior citizen's house at night.
16. Corrupt county officials on various levels making person and property vulnerable to frequent crimes.

In order to protect our wildlife sanctuaries, botanical preserves, nature trails and other parts of our \$20,000,000 plus investment in the future of Waterwood I hereby declare the dishonest, aka bogus promises in the last "agreement" to be null and void due to WIA deception and an attempt to force us to pay nearly \$1,000 for a cheap and tacky tin sign rather than a blacksmith forged work of art and beauty to replace our very beautiful and popular sign



telling people about our Veteran's Cemetery.<sup>65</sup>

ghr

The email was forwarded to the Mediator later that day.<sup>66</sup>

68. On December 15, 2016, by email timed 8:22 p.m. George Russell published the following:

From: George H Russell  
 To: Waterwood WIA; Sue Ann Delk; George Russell; Hans Barcus ; 'Lanny Ray'; Jack Zimmermann  
 Sent: Thursday, December 15, 2016 8:22 PM  
 Subject: WIA back stabbing  
 15 December 2016

WIA:

As I have previously stated the latest so-called agreement was based on two false commitments on the part of WIA. This 'sucker-punching' . aka "back stabbing" is typical of me being so stupid as to assume that WIA has suddenly decided to operate on an honest and ethical basis.

JUST ONE MORE TIME I WAS DEAD WRONG!!!

Zimmerman has PROMISED that our professionally produced signs telling about our wildlife sanctuaries and botanical preserves could remain adjacent to any areas where we had ever suffered, criminal trespass, vandalism, or other crimes.

The hidden part in the most recent agreement that clandestinely negated Zimmerman's promise was NEVER DISCUSSED OR SEEN BY ME when I was fraudulently induced to sign the "agreement" without any knowledge of the hidden provision that allowed our signs NOT ON THE PARKWAY to be removed and replaced with illegible tiny signs.

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<sup>65</sup> Compare this position of Russell with the position asserted in Russell's April 10, 2017 Response to Request for Disclosure: "The Mediated Settlement Agreement ("MSA") and resulting Agreed Judgement (sic) prohibit signs that are not approved or agreed to or other items placed within 200 feet of certain roadways. ... The MSA was an arms' length transaction with counsel on both sides." - Plaintiff's Exhibit No. 47.

<sup>66</sup> Email December 10, 2016 - Plaintiff's Exhibit No. 29.

The promise of a "wrought iron", aka professionally produced artistic blacksmith forged Veteran's Cemetery sign was just another WIA lie. Attempting to force our CHURCH to pay nearly \$1,000 for a tacky junk NON WROUGHT IRON SIGN was just another incident of "sucker-punching" our church.

Therefore the latest so-called agreement was BOGUS ON FACE due to the fact that WIA, as usual had made no attempt to follow through on Zimmerman promises and thus is VOID ON FACE!!!

I am so sorry that I was induced to sign an agreement based on subterfuge and downright just another case of WIA lies, which I consider to be fraudulent due to the facts.

The fact that the County Judge and the DA said that there was nothing that could be done to induce the county to help us recover our \$27,000 in damages and send the person to jail, who committed felonious assaults against two senior citizens because the property WAS NOT PROPERLY POSTED, adds insult to injury in the long sordid list of HATE CRIMES committed against our persons and our properties.

Twice in the last few weeks our church properties have been invaded and we have suffered from thefts and serious vandalism inside the Chapel of the Nativity.

As such we have acquired a PREVOST Motor Home to serve as a SECURITY COMMAND CENTER at great expense including having security on duty on site since Waterwood Security has proven to be totally worthless and a waste of money especially when security officers witnessing crimes against us refuse to divulge what crimes they had witnessed due to being afraid for their jobs if they seemed to be on the side of the victims of the crimes against the Russell's and their employees.

Therefore we have no choice but to do the following to attempt to protect our multi-million dollar investment in the future of Waterwood:

We have a significant amount of chain-link fence, some with barbed wire at the top and in order to protect our properties along Waterwood Parkway from criminal trespass, criminal vandalism, poaching and other crimes we feel that we must erect fencing along our property lines.

Quite frankly I hate the ugliness of chain-link fencing but we feel that we have no choice to protect our wildlife sanctuaries, botanical

preserves, Texas Forest Service special areas, and Texas Archaeological Landmarks bit to fence them off since WIA has tricked us into leaving our natural areas unprotected for which we have suffered great harm.

Now if WIA is willing to to assume ALL LIABILITIES associated with intrusions to our properties along with a bond sufficient to pay for the damages without us having to sue WIA when trespass and damages occur in the future and submit a check in the amount of \$27,000 for the loss of our trees, then we might consider NOT erecting the chain-link fencing along our property lines along the parkway that we were coerced into selling to WIA at a \$250,000 loss.

We also intend to erect a huge billboard 200 feet away from the parkway or any other WIA controlled roadway, warning potential purchasers to conduct serious due diligence before investing a single penny in pathetic sub-division unless WIA decides to work with us instead of AGAINST US.

ghr<sup>67</sup>

69. George Russell, continuing his rant on December 26, 2016, by email timed 8:26 p.m., published the following:

From: George H Russell  
**To:** Waterwood WIA; Jack Zimmermann; Hans Barcus; 'Lanny Ray' ; George Russell; Sue Ann Delk  
**Sent:** Monday, December 26, 2016 8:26 PM  
**Subject:** SAD CHRISTMAS

26 December 2016

WIA AND ZIMMERMAN:

Christmas Day proved that WIA and lies, backstabbing etc. proved that the removal of our professionally produced signed indicating wildlife refuges and botanical refuges has caused us great grief and multiple crimes against our CHURCH , OUR WILDLIFE REFUGES AND

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<sup>67</sup>

Email December 15, 2016 by Russell – Plaintiff's Exhibit No. 30.



## BOTANICAL PRESERVES.

1. There have been multiple trespasses , personal and other assaults, and criminal vandalisms since WIA induced us to remove the "signs" from our parkway that was sold for a serious loss TO MAKE EVERLASTING PEACE according to Zimmerman's lies.

1. We have recently have had two CRIMINAL VANDALISM events at our Chapel since WIA Security is no longer allowed to defer criminal acts against our CHURCH.

2. Yesterday, (Christmas Day) in the space of around 30 minutes, I personally witnessed THREE different ORV'S trespassing on and through our PRIVATE WILDLIFE REFUGES due to the fact that WIA has made it appear that our properties are open to anyone at will. Who knows how many events took place before and after the time I was watching.

I did not encounter THE TRESPASSERS or call the worthless cops because the perps had a legitimate way to proclaim that the TRAIL ENTRANCES WERE NOT POSTED AND THE SIGNS IF ANY, WERE TOO SMALL TO READ FROM THE ROAD.

The County Judge and DA BOTH refused to take action against the CRIMINALS who invaded our wildlife sanctuaries and destroyed \$27,000 worth of trees DUE TO THE FACT THAT THERE WERE NO LEGAL NO TRESPASSING SIGNS on the property where the CRIMES TOOK PLACE. DUE TO WIA action "corruption" and hate crimes against our church and foundation.

THEREFORE , we have no choice but to DECLARE ANY SO-CALLED AGREEMENTS PERPETUALLY VIOLATED BY WIA, NULL AND VOID, AND THUS WE MUST POST SIGNS AS MAY BE IN ACCORDANCE WITH LAW TO STOP THE CRIMINAL ACTS AND ACTIONS AGAINST OUR CHURCH AND FOUNDATION DUE TO WIA ACTS AND ACTIONS AGAINST OUR CHURCH AND FOUNDATION.

In addition we are letting WIA know that we may have to place fences along the Parkway property that we were forced to sell at a quarter million dollar loss to let criminals know where our property lines are and to NOT TRESPASS OR DO FURTHER CRIMINAL DAMAGES

AGAINST OUR TEXAS ARCHAEOLOGICAL LANDMARKS, TEXAS  
FOREST SERVICE SPECIAL OR UNIQUE AREAS  
OR WESTERNMOST LONG LEAF WILDLIFE SANCTUARY.

GHR<sup>68</sup>

70. Continuing on December 28, 2016, by email timed 7:20 p.m., George Russell published the following:

From: George H Russell  
To: Waterwood WIA; Jack Zimmermann ; 'Lanny Ray' ; Hans Barcus ; Sue Ann Delk ; George Russell  
Sent: Wednesday, December 28, 2016 7:20 PM  
Subject: PERVASIVE TRESPASS

28 Dec 2018

I made a TERRIBLE mistake by once again stupidly trusting Zimmerman and WIA to tell the truth. How STUPID OF ME!! ZIMMERMAN HAS A SORDID HISTORY OF LYING TO ME DATING BACK MANY YEARS.

LIES OF ZIMMERMAN ON BEHALF OF WIA:

1. If you sell WIA Parkway, WIA will love you forever. SUPREME LIE!!!
2. We will make sure that the exceedingly rare Longleaf Pines will continue to be marked so that they can be identified by visitors. MAJOR ZIMMERMAN LIE.
3. If there has ever been any criminal trespass, vandalism, or poaching on any of our properties then our PROFESSIONAL PRODUCED SIGNS LETTING THE PUBLIC KNOW THAT CRIMES ARE NOT PERMITTED MAY STAY IN PLACE. MAJOR ZIMMERMAN LIE.
4. WIA will contract for a WROUGHT IRON SIGN to replace the professionally produced sign at the entrance to the VETERANS CEMETERY. MAJOR WIA LIE!!!

BOTTOM LINE:

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<sup>68</sup> Email December 26, 2016 from Russell - Plaintiff's Exhibit No. 31.

We are back at square one when residents believed that all of our wildlife sanctuaries and botanical preserves were NOT POSTED and open to ATV intrusions at will as has been happening ever since our signs WERE TORN DOWN BY WIA.

Today we saw multiple evidences of ATV trespass including running up and down our creeks and streams, including one that we just are paying \$2,000,000 (two million dollars) in an attempt to keep poachers and trespassers out.

In my opinion, Zimmerman should face PERSONAL LIABILITY FOR HIS LIES THAT HAVE COST US A HUGE AMOUNT OF STRESS, DURESS, CRIMINAL TRESPASS, CRIMINAL VANDALISM AND EVEN PHYSICAL ASSAULT!!!!

Perhaps ZIMMERMAN can avoid personal liability by proving that he was outvoted by the HATE CRIMINALS who have proven that they hate our church with multiple recent break-ins and vandalism, and our damaged wildlife sanctuaries due to lack of proper SIGNS indicating that our properties are SPECIAL and should not be invaded and damaged.

GHR <sup>69</sup>

71. On February 8, 2017, George Russell published yet another email:

From: George H Russell  
 To: Waterwood WIA , Jack Zimmermann, moo, Sue Ann Delk , George Russell, Hans Barcus, 'Lanny Ray'  
 Sent: Wednesday, February 8, 2017 9:23 AM  
 Subject: BREACH OF CONTRACT BY WIA

Please see attached.

The following was attached to the email:

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<sup>69</sup> Email December 28, 2016 – Plaintiff's Exhibit No. 32.



8 February 2017

To: WIA

Subject: ILLEGAL AND INVALID "SIGN AGREEMENT"

The so-called "agreement" that I was pressured into signing after being worn-down much like used car dealers wear potential customers down so that they will sign on the bottom line, was fatally flawed in several areas, to wit:<sup>70</sup>

1. The pathetic little green signs are virtually impossible to read and do NOT meet the requirements of the Texas Penal Code 30.05 that a reasonable person would notice that the property was properly posted with easy to see signs placed NO LESS THAN 100 FEET APART.<sup>71</sup>
2. The micro-signs do NOT meet the very strict requirements of Penal Code 30.05 as they are very widely spaced and thus our properties are NOT LEGALLY POSTED, which led to the destruction of \$27,000 worth of our trees on our Longleaf Pine Sanctuary followed by the felonious assault of two senior citizens by the perps.<sup>72</sup>
3. The so-called agreement snuck in a provision that I didn't see which was that our professionally produced signs could be torn down on areas other than the parkway and replaced with virtually illegible micro-signs. Zimmerman had PROMISED that our posted signs could remain on any area where poaching, trespassing, or vandalism had taken place on our properties in the past. By sneaking in the added paragraph, hidden on page two, that PROMISE became a LIE.
4. Another "fraudulent" provision in the fatally flawed "agreement" was to replace our Veteran's Cemetery sign with a WROUGHT IRON SIGN, meaning beautifully and artistically produced by a skilled blacksmith, and

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<sup>70</sup> Contrary to George Russell's delusion, Russell's attorney admits that the contract is a valid, arms-length transaction: "The MSA was an arms' length transaction with counsel on both sides." Plaintiff's Exhibit Nos. 44 (Defendant's Original Answer and Counterclaim), 47 (Defendants' Response to Request for Disclosure). Russell has been represented by counsel since at least the *First Russell Lawsuit* filed July 2011.

<sup>71</sup> The 10 x 14 No Trespassing signs (Plaintiff's Exhibit No. 20) as posted meet the requirements of 30.05. They do in fact meet the requirements of 30.05. See Plaintiff's Exhibits 49, 50, and 51.

<sup>72</sup> Russell's email attachment claims that his trees worth \$27,000 were destroyed because the micro-signs do NOT meet the requirements of 30.05 and that the signs were "very widely spaced". In fact they do meet the code. Russell agreed to the size and wording, and they are placed at distances comparable to his posted properties along FM 980. The trees in question were topped by the county contractor the week before the August 25, 2016 mediation with George Russell in which the posting of the 10 x 14 signs were agreed to. So it is impossible that the 10 x 14 signs were up when the trees were topped. There were no signs posted on the parkway at that time because Russell removed his "no trespassing" signs on the day of the parkway property closing, March 14, 2016, but he never came to WIA with any proposal for WIA to agree to as to replacement of no trespassing signs as stipulated in the agreement. So it is not WIA's fault that the parkway was not posted at the time of the trees topping, it is Russell's fault for never requesting WIA to approve any alternate signs. See Plaintiff's Exhibits 49, 50, and 51.

NOT a tacky "tin" sign worth no more than \$200 that WIA tried to get us to pay \$700 more than the sign was worth.

Therefore I consider the "bogus" agreement to be NULL AND VOID as our properties are still subject to trespass, poaching and vandalism including the breaking of the plexi-glass window in our Chapel of the Nativity and the attempted theft of baby Jesus.

We have had to spend a very large sum of money on security at our chapel including the purchase of a Prevost motorhome to serve as security headquarters and the construction of a driveway to park said vehicle.

In accordance with TEXAS LAW, we intend to LEGALLY POST OUR PROPERTIES to hopefully better protect our multi-million dollars worth of assets.

The Ethician Foundation recently spent an additional \$2 MILLION DOLLARS to purchase the 500 acres lining the south side of Palmetto Creek to protect our properties on the north side from intrusions by trespassers and poachers.<sup>73</sup>

WIA has maliciously endangered our properties by failing to protect me from repeated assaults, ambushes, blatant trespass and other crimes against my person and properties, especially from known perps residing or visiting at Bass Boat Village as well as being shot at several times by a known perp on St. Andrews.

If you can find a Texas Statute that proves that the virtually illegible signs you placed on our properties well over 100 feet apart meet the letter of Texas Penal Code 30.05, then I would like to see said proof that WIA has legally posted our properties.

Otherwise, we intend to LEGALLY POST OUR PROPERTIES beginning February 16, 2017.<sup>74</sup>

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<sup>73</sup> Based on this assertion, Russell paid approximately \$4,000.00 an acre.

<sup>74</sup> Russell argues that the green signs posted by WIA are virtually impossible to read and do NOT meet the requirements of 30.05 and states that the signs must be placed NO LESS THAN 100 FEET APART to comply with the code. The code actually states in 30.05, (2) "Notice means" (C) "a sign or signs posted on the property or at the entrance to the building, reasonably likely to come to the attention of intruders, indicating that entry is forbidden". See Plaintiff's Exhibits 49, 50, and 51.



Thank you for your attention to this serious breach of WIA's fiduciary duties to the Russell family and our foundation and church.

George H. Russell, President<sup>75</sup>

Fourth Russell Lawsuit

72. On February 22, 2017, Defendant, without complying with the requirements of the 2016 Agreed Final Judgment, [and without] seeking approval, started painting purple signs on trees within the Exclusion Zone, i.e., 200 feet of the Waterwood Parkway and the Waterwood Streets and/or Roads in the Waterwood Subdivision, as defined in the 2016 Agreed Final Judgment, and ¶¶ 13, 14, and 15 hereof:

As used herein "Waterwood Parkway and any street in Waterwood that borders on property owned by Russell, shall include, but not be limited to, Texas Farm-to-Market 980, the Marina Access Road, together with any roads or streets in the following subdivisions of the Waterwood Community: Augusta Estates, Bass Boat Village A, Bass Boat Village B, Bay Hill, Bay Hill Point, Country Club Estates I, Country Club Estates II, Country Club Estates III, Fairway One, Fairway Village, Greentree Village XI-A, Lakeview Estates, Park Forest, Piney Point, Putters Point, The Beach, The Villas, Tournament Village, Whispering Pines Village 1, and Whispering Pines Village 2."

Photographs of the trees on Waterwood Parkway with purple paint signs after Defendant's painting spree are shown by Plaintiff's Exhibit Nos. 34, 35, 36.<sup>76</sup>

73. On Wednesday, February 22, 2017, Thomas C. Readal, (Readal), a resident in Waterwood and past Board member of WIA, while driving to the Waterwood Park construction site

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<sup>75</sup> Email of February 8, 2017 and the attached letter – Plaintiff's Exhibit No. 33.

<sup>76</sup> See also Plaintiff's Exhibit 37 - February 23, 2017 Affidavit of Thomas C. Readal (Exhibit No. 4 with Original Petition); Plaintiff's Exhibit 38 - February 23, 2017 Affidavit of Joe Moore (Exhibit No. 5 Original Petition); Plaintiff's Exhibit 45 - March 10, 2017 Affidavit of Joe Moore (Exhibit No. 5A with First Amended Petition); See Plaintiff's Exhibits 49, 50, and 51.



around 11 o'clock a.m., observed George Russell, by himself, painting signs, being approximately 8 to 12 inch purple squares, on trees which were inside Russell's property line on the north side of Waterwood Parkway, but within 200 feet of the boundary of the Waterway Parkway. Shortly after Readal stopped at the Waterwood Park construction site, which is on the south side of Waterwood Parkway directly opposite to the area where Russell was painting the trees, to meet with Dick Hansen, who was already there, Russell got into his vehicle and drove away. The five (5) photographs, Plaintiff's Exhibit No. 34 (Exhibit No. 5 to Original Petition), depicted some of the trees that Readal witnessed Russell painting.<sup>77</sup>

74. After painting the purple signs on the trees, evidenced by the photographs depicted by Plaintiff's Exhibit Nos. 34, 35, and 36, and witnessed by Readal on February 22, 2017, Russell continued painting signs on trees by painting additional trees on Latrobe Street between the Waterwood Parkway and Pine Valley. Prior to being served with the TRO in this case, Russell, with apparent help of the "Ethician Foundation Wildlife Manager, Mike Zeltner", continued painting trees, and a total of 207 trees were painted: 21 trees Parkway inbound 980 to WLA office; 6 trees Parkway inbound across from old club house; 50 trees Parkway outbound Latrobe to 980; 29 trees Latrobe-Parkway to Pine Valley Loop; 88 trees Latrobe-Doral to LaJolla; 6 trees Gate on LaJolla North side; 4 trees Latrobe about 1/2 way

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<sup>77</sup> Plaintiff's Exhibit No. 37 - February 23, 2017 Affidavit of Thomas C. Readal (Exhibit No. 4 Original Petition; Plaintiff's Exhibit No. 49 - May 8, 2017 Affidavit of Thomas C. Readal.

down; and 3 trees on Doral just after Augusta east side.<sup>78</sup>

75. On Thursday, February 23, 2017, John Charlton, a Waterwood resident and Board member of WIA, witnessed an employee of Russell, later identified by Russell as Mike Zeltner, painting signs on trees. Acting as a Board member, Charlton took photographs of painted signs on the trees he witnessed a person he presumed to be an employee of Russell painting.<sup>79</sup> Charlton asked the person if he was painting the signs for Russell. At first the employee refused to answer, stating "you don't know that" then admitted he was painting the signs for Russell. Charlton advised the employee that Russell would most likely end up in court.<sup>80</sup>
76. Russell has painted purple signs on trees that are as large as 1 x 1.5 feet and are spaced on average less than 20 feet apart. These signs have been needlessly placed on land that was already properly posted with signs per Section 30.05 under the August 2016 MSA. Some of the signs are on trees that are believed to be on county property. Russell claims that these properties were trespassed on and subject to poaching and vandalism, however he has never produced documentation in the form of police, or other, records to that effect to prove this allegation. The only instances he cited in the attachment to the February 8 email was on church property on the northwest corner of 980 and the parkway which has never been posted

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<sup>78</sup> Plaintiff's Exhibit 45 - March 10, 2017 Affidavit of Joe Moore (Exhibit 5A to First Amended Petition); Plaintiff's Exhibit Nos. 34, 35, and 36 - representative photographs of signs painted on trees on the various Waterwood Streets.

<sup>79</sup> Plaintiff's Exhibit 36 - Photographs taken by John Charlton (including photograph of Mike Zeltner identified by Defendant in response to Interrogatories - Plaintiff's Exhibit No. 36 ).

<sup>80</sup> Plaintiff's Exhibit 50 - May 8, 2017 Affidavit of John Charlton.

as long, and near the parkway while it was not posted at all.<sup>81</sup>

77. Several of the trees that had No Trespassing signs posted by WIA pursuant to the August 2016 MSA were painted with the purple paint signs. See Plaintiff's Exhibit No. 35, pages 8, 12, 15, 16, and 23.

78. On Thursday, February 23, 2017, at 12:30 p.m., WIA filed its Original Petition<sup>82</sup> and at 1:45 p.m. obtained the issuance of a Temporary Restraining Order ("TRO"), which was filed at 2:20 p.m.<sup>83</sup>

79. On Thursday, February 23, 2017, George Russell, by email timed 2:33 p.m., published the following:

From: George H. Russell  
To: Waterwood WIA; Jack Zimmermann; Hans Barcus; Sue Ann Delk; George Russell  
Sent: Thursday, February 23, 2017 2:33 PM  
Subject: Stalking and harassment

23 February 2017

WIA and Zimmerman:

Please demand that John Charlton cease and desist from threatening, harassing, and stalking Ethician Foundation Wildlife Manager, Mike Zeltner, while he is legally conducting foundation business in accordance with State Law and NOT in violation of any "agreement" between the foundation and WIA.

John Charlton was OBVIOUSLY making his threats to sue me and Mike in his official capacity as Executive Vice-President of WIA which I believe is

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<sup>81</sup> Plaintiff's Exhibit 49 - May 8, 2017 Affidavit of Thomas C. Readal; Plaintiff's Exhibit No. 50 - May 8, 2017 Affidavit of John Charlton; Plaintiff's Exhibit No. 51 - May 8, 2017 Affidavit of Joe Moore.

<sup>82</sup> Plaintiff's Original Petition (less Exhibits) - Plaintiff's Exhibit No. 39, filed 12:30 p.m.

<sup>83</sup> February 23, 2017 Temporary Restraining Order - Plaintiff's Exhibit No. 40.



a serious liability to WIA.

I haven't read the by-laws in a long time but I vaguely recall that any WIA Board member who commits crimes, especially using illegal and uncalled for threats, harassment, and stalking in his official capacity should be asked to resign from the WIA Board immediately.

When Channing was stalking, threatening me and otherwise harassing me while holding an official position with WIA, I believe that WIA did not pay for his legal fees as his acts and actions were in violation State Law and of his fiduciary duties with WIA.

That is from my memory so please let me know if my memory is correct or if WIA would pay for Charlton's legal defense if we find it necessary to sue him and/or WIA and Charlton if indeed he was following orders from the WIA Board to make the threats directed toward Mr. Zeltner and me.

Thanks for your kind attention to this serious breach of Charlton's fiduciary duty to the WIA Board.

ghr<sup>84</sup>

80. Russell was served with citation and the TRO on February 23, 2017 at 5:30 p.m.<sup>85</sup>

81. After being served on February 23, 2017, starting at 8:09 p.m. and ending at 11:00 p.m..

George Russell went on a tirade and sent out 7 emails.<sup>86</sup>

From: George H Russell

Date: February 23, 2017 at 8:09:39 PM CST

To: Jack Zimmermann, Hans Barcus, George Russell, Sue Ann Delk, Waterwood WIA

Subject: Fwd: BREACH OF CONTRACT BY WIA

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<sup>84</sup> February 23, 2017 Email from Russell timed 2:33 p.m. – Plaintiff's Exhibit No. 41.

<sup>85</sup> February 23, 2017 Citations on Original Petition and TRO – Plaintiff's Exhibit No. 42.

<sup>86</sup> The emails are collectively attached as Plaintiff's Exhibit No. 43.

Jack:

Please explain your role in refusing to respond to our notification of 8 February 2017 that we had no choice but to follow STATE LAW in regard to "posting" our properties WITHOUT SIGNS!!!

Please also explain your personal role in the harassment, stalking and threats from John Charlton directed against our wildlife manager today over a period of over 3 hours.

Please also explain your personal role in the insane threats from Travis Kitchens and his harassment in violation of ethics rules of the Texas Bar.

Please also explain how legally required by STATE LAW purple paint according to statute constitutes TOILETS, HEARSEs, "Constitutionally protected First Amendment signs", or any other negative "sign" or ITEM which does NOT MEET THE LEGAL DEFINITION OF STATE MANDATED PURPLE PAINT?

I will ask my attorneys to DEPOSE you to determine your PERSONAL ROLE in today's threats, intimidation, and illegal nonsense that I was thrust with on our properties this evening in order to constitute ELDER ABUSE which includes my severely handicapped wife that is under threat by WIA's illegal acts and actions.

Just because I trusted that your word was your bond as is mine I FOOLISHLY trusted your honor and personal integrity to STOP THE ABUSE OF ME, MY WIFE, OUR CHURCH, and our foundation.

In addition, any act or action against the various institutions or governmental entities that we have the fiduciary duties to protect include but are not limited to:

1. Texas Parks and Wildlife
2. The Texas Historical Commission
3. The Texas Forest Service
4. The Ethician Foundation
5. Natural Area Preservation Association.
6. Various universities and research centers that use our properties for SCIENTIFIC RESEARCH.

So to be legal, WIA would have to sue ALL ENTITIES THAT HAVE A LEGAL BASIS TO BE PROTECTED FROM TRESPASS, VANDALISM, AND POACHING.

Thus the NONSENSE thrust in my hands without notice by Travis Kitchen's

GOONS directed by WIA, with your personal approval?, are without merit and CONSTITUTE ILLEGAL ACTS AND ACTIONS AGAINST MY PERSON AND A NUMBER OF STATE AGENCIES.

Should I also file a FORMAL COMPLAINT with the Texas Bar against you if your are personally involved in this nonsense or will you let me and my attorneys know in writing and under oath that you PERSONALLY HAD NOTHING TO DO WITH THE ILLEGAL ACTS AND ACTIONS OF WIA?<sup>87</sup>

At 9:09 p.m., George Russell sent the following email:

From: George H Russell  
Sent: Thursday, February 23, 2017 9:09 PM  
To: Travis Kitchens ; George Russell ; Jack Zimmermann ; Sue Ann Delk  
Subject: TEXAS DISCIPLINARY RULES OF - Template.cfm

Travis and Zimmerman,

I implore your to read and study the attached rules and then back off from harassing me and my wife for ZERO legal reason.

I did file twice against the corrupt attorney who ILLEGALLY represented Bass Boat Village against me and various State entities.

Tragically he decided to end his life. I do wish both of you long and peaceful lives and thus I beg both of your to stop the illegal harassment of me and my handicapped wife in violation of State Law for no legitimate purpose except harassment and intimidation.

We also wish to live long and peaceful lives without being harassed, threatened, intimidated, stalked, violated, assaulted and so on and on and on.

ghr

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<sup>87</sup>

February 23, 2017 email timed 8:09 p.m. – Plaintiff's Exhibit No. 45



At 10:34 p.m., George Russell sent the following email:

From: George H Russell

Sent: Thursday, February 23, 2017 10:34 PM

To: Travis Kitchens ; Waterwood WIA ; Jack Zimmermann ; George Russell ; Sue Ann Delk ; Hans Barcus ; 'Lanny Ray' ; Bryan Cantrell ; 'Henry Bird' ; Tom Waddill

Subject: elder abuse texas law - Google Search

My handicap wife and I are totally threatened by WIA and Travis Kitchens and Jack Zimmerman as VICTIMS OF ELDERLY ABUSE!!!

]

The crimes committed against US should cease immediately and Travis Kitchens should send LETTERS OF APOLOGY to me and my elderly and crippled wife for his transgressions and EGREGIOUS VIOLATIONS TO TEXAS

LAWS ON MANY FRONTS.

Travis Kitchens can ask for forgiveness and as a follower of Jesus I have no choice but to forgive him of his violations of STATE LAWS and his duty to his LAW CARD in regard to ETHICS.

ghr

P. S. Tom Waddill of the Huntsville ITEM are obviously under the control of the "oligarchy" and thus will REFUSE to expose malfeasance in WIA's GOVERNANCE.<sup>88</sup>

At 10:39 p.m., George Russell sent the following email:

Jack.

Please let me know IMMEDIATELY if you are "part and party" to the criminal acts against "us" by WIA.

I would avoid having to be forced to sue you personally and filing criminal charges against you for ELDERLY ABUSE.

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<sup>88</sup>

February 23, 2017 email timed 10:34 p.m. – Plaintiff's Exhibit No. 43.

At 10:42 p.m., George Russell sent the following email:

From: George H Russell [mailto:ghr@cyberclone.net]  
Sent: Thursday, February 23, 2017 10:42 PM  
To: Jack Zimmermann; Sue Ann Delk; Hans Barcus  
Subject: Re: Part and party

Yes. I have pushed into trying to hide from your transgressions even if  
it means alcohol consumption due to being FORCED INTO DRINKING DUE  
TO EMOTIONAL DISTRSS

At 10:52 p.m., George Russell sent the following email:

From: George H Russell  
Sent: Thursday, February 23, 2017 10:52 PM  
To: Travis Kitchens ; George Russell ; Jack Zimmermann  
Subject: WHY cant we be friend?

Why do you work for Satan and NOT for world peace as did Jesus?

I just don't get it.

You have caused me and my wife elderly GREAT DISTRESS .

Why?

At 11:00 p.m., George Russell sent the following email:

From: George H Russell  
Sent: Thursday, February 23, 2017 11:00 PM  
To: Travis Kitchens ; Jack Zimmermann ; Hans Barcus ; Sue Ann Delk ; George  
Russell  
Subject: Re: WHY cant we be friend?

Jack,

I have attempted to confront EVIL and expose the HOLOCAUST yet YOUR have  
allied yourself with EVIL and HATRED AGAINST OUR CHURCH which  
includes JEWS.

What kind of evil hypocrisy do YOU REPRESENT?

Are you really the leader of the WIA HATE MONGERS?

ghr

Ps I am really too tired and old to continue to be harassed by WIA  
after spending millions to protect WIA

Back Stabbing is EVIL!!!

82. On March 7, 2017, Russell filed his original answer and a counterclaim. Russell alleged affirmative defenses of "equitable doctrines of waiver, laches and estoppel, along with unclean hands, the parole (sic) evidence rule, statute of frauds, and necessity." Russell further alleged counterclaims of "A. Frivolous Lawsuit", alleging:

3. Given that the Mediated Settlement Agreement and resulting Agreed Judgement nowhere prohibit the painting of trees, particularly not when done in compliance and reliance on Texas law, this action is frivolous as it was clearly brought in bad faith having no basis in law or fact.

4. The Mediated Settlement Agreement ("MSA") and resulting Agreed Judgement prohibit signs that are not approved or agreed to or other items being placed within 200 feet of certain roadways. Plaintiff's Petition expressly admits and states that the order and MSA prohibits "the placement of signs" only. See, e.g., P1's Pet. at p.2, ¶ 2. The MSA was an arms' length transaction with counsel on both sides. If WIA had desired to prohibit painting, WIA should have bargained for that provision. Its absence renders this action -frivolous in fact.

5. The action is frivolous in law as well because painting purple markings on trees is statutorily prescribed as a method of marking land to ward off trespassers.

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6. Texas law differentiates between signs and purple marks, making this action frivolous in law, particularly given that Texas' trespass law prescribes the use of purple pain marking to provide notice to potential trespassers.



7. Defendants hereby requests recovery of court costs and all reasonable and necessary attorney's fees incurred in connection with the defense of this claim pursuant to Chapters 9 and 10 of Texas' Civil Practice and Remedies Code and TRCP 13<sup>89</sup>

and "B. Abuse of Process", alleging that "[t]he bringing of this action and the initial TRO obtained constitute the tort of abuse of process as it is legal process brought for a subversive and nefarious reason – to extort additional funds from Collins." <sup>90</sup>

83. On March 10, 2017, WIA filed its First Amended Petition, joining in as a named Defendant the Universal Ethician Church, together with Affidavit of WIA's Executive Director, Joe Moore.<sup>91</sup> On March 20, 2017, the Universal Ethician Church filed its original answer and counterclaim, which essentially tracked the Original Answer and Counterclaim of George Russell filed on March 9.<sup>92</sup>

84. On April 13, 2017, Russell answered Interrogatory No. 6 admitting that the person painting trees photographed by John Charlton was Mike Zeltner.<sup>93</sup>

85. On April 13, 2017, Russell when asked to "[s]tate the legal theories and in general, the factual bases for your claims or defenses," responded, in pertinent part:

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<sup>89</sup> Original Answer and Counterclaim – Plaintiff's Exhibit No. 44.

<sup>90</sup> Original Answer and Counterclaim – Plaintiff's Exhibit No. 44.

<sup>91</sup> Affidavit of Joe Moore – Plaintiff's Exhibit No. 45.

<sup>92</sup> Plaintiff's Exhibit No. 44.

<sup>93</sup> Defendant's Answers to Plaintiff's Corrected First Set of Interrogatories – Plaintiff's Exhibit No. 46.

Given that the Mediated Settlement Agreement and resulting Agreed Judgement nowhere prohibit the painting of trees, particularly not when done in compliance and reliance on Texas law, this action is frivolous as it was clearly brought in bad faith having no basis in law or fact.

The Mediated Settlement Agreement ("MSA") and resulting Agreed Judgement prohibit signs that are not approved or agreed to or other items being placed within 200 feet of certain roadways. Plaintiff's Petition expressly admits and states that the order and MSA prohibits "the placement of signs" only. See, e.g., P1's Pet. at p.2, ¶ 2. The MSA was an arms' length transaction with counsel on both sides. If WIA had desired to prohibit painting, WIA should have bargained for that provision. Its absence renders this action -frivolous in fact.

The action is frivolous in law as well because painting purple markings on trees is statutorily prescribed as a method of marking land to ward off trespassers.

Russell cites Section 30.05, Texas Penal Code, for its definition of Notice under (b) (2):

"Notice" means:

(A) oral or written communication by the owner or someone with apparent authority to act for the owner;

(B) fencing or other enclosure obviously designed to exclude intruders or to contain livestock;

(C) a sign or signs posted on the property or at the entrance to the building, reasonably likely to come to the attention of intruders, indicating that entry is forbidden;

**(D) the placement of identifying purple paint marks on trees or posts on the property**, provided that the marks are:

(i) vertical lines of not less than eight inches in length and not less than one inch in width;

(ii) placed so that the bottom of the mark is not less than three feet from the ground or more than five feet from the ground; and (iii) placed at locations that are readily visible to any person approaching the property and no more than:

(a) 100 feet apart on forest land; or

(b) 1,000 feet apart on land other than forest land. (Emphasis added by Russell).<sup>94</sup>

<sup>94</sup>

Plaintiff's Exhibit No. 47 - Defendants' Response to Request for Disclosure.

86. All conditions precedent to WIA's causes of action and claims have been met and satisfied.

#### IV. ARGUMENT AND AUTHORITIES

##### A. The Summary Judgment Standard

87. A summary judgment movant has the burden of showing that no genuine issue of material fact exists and that it is entitled to judgment as a matter of law. *See* Tex. R. Civ. P. 166a(c); *Nixon v. Mr. Property Mgmt. Co.*, 690 S.W.2d 546, 548 (Tex. 1985); *Provident Life and Accident Ins. Co. v. Knott*, 128 S.W.3d 211, 216 (Tex. 2003).
88. Summary judgment is also proper where the moving party conclusively establishes, as a matter of law, all of the elements of its cause of action. *Williams v. Glash*, 789 S.W.2d 261, 264 (Tex. 1990). A movant is not obligated to negate the affirmative defenses raised by a defendant's pleadings in order to be entitled to summary judgment. *See Nicholas v. Smith*, 507 S.W.2d 518, 520 (Tex. 1974); *Parker v. Dodge*, 98 S.W.3d 297, 300 (Tex. App.—Houston [1st Dist.] 2003, no pet.) (recognizing that where a "party opposing summary judgment relies on an affirmative defense, he must come forward with summary judgment evidence sufficient to raise an issue of material fact on each element of the defense to avoid summary judgment.").
89. Where an adequate time for discovery has passed, a party may move for summary judgment on the grounds that there is no evidence of one or more essential elements of a claim or defense on which an adverse party would have the burden of proof at trial. Tex. R. Civ. P. 166a(i). The court must grant the motion unless the respondent produces summary judgment evidence raising a genuine issue of material fact. *Id.*



90. To prevail on a no-evidence summary judgment motion, a movant must allege that there is no evidence of an essential element of the adverse party's claim. *Southwestern Electric Power Co. v. Grant*, 73 S.W.3d 211, 215 (Tex. 2002). The non-movant then must present evidence that raises a genuine fact issue on the challenged elements. *Id.* (citing Tex. R. Civ. P. 166a).
91. When considering a summary judgment motion, this Court "is authorized to dispose of part or all of the issues raised in the pleadings without adjudicating the entire case." *Chase Manhattan Bank, N.A. v. Lindsay*, 787 S.W.2d 51, 53 (Tex. 1990). "A summary judgment may be granted on separate issues within a single cause of action." *Id.* The summary judgment procedure provides an avenue for the speedy resolution of controversies that do not present factual issues. *See New Jersey Bank, N.A. v. Knuckley*, 673 S.W.2d 920, 921 (Tex. 1982).

**B. As a matter of law, Plaintiff is entitled to summary judgment on its claim that Defendant George Russell is in contempt of court for violations of the 2016 Agreed Final Judgment and the permanent injunction set forth in said Judgment.**

92. Plaintiff incorporates by reference, the same as if repeated herein, ¶¶ 1-91 *supra*, in support of this motion for summary judgment.
93. The actions of Defendant, and his violation of the permanent injunction in the 2016 Agreed Final Judgment, were intentional and with knowledge that such construction was in violation of the 2016 Agreed Final Judgment. The record is abundantly clear that George Russell has repeatedly violated both the spirit and the intent of the Mediation Settlement Agreements. This violation of the Court's injunction and his other actions evidence his contempt. He has

taken action requiring WIA to seek the intervention, now for the fourth time, to enforce and protect the rights of WIA and the property owners in the Waterwood Community. When he does not get his way, he resorts to contemptuous, disgusting, anti-semitic rants, rages, and disatribes, finding fault with everyone but himself. His actions exhibit his contempt for both his own written agreements and this Court's orders. ¶¶ 57, 67, 68, 69, 70, 71, 79, and 81 *supra*.

94. As early as September 23, 2016, via his email, George Russell started off complaining about issues he has with local law enforcement and the "corrupt" court system, then turns his rage against WIA and starts complaining about the agreement with WIA, apparently upset about the August 2016 MSA that was negotiated by Geroqe Russell and his attorneys with WIA. ¶ 57 *supra*. Even though the August 2016 MSA did not require any approval of the No Trespassing sign design or the Veterans Cemetery sign by Russell or the Mediator, WIA submitted the same. No objection was received from the Mediator or Russell concerning the No Trespassing sign and the No Trespassing signs were placed where Russell and WIA had agreed at the August 2016 mediation. ¶¶ 58-60 *supra*.
95. On February 8, 2017, George Russell sent a letter advising WIA that he was breaching the agreement – "Therefore I consider the "bogus" agreement to be NULL AND VOID" and advised that "we intend to LEGALLY POST OUR PROPERTIES beginning February 16, 2017."<sup>95</sup> ¶ 71 *supra*. This email effectively breached the mediation agreements.

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<sup>95</sup> Plaintiff's Exhibit No. 33; Russell argues that the green signs posted by WIA are virtually impossible to read and do NOT meet the requirements of 30.05 and states that the signs must be placed NO LESS THAN 100 FEET APART to comply with the code. The code actually states in 30.05, (2) "Notice means" (C) "a sign or signs posted on the property or at the entrance to the building, reasonably likely to come to the attention of

96. In the February 8, 2017 email, George Russell claimed to have recently purchased 500 acres of land near Waterwood for \$2 million, or \$4,000 per acre. ¶ 71 *supra* If you apply this per acre price to the land WIA purchased and throw in something for the billboard, the total value of the land and billboard is about \$200,000. The remaining \$800,000 represents the premium WIA paid for the 200 foot wide "Exclusion Zone" to be free of Russell's putting up whatever signs and notices he wanted to. Plaintiff would submit that \$800,000 is not a trivial sum to pay for something it has every right to expect Russell to adhere to under the agreements which Russell has once again violated.
97. There was no approval sought, and no approval was given, by WIA, for Russell to paint the 207 trees as he did on the morning of Wednesday, February 22, 2017, and continuing on Thursday, February 23, 2017 until he was served with citation at 4:30 p.m.<sup>96</sup>
98. The actions of Defendant are in violation of the permanent injunction set forth by the 2016 Agreed Final Judgment.
99. Russell seeks to avoid responsibility for his written agreement by arguing that somehow, even though he was represented by competent counsel at all three of the mediations, he was forced to accept \$1 million dollars for the sale of the Parkway and giving up control of putting up whatever signs he claims. Russell argues that none of the mediation settlement agreements prohibited him from painting signs on trees to give notice to potential trespassers, arguing that painting trees to give notice is not the same as putting a sign within 200 feet of

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intruders, indicating that entry is forbidden". See Plaintiff's Exhibits 49, 50, and 51.

<sup>96</sup> Affidavit of Joe Moore, May 8, 2017 – Plaintiff's Exhibit No. 50.



the Parkway or the Waterwood Streets. ¶ 81 *supra*. This argument is groundless, meritless, and frivolous.

100. How are signs generally made? Paint is applied to a surface – sometimes plastic (as in the No Trespassing signs), sometimes wood (as in the current Wounded Warriors Cemetery sign), sometimes paper. What are wood and paper made up of? Trees, an abundant resource in East Texas and the Waterwood area.
101. What is the purpose of Russell putting purple paint on the trees? It is to give notice to trespassers, as he admits in his Counterclaim. Section 30.05 provides that trees may be painted purple to convey the message that there is to be no trespassing on the property. The Law goes on to specify how the trees are to be painted and the spacing required. The painting of trees is a written legal message saying “no trespassing.” ¶ 54 *supra*.
102. While 30.05 says painting purple signs on trees is giving notice of no trespassing, how many ordinary persons know what the purple paint means? Wouldn't having a sign that says “No Trespassing” be a more effective way of giving a no trespassing notice? Indeed, at least five of the photographs show Russell painting purple signs underneath the No Trespassing signs that WIA put up on the trees in compliance with the August 2016 MSA.<sup>97</sup>
103. The Texas courts have long held that if a word does not have a specific legal meaning, then the normal definition of that word is adopted by the court. When interpreting any contract, the “court’s primary concern is to ascertain the parties’ true intent as expressed in the

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<sup>97</sup>

See Plaintiff’s Exhibit No. 35, pages 8, 12, 15, 16, and 23.

contract. ... The Court may look to the entire agreement in an effort to give each party meaning.” *Epps v. Fowler*, 351 S.W.3d 862, 865 (Tex. 2011). To achieve this goal, courts “examine the entire document and consider each part with every other part so that the effect and meaning of one part on any other part may be determined... We presume that the parties to a contract intend every clause to have some effect.” *Heritage Res., Inc. v. NationsBank*, 939 S.W.2d 118, 212 (Tex. 1996). *Accord Winfield v. Lamoyne*, 05-94-01851-CV, 1995 WL 634161, at \*12 (Tex. App.—Dallas Oct. 16, 1995, writ dismissed by agreement). Courts must examine the covenants as a whole in light of the circumstances present when the parties entered into the agreement. *Pilarcik v. Enmons*, 966 S.W.2d 474, 478 (Tex. 1998); *see also Air Park-Dallas Zoning Committee*, 109 S.W.3d at 909. “When a contract leaves a term undefined, we presume that the parties intended its plain, generally accepted meaning. Accordingly, we give the term its ordinary meaning. Often, we consult dictionaries to discern the natural meaning of a common-usage term not defined by contract, statute or regulation.” *Epps v. Fowler*, 351 S.W.3d at 866. If the words of the contract can be given a certain and definite meaning, the agreement is not ambiguous and the contract’s construction is a matter for the court. *Milner v. Milner*, 361 S.W.3d 615, 619 (Tex. 2012); *accord Chrysler Ins. Co. v. Greenspoint Dodge of Houston, Inc.*, 297 S.W.3d 248, 252 (Tex. 2009) (“Contract language that can be given a certain or definite meaning is not ambiguous and is construed as a matter of law.”) Critically, an ambiguity is not created simply because the parties differ over the interpretation of the terms. *See Uptegraph*, 312 S.W.3d at 930 (concluding that although the parties differ over the interpretation of restrictive covenants,

because they can be given a definite and certain legal meaning they are not ambiguous); *Dynegy Midstream Servs. v. Apache Corp.*, 294 S.W.3d 164, 168 (Tex. 2009); *Air Park-Dallas Zoning Committee*, 109 S.W.3d at 909. As the Dallas Court of Appeals has recognized, one party's unilateral misinterpretation of the contract does not render it ambiguous. *Esty v. Beal Bank S.S.B.*, 298 S.W.3d 280, 300 (Tex. App.—Dallas 2009, no pet.). Only after appropriate rules of construction have been applied and a covenant is still susceptible of more than one reasonable interpretation, can the court determine that the covenant is ambiguous. *Pilarcik*, 966 S.W.2d at 478.

104. In the context of the January 2016 MSA, the word "sign" is used as a noun. The Merriam-Webster dictionary defines "sign" as "2: a mark having a conventional meaning and used in place of words or to represent a complex notion" and "5. b. a posted command, warning, or direction." Further it is defined as "a piece of paper, wood, etc., with words or pictures on it that gives information about something." The Free Dictionary defines "sign" as "3. b. A posted notice bearing a designation, direction, or command."<sup>98</sup> The definitions clearly say there are numerous ways of conveying messages other than written or verbal. Highway signs such as warnings of curved roads are good examples of conveying messages without words. Painting of trees, whether purple for no trespassing, green for do not cut, and other colors for various meanings are "signs" conveying specific messages.
105. Further, the agreements and court injunction prohibited placement of other "items" in the Exclusion Zone without WIA's approval. "Item" means (a) "warning;" (b) "an object of

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<sup>98</sup> Plaintiff's Exhibit No. 58 - Excerpts of definitions of "sign" and "item".



attention, concern, or interest;" (c) "a single article or unit in a collection, enumeration, or series;" (d) "a bit of information; a detail;" and/or (e) "a piece of information, detail, or note."<sup>99</sup>

106. When construed under Texas rules of contract construction, as discussed above, it is clear that the parties intended for WIA, in exchange for \$1 million, bargained for and is entitled to control signs and other items, whether painted on plastic, paper, wood, or trees, within the Exclusion Zone of 200 feet as ordered by the Court in the 2016 Agreed Final Judgment.

107. Pursuant to § 21.001 (a), Texas Government Code, "A court has all powers necessary for the exercise of its jurisdiction and the enforcement of its lawful orders, including authority to issue the writs and orders necessary or proper in aid of its jurisdiction" and § 21.002(a), "a court may punish for contempt," this Court has authority to enforce its orders by contempt.<sup>100</sup>

108. Pursuant to § 21.002 (b), "The punishment for contempt of a court other than a justice court or municipal court is a fine of not more than \$500 or confinement in the county jail for not more than six months, or both such a fine and confinement in jail." **\$103,500**

109. The evidence in the instant case establishes that Russell painted purple signs on at least 207 trees on February 22, 2017 and February 23, 2017. Accordingly, he has committed 207 acts of contempt of this Court's 2016 Agreed Final Judgment in the *Second Russell Lawsuit* signed on March 14, 2017, and agreed to by Russell in the January 2016 MSA and the August 2016 MSA. Such excessive contempt should not be treated lightly. **124 years in Jail**

<sup>99</sup> Plaintiff's Exhibit No. 48 - Excerpts of definitions of "sign" and "item" from Merriam-Webster and Free Dictionaries.

<sup>100</sup> Sections 21.001 and 21.002, Texas Government are attached as Appendix B.

110. The evidence establishes that there is no genuine issue of material fact concerning Plaintiff's complaint that Defendants violated the 2016 Agreed Final Judgment and the injunction granted WIA in that Judgment. Defendants should be held in contempt of court, jailed, and fined, as authorized by § 21.002(b), and other applicable Texas law, for each individual tree that has had a purple sign painted on it, that is within the Exclusion Zone, i.e., 200 feet of the Waterwood Parkway and any street in Waterwood that borders on property owned by Russell, each being a violation of the permanent injunction set forth above.

**C. Plaintiff is entitled to summary judgment as a matter of law that it is entitled to further injunctive relief against Defendants, enjoining Defendants from violating the 2016 Agreed Final Judgment, the January 2016 MSA and the August 2016 MSA.**

111. Plaintiff incorporates by reference, the same as if repeated herein, ¶¶ 1-110, in support of this motion for summary judgment.
112. Plaintiff has presented its application for a permanent injunction based on these claims.
113. The record is abundantly clear that George Russell, until otherwise enjoined and restrained, will continue to violate both the spirit and the intent of the Mediation Settlement Agreements:

- (a) In George Russell's December 15, 2016 email (Plaintiff's Exhibit No. 30), he threatened:

Therefore we have no choice but to do the following to attempt to protect our multi-million dollar investment in the future of Waterwood;

We have a significant amount of chain-link fence, some with barbed wire at the top and in order to protect our properties along Waterwood Parkway from criminal trespass, criminal vandalism, poaching and other crimes we fee that we must erect fencing along our property lines.

Quite frankly I hate the ugliness of chain-link fencing but we feel that we have no choice to protect our wildlife sanctuaries, botanical preserves, Texas Forest Service special areas, and Texas Archaeological Landmarks but to fence them off since WIA has tricked us into leaving our natural areas unprotected for which we have suffered great harm.

Now if WIA is willing to to assume ALL LIABILITIES associated with intrusions to our properties along with a bond sufficient to pay for the damages without us having to sue WIA when trespass and damages occur in the future and submit a check in the amount of \$27,000 for the loss of our trees, then we might consider NOT erecting the chain-link fencing along our property lines along the parkway that we were coerced into selling to WIA at a \$250,000 loss.

We also intend to erect a huge billboard 200 feet away from the parkway or any other WIA controlled roadway, warning potential purchasers to conduct serious due diligence before investing a single penny in pathetic sub-division unless WIA decides to work with us instead of AGAINST US.

- (b) In George Russell's December 26 2017 email (Plaintiff's Exhibit No. 31), he threatened:

The County Judge and DA BOTH refused to take action against the CRIMINALS who invaded our wildlife sanctuaries and destroyed \$27,000 worth of trees DUE TO THE FACT THAT THERE WERE NO LEGAL NO TRESPASSING SIGNS on the property where the CRIMES TOOK PLACE, DUE TO WIA action "corruption" and hate crimes against our church and foundation.

THEREFORE, we have no choice but to DECLARE ANY SO-CALLED AGREEMENTS PERPETUALLY VIOLATED BY WIA, NULL AND VOID, AND THUS WE MUST POST SIGNS AS MAY BE IN ACCORDANCE WITH LAW TO STOP THE CRIMINAL ACTS AND ACTIONS AGAINST OUR CHURCH AND FOUNDATION DUE TO WIA ACTS AND ACTIONS AGAINST OUR CHURCH AND FOUNDATION.

In addition we are letting WIA know that we may have to place fences along the Parkway property that we were forced to sell at a quarter



million dollar loss to let criminals know where our property lines are ...

114. This Court set forth a permanent injunction in the 2016 Agreed Final Judgment. ¶ 46 *supra*. George Russell contends that it is authorized to declare the agreements and court orders null and void on their own declaration and take whatever action he wants to take. Plaintiff requests a further permanent injunction prohibiting Defendants from violating the 2016 Agreed Final Judgment and the January 2016 MSA and the August 2016 MSA, and otherwise interfering with WIA's maintenance of the Waterwood Parkway and any street in Waterwood that borders on property owned by Defendants.
115. Generally, to obtain injunctive relief, an applicant must demonstrate four grounds for relief: (1) the existence of a wrongful act; (2) the existence of imminent harm; (3) the existence of irreparable injury; and (4) the absence of an adequate remedy at law. *Winfield v. Lamoyne*, 1995 WL 634161, at \*2 (Tex. App. – Dallas, Oct. 16, 1995, writ dismissed by agreement). *Accord Jim Rutherford Investments, Inc. v. Terramar Beach Community Association*, 25 S.W.3d at 849 (citing *Priest v. Texas Animal Health Commission*, 780 S.W.2d 874, 875 (Tex. App. – Dallas 1989, no writ).
116. Plaintiff has shown, as a matter of law, a distinct and substantial breach of the restrictive covenants entered into by and between WIA and Russell, and the placement of signs and other items in the Exclusion Zone. Plaintiff has no adequate remedy at law because they cannot specifically establish that the Defendants' painting of purple signs on trees, in violation of the agreements and judgments between them, will cause them to suffer any monetary damage, other than remedial removal of the purple signs. Without the issuance of

a permanent injunction, Plaintiff has no adequate or effective remedy for Defendants' continued breach of their written agreements and the judgments of this Court.

117. "A remedy at law is not adequate unless that remedy is as complete, practical, and efficient to the ends of justice and its prompt administration as is equitable relief." *Gigowski v. Russell*, 718 S.W.2d at 21-22 (citing *Brazos River Conservation and Reclamation Dist. v. Allen*, 141 Tex. 208, 171 S.W.2d 842, 846 (1943)).
118. The grant or refusal of a permanent injunction ordinarily lies within the trial court's sound discretion. *Winfield*, 1995 WL 634161 at \*2. A court may properly grant a permanent injunction in a summary judgment proceeding. See *Voice of the Cornerstone Church Corporation v. Pizza Property Partners*, 160 S.W.3d 657, 668 (Tex. App. – Austin 2005, no pet.) (upholding trial court's summary judgment granting permanent injunction enjoining defendant's violations of restrictive covenants, stating that "a court may interpret and apply provisions of a restrictive covenant on summary judgment when no factual issues exist."); *Jim Rutherford Investments, Inc.*, 25 S.W.3d at 850 (holding that the plaintiff "conclusively proved its entitlement to summary judgment as a matter of law... [and] [t]herefore the trial court did not abuse its discretion in permanently enjoining [defendant] from violating the Terramar Beach deed restrictions.").
119. Although some courts balance the equities between the parties in cases where injunctive relief is sought some courts appear not to. See *Wilmoth v. Wilcox*, 734 S.W.2d 656, 657-658 (Tex. 1987) (containing no discussion concerning any balancing of the equities in affirming trial court judgment granting mandatory injunction ordering manufactured home removed

because it violated subdivision's deed restrictions): *Voice of Cornerstone Church Corp.*, 160 S.W.3d at 660-661, 669-670, 673 (affirming trial court's granting of permanent injunction at summary judgment, but containing no discussion of any balancing of the equities between the parties.)

120. In the restrictive covenant context, which are contracts, Texas Courts that have applied a balancing of the equities have nonetheless held that a trial court may only refuse to enforce restrictive covenants if, in balancing the equities, the disproportion between the harm the injunctive relief causes and the benefit it produces is "of considerable magnitude." *Bollier v. Austin Gurdwara Sahib, Inc.*, 2010 WL 2698765, at \*8 (Tex. App. – Austin 2010, pet. denied) (reversing trial court's judgment denying injunctive relief and remanding to the trial court for the issuance of a permanent injunction) *see also* *Cowling v. Colligan*, 312 S.W.2d 943, 946 (Tex. 1958) ("It is not sufficient to create the disproportion (of harm) that will justify refusing to grant injunctive relief that the harm ensuing from granting such relief will be greater than the benefit gained thereby. When the disproportion between the harm and benefit is the sole reason for refusing relief, the disproportion must be one of considerable magnitude.").
121. In *Jim Rutherford Investments, Inc.*, 25 S.W.3d at 848, 850, the court of appeals upheld the trial court's summary judgment granting a permanent injunction, determining that a balancing of the equities demonstrated that those favoring the plaintiff "significantly outweigh any equities favoring [the defendant]." In that case, the evidence showed that the defendant builder purchased the property with knowledge of the restrictive covenants, and



when informed that his property was subject to deed restrictions he refused to halt construction, and completed the fence, thus resulting in the legal action taken to force him into compliance with the restrictive covenants. *Id.*

122. Even when the cost to the defendant will be high if a permanent injunction is issued, Texas courts will not balance the equities in favor of the defendant where he had actual or constructive knowledge of the restrictive covenants. *See Bollier*, 2010 WL 2698765 at \*8 (stating that “[i]n this case, enforcement of the restrictive covenant requires the removal of the New Temple from AGS’s lot. While such an undertaking will undoubtedly be costly, Texas courts have declined to balance the equities in favor of a party who incurs building costs after receiving actual or constructive notice of a deed restriction prohibiting construction.”); *Gigowski*, 718 S.W.2d at 22 (ordering appellants to remove mobile home despite “considerable expense” when they had actual and constructive notice of deed restrictions.).

123. The evidence in the instant case establishes that Defendants entered into contracts and agreements, accepted \$1 million from WIA, and then continued to engage in the activity complained about in the prior lawsuits – interference in the maintenance of the Parkway and violation of written agreements – that Defendants had agreed not to engage in. The Statement of Facts reflect the continued combative and litigious nature of George Russell in issues dealing with WIA, local law enforcement, the San Jacinto County, Texas District Attorney, the San Jacinto County, Texas, judicial system, Jack Zimmermann and WIA’s attorney. Defendants argue, in their counterclaim alleging a frivolous lawsuit, that painting

purple paint on trees is not a sign and the permanent injunction in the 2016 Agreed Final Judgment did say he could not paint purple paint on the trees within the Exclusion Zone. As set forth in the discussion above concerning signs and other items, unless further restrained, Defendants will continue on their attempt to violate any agreement or court orders based on their own interpretation of what they are allowed to do.

124. Plaintiff is entitled to a permanent injunction prohibiting Defendants from:

- (a) violating the 2016 Agreed Final Judgment and the January 2016 MSA and the August 2016 MSA;
- (b) from interfering with WIA's maintenance of the Waterwood Parkway and any street in Waterwood that borders on property owned by Defendants;
- (c) from erecting or placing any sign or other items, including chain-link fences and barbed wire, within the Exclusion Zone; and
- (d) from erecting any billboards defaming WIA.

125. Plaintiff is also entitled to a permanent injunction requiring that Defendants remove all purple paint signs from the 207 trees at Defendant's expense.

126. The evidence establishes that there is no genuine issue of material fact that would prevent the Court from granting a further permanent injunction. Based on the foregoing, as a matter of law, Plaintiff is entitled to a permanent injunction enjoining Defendants from painting any purple signs on trees within the Exclusion Zone without the specific written approval of WIA. Accordingly, summary judgment is proper on the granting of a permanent injunction.

**D. Plaintiff is entitled to summary judgment as a matter of law that Defendants have violated and breached the 2016 Agreed Final Judgment and the January 2016 MSA and August 2016 MSA.**

127. Plaintiff incorporates by reference, the same as if repeated herein, ¶¶ 1-126, in support of this motion for summary judgment.
128. Plaintiff has brought claims against Defendants for breach of the 2016 Agreed Final Judgment, the January 2016 MSA, and the August 2016 MSA.
129. The evidence conclusively establishes that Defendants have repudiated, breached and violated the 2016 Agreed Final Judgment, the January 2016 MSA, and the August 2016 MSA.
130. When interpreting any contract, the court's primary duty to ascertain the drafter's intent from the instrument's language. *Uptegraph v. Sandalwood Civic Club*, 312 S.W.3d 918, 925 (Tex. App. – Houston [1st Dist.] 2010, no pet.); *Epps v. Fowler*, 351 S.W.3d 862, 865 (Tex. 2011) (“Our primary concern when we construe a written contract is to ascertain the parties’ true intent as expressed in the contract... We may look to the entire agreement in an effort to give each part meaning.”).
131. To achieve this goal, courts “examine the entire document and consider each part with every other part so that the effect and meaning of one part on any other part may be determined... We presume that the parties to a contract intend every clause to have some effect.” *Heritage Res., Inc. v. NationsBank*, 939 S.W.2d 118, 212 (Tex. 1996). *Accord Winfield v. Lamoyne*, 05-94-01851-CV, 1995 WL 634161, at \*12 (Tex. App.–Dallas, Oct. 16, 1995, writ dismissed by agreement). Courts must examine the covenants as a whole in light of the circumstances present



when the parties entered into the agreement. *Pilarcik v. Emmons*, 966 S.W.2d at 478; see also *Air Park-Dallas Zoning Committee*, 109 S.W.3d at 909.

132. If the words of the contract can be given a certain and definite meaning, the agreement is not ambiguous and the contract's construction is a matter for the court. *Milner v. Milner*, 361 S.W.3d 615, 619 (Tex. 2012); accord *Chrysler Ins. Co. v. Greenspoint Dodge of Houston, Inc.*, 297 S.W.3d 248, 252 (Tex. 2009) ("Contract language that can be given a certain or definite meaning is not ambiguous and is construed as a matter of law.").
133. Critically, an ambiguity is not created simply because the parties differ over the interpretation of the terms. See *Uptegraph*, 312 S.W.3d at 930 (concluding that although the parties differ over the interpretation of restrictive covenants, because they can be given a definite and certain legal meaning they are not ambiguous); *Dynegy Midstream Servs. v. Apache Corp.*, 294 S.W.3d 164, 168 (Tex. 2009); *Air Park-Dallas Zoning Committee*, 109 S.W.3d at 909. As the Dallas Court of Appeals has recognized, one party's unilateral misinterpretation of the contract does not render it ambiguous. *Esty v. Beal Bank S.S.B.*, 298 S.W.3d 280, 300 (Tex. App.-Dallas 2009, no pet.). Only after appropriate rules of construction have been applied and a covenant is still susceptible of more than one reasonable interpretation, can the court determine that the covenant is ambiguous. *Pilarcik*, 966 S.W.2d at 478.
134. The evidence submitted herewith establishes that by their acts, deeds, conduct, and admissions, Defendants have breached, violated, and repudiated their mediation agreements and the agreed final judgment, and accordingly, Plaintiff is entitled to summary judgment, as a matter of law, on its claims against Defendants for breach of and violation of the

2016 Agreed Final Judgment and the January 2016 MSA and the August 2016 MSA, by failing to obtain approval of WIA of the placement of signs and other items in the Exclusion Zone.

**E. Plaintiff is entitled to summary judgment as a matter of law on its cause of action for Declaratory Judgment.**

135. Plaintiff incorporates by reference, the same as if repeated herein, ¶¶ 1-134, in support of this motion for summary judgment.
136. Plaintiff requests the Court, pursuant to Chapter 37, Texas Civil Practices and Remedies Code, (a) to declare what the rights of WIA are pursuant to the January 2016 MDA from the *Second Russell Lawsuit*, the August 2016 MSA from the *Third Russell Lawsuit*, and the 2016 Agreed Final Judgment in the *Third Russell Lawsuit*, as concerns the rights of WIA to maintain the Parkway pursuant to the 2016 Agreed Final Judgment and the Mediation Settlement Agreement; (b) if the Court finds that any part of the 2016 Agreed Final Judgment and the permanent injunction sought to be enforced is not specific enough to be enforced by contempt, the Court enter a declaratory judgment and clarifying order restating the terms of the judgment and the permanent injunction in a manner specific enough to allow enforcement by contempt and specifying a reasonable time within which compliance will be required; and (c) to declare that WIA has the sole right to design the Veterans Cemetery Sign, under the August 2016 MSA, and the right to go upon Russell's property to replace the current Wounded Warrior Cemetery sign without the interference or consent of Russell as to the design of the sign.

**F. Plaintiff is entitled to summary judgment on its request for attorneys fees.**

137. Plaintiff incorporates by reference, the same as if repeated herein, ¶¶ 1-136, in support of this motion for summary judgment concerning attorney's fees.
138. Plaintiff is entitled to recovery of its attorney's fees, as provided for by Chapters 37 and 38, Texas Civil Practice & Remedies Code.
139. Plaintiff is entitled to recover its attorney's fees and costs for Defendants' repudiation, breach and violation, and the required necessity of WIA's legal action to enforce same, of the 2016 Agreed Final Judgment, together with the January 2016 MSA and the August 2016 MSA.
140. Plaintiff incorporates by reference the Affidavit of Travis E. Kitchens, Jr.<sup>101</sup> concerning the amount of attorney's fees and costs incurred in the prosecution of this lawsuit. As established by Plaintiff's lawyer, the legal fees incurred to date, as well as those anticipated through the summary judgment hearing, is \_\_\_\_\_ (\_\_\_\_) hours, for a total legal fee of \$ \_\_\_\_\_.
141. Additionally, if this case were appealed to the court of appeals, it would require at least an additional 40 hours of work (\$10,000.00) for representation through appeal to the court of appeals to prepare the brief and 10 hours (\$2,500.00) for oral arguments, for a reasonable attorney fee an appeal through the court of appeals would be 50 hours, or a fee of \$12,500.00. Further, if the case were appealed to the Texas Supreme Court, it would require another 50 hours of work, which would be an additional \$11,500.00. This work would include drafting or responding to a petition for review, drafting a reply in support of petition for review,

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<sup>101</sup> Plaintiff's Exhibit No. 52.



drafting or responding to a brief on the merits, drafting a reply brief on the merits, preparing for and attending oral argument in Austin, and drafting or responding to any post-submission brief or motion for rehearing, and is broken down as follows: (a) for representation at the petition for review stage in the Supreme Court of Texas - (20 hours) \$5,000.00; (b) for representation at the merits briefing stage in the Supreme Court of Texas - (16 hours) \$4,000.00; and (c) for representation through oral argument and the completion of proceedings in the Supreme Court of Texas - (10 hours) \$2,500.00.

142. Plaintiff requests the Court to enter its order finding that Defendants breached and violated the 2016 Agreed Final Judgment, together with the January 2016 MSA and the August 2016 MSA, and that Defendants are liable to Plaintiffs for their reasonable attorney's fees and costs.

**G. As a matter of law, Plaintiff is entitled to summary judgment on Defendants' affirmative defenses of "waiver, laches and estoppel, along with unclean hands, the parole (sic) evidence rule, statute of frauds, and necessity."**

143. Plaintiff incorporates by reference, the same as if repeated herein, ¶¶ 1-140, in support of this motion for summary judgment as to the affirmative defenses alleged by Defendants.
144. Defendants allege affirmative defenses of "waiver, laches and estoppel, along with unclean hands, the parole (sic) evidence rule, statute of frauds, and necessity."<sup>102</sup> A movant is not obligated to negate the affirmative defenses raised by a defendant's pleadings in order to be entitled to summary judgment. *See Nicholas v. Smith*, 507 S.W.2d 518, 520 (Tex. 1974):

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<sup>102</sup> Plaintiff's Exhibit No. 44.

*Parker v. Dodge*, 98 S.W.3d 297, 300 (Tex. App.—Houston [1st Dist.] 2003, no pet.) (recognizing that where a “party opposing summary judgment relies on an affirmative defense, he must come forward with summary judgment evidence sufficient to raise an issue of material fact on each element of the defense to avoid summary judgment.”).

145. Nonetheless, Plaintiff would provide the following to negate the existence of the affirmative defenses alleged by Defendants in this lawsuit.

**i. Waiver**

146. Defendants allege the affirmative defense of waiver. “The affirmative defense of waiver can be asserted against a party who intentionally relinquishes a known right or engages in intentional conduct inconsistent with claiming that right. *Sun Exploration & Prod. Co. v. Benton*, 728 S.W.2d 35, 37 (Tex.1987). A waivable right may spring from law or, as in this case, from a contract. *Ford v. Culbertson*, 158 Tex. 124, 308 S.W.2d 855, 865 (1958); see also *Alford, Meroney & Co. v. Rowe*, 619 S.W.2d 210, 213 (Tex.Civ.App.—Amarillo 1981, writ ref’d n.r.e.). A party’s express renunciation of a known right can establish waiver. *Rowe*, 619 S.W.2d at 213. Silence or inaction, for so long a period as to show an intention to yield the known right, is also enough to prove waiver. *Id. Tenneco, Inc. v. Enterprise Products Co.*, 925 S.W.2d 640, 643 (Tex. 1996). In *Tenneco*, the waiver evidence spanned a period of over three years where contract rights were not asserted and third parties were able to conclude that the contract rights in issue had not been waived by Tenneco. The Supreme Court noted that waiver is “ordinarily a question of fact. See *Caldwell v. Callender Lake Property Owners Improvement Ass’n*, 888 S.W.2d 903, 910 (Tex.App.—Texarkana 1994, writ

denied); *Rowe*, 619 S.W.2d at 213. Where the facts and circumstances are admitted or clearly established, however, the question becomes one of law. *Id.*”

147. In the instant case, the parties entered into two Mediation Settlement Agreements – one in January 2016 and one in August 2016, and an Agreed Final Judgment that was signed on March 14, 2016. Upon discovering that George Russell, contrary to the express terms of the two mediation agreements and the agreed final judgment, started painting purple signs on trees within the Exclusion Zone on February 22, 2017, WIA, on February 23, 2017, filed the instant lawsuit and obtained a temporary restraining order to halt the further painting of purple signs on the trees within the Exclusion Zone. ¶¶ 72-78. George Russell knew that WIA objected to the painting of signs on the trees, evidenced, in part, by the fact that WIA agreed to pay, and did pay \$1 million to Russell so that WIA would have the right to control the view of the members of WIA and the traveling public upon the Parkway and Waterwood Streets from George Russell’s actions in destroying the beautiful forested look. There is no evidence presented by Defendants that evidence any waiver on the part of WIA.
148. In the instant case, there is no evidence to raise a genuine issue of material fact with respect to the elements of waiver. The clearly established facts establish, as a matter of law, that the 2016 Mediation Settlement Agreements and the 2016 Agreed Final Judgment have not been waived. There is no evidence of one or more essential elements of Russell’s affirmative defense of waiver, and WIA is entitled to summary judgment on this affirmative defense.



## ii. Laches

149. Defendants allege the affirmative defense of laches. The two elements of laches are: (1) an unreasonable delay in asserting a legal or equitable right; and (2) a good faith change of position by the person alleged to have violated the prohibited conduct, to such person's detriment in reliance upon the delay. *City of Fort Worth v. Johnson*, 388 S.W.2d 400, 403 (Tex. 1964). When a party takes no steps to enforce its known rights until the other party has, in good faith, so changed its position that it cannot be restored to its former state, the delay becomes inequitable and may estop the assertion of the claimed right. *City of Houston v. Muse*, 788 S.W.2d 419, 422 (Tex.App.—Houston [1<sup>st</sup> Dist.] 1990, no writ), citing *Culver v. Pickens*, 176 S.W.2d 167, 170-71 (1943).
150. The Court, in *Culver v. Pickens*, 142 Tex. 87, 176 S.W.2d 167, 170. (Tex. 1943), described the requirement that to establish laches, "Delay, coupled with disadvantage to another, are the essential elements. If one, knowing his rights, 'takes no steps to enforce them until the condition of the other party has, in good faith, become so changed that he cannot be restored to his former state, if the right be then enforced, delay becomes inequitable.'"
151. In the instant case, Defendants had prior notice that the placement of signs and other items within the Exclusion Zone was part of the 2016 MSAs and the 2016 Agreed Final Judgment between the parties. There is no evidence of delay in WIA asserting its right to enforce its control over the Exclusion Zone. George Russell knew that Tom Readal saw him painting signs on the morning of February 22, 2017 and George Russell then exited the area, only to return with his employee and started painting signs on trees again, until the *Fourth Russell*

*Lawsuit* was filed at 12:30 p.m. the next day, and he was served with the TRO at 5:30 p.m. the next day. There was no delay in enforcing the agreements and court orders when it was discovered that George Russell was once again violating his written agreements and this Court's injunction.

152. Defendants chose to violate the agreements and orders of the court, and WIA brought legal action promptly to enforce the agreements and orders. In the instant case, there is no evidence to raise a genuine issue of material fact with respect to the elements of laches. There is no evidence of one or more essential elements of Russell's affirmative defense of waiver, and WIA is entitled to summary judgment on this affirmative defense.

### **iii. Estoppel**

153. Defendants allege the affirmative defense of estoppel. The following elements establish the defense of estoppel: (1) a false representation or concealment of material facts, (2) made with actual or constructive knowledge of the facts, (3) to a party without knowledge or the means to obtain knowledge of the facts, (4) and made with the intention that such misrepresentation or concealment should be acted on, (5) so that the party to whom it was made must have relied on or acted on it to his or her prejudice. *Dempsey v. Apache Shores Property Owners*, 737 S.W.2d 589, 595-596 (Tex. App. – Austin 1987, no writ); *accord Pebble Beach Prop. Owners' Ass'n v. Sherer*, 2 S.W.3d at 291. The party relying on estoppel has the burden of proof as to each of these elements. *Id.*
154. In the instant case, there is no evidence to raise a genuine issue of material fact with respect to the elements of estoppel. There is no evidence of one or more essential elements of

Russell's affirmative defense of estoppel, and WIA is entitled to summary judgment on this affirmative defense.

#### iv. Unclean Hands

155. Defendants next allege the affirmative defense of unclean hands. The elements of the unclean hands doctrine were set out in the Fort Worth's Court of Appeals' decision in *Paciwest, Inc. v. Warner Alan Properties, LLC*, 266 S.W.3d 559, 571 (Tex. App. – Fort Worth 2008, pet. denied): “The doctrine of unclean hands operates as a bar to the equitable relief of specific performance. *Stafford*, 231 S.W.3d at 536 n. 4; *Lazy M Ranch, Ltd. v. TXI Operations LP*, 978 S.W.2d 678, 683 (Tex.App.-Austin 1998, pet. denied). The party claiming unclean hands has the burden to show that it was injured by the other party's unlawful or inequitable conduct. *Stafford*, 231 S.W.3d at 536 n. 4; *Willis v. Donnelly*, 118 S.W.3d 10, 38 (Tex. App.-Houston [14th Dist.] 2003), *aff'd in part and rev'd in part on other grounds*, 199 S.W.3d 262, 278-79 (Tex.2006).” *Paciwest v. Warner Alan Properties*, at 571- 572. In *Paciwest*, Paciwest argues that specific performance of a contract with Warner Alan Properties was barred because of “unclean hands.” The *Paciwest* court noted that the “clean hands doctrine should not be applied unless the party asserting the doctrine has been seriously harmed and the wrong complained of cannot be corrected without the application of the doctrine. *Dunnagan v. Watson*, 204 S.W.3d 30, 41 (Tex.App.-Fort Worth 2006, pet. denied).” The *Paciwest* court noted that, in that case, “the evidence shows that any harm suffered by Paciwest was its own doing ... Paciwest was responsible for its own default under the contract. Accordingly, we conclude and hold that the trial court did not abuse its discretion



in determining that Westcliff was not barred from seeking specific performance by the "unclean hands" doctrine. *See Stafford*, 231 S.W.3d at 536 n. 4; *Dunnagan*, 204 S.W.3d at 41.

156. In the instant case, there is no evidence of any "serious" harm that would invoke the unclean hands doctrine. Defendants intentionally painted purple signs on over 200 trees in the Exclusion Zone. As the *Paciwest* court noted, Russell is responsible for its own default under the contract, *i.e.*, the mediation agreements and the Agreed Final Judgment.
157. In the instant case, there is no evidence to raise a genuine issue of material fact with respect to the elements of unclean hands. There is no evidence of one or more essential elements of Russell's affirmative defense of unclean hands, and WIA is entitled to summary judgment on this affirmative defense.

#### **v. The Parol Evidence Rule**

158. Defendants next throw out the affirmative defense of the parol evidence rule. The Texas Supreme Court explained the parol evidence rule:

An unambiguous contract will be enforced as written, and parol evidence will not be received for the purpose of creating an ambiguity or to give the contract a meaning different from that which its language imports. *Universal C.I.T. Credit Corp. v. Daniel*, 243 S.W.2d 154, 157 (Tex. 1951). Only where a contract is ambiguous may a court consider the parties' interpretation and "admit extraneous evidence to determine the true meaning of the instrument." *Nat'l Union Fire Ins. Co. of Pittsburgh, Penn. v. CBI Indus., Inc.*, 907 S.W.2d 517, 520 (Tex. 1995) (per curiam). "Whether a contract is ambiguous is a question of law that must be decided by examining the contract as a whole in light of the circumstances present when the contract was entered." *Columbia Gas Transmission Corp. v. New Ulm Gas, Ltd.*, 940 S.W.2d 587, 589 (Tex. 1996).

Haden argues that the collateral and consistent exception applies. Under the

exception, parol evidence can be used to demonstrate a prior or contemporaneous agreement that is both collateral to and consistent with a binding agreement, and that does not vary or contradict the agreement's express or implied terms or obligations. *Id.* But "[a] previous or simultaneous agreement to alter the fee agreed upon in a written contract is in conflict with the written contract and not merely collateral to it." *Lakeway Co. v. Leon Howard, Inc.*, 585 S.W.2d 660, 662 (Tex. 1979) (*per curiam*); see also *Rincones v. Windberg*, 705 S.W.2d 846, 849 (Tex. App.—Austin 1986, no writ) ("It is a fair conclusion, we think, that the parol evidence rule prohibits the admission of oral evidence which alters the payment terms of a written contract."). The evidence offered by Haden would alter the written fee agreement, and is therefore not admissible under the collateral and consistent exception to the parol evidence rule.

The court of appeals erred in holding that there was no meeting of the minds necessary to form a binding contract, and erred in holding that the parol evidence rule did not bar Haden's evidence of an oral agreement to cap fees. Accordingly, we grant Sacks's petition for review and, without hearing oral argument, see Tex. R. App. P. 59.1, reverse the court of appeals' judgment and render judgment that the trial court's judgment with respect to the admissibility of parol evidence be reinstated. We remand the case to the court of appeals for consideration of other issues raised on appeal.

159. In the instant case, parol evidence, *i.e.*, the testimony of Joe Moore, Thomas Readal, and John Charlton are not offered to alter the terms of the 2016 Agreed Final Judgment and the January 2016 MSA and August 2016 MSA, but to explain the context of the settlements and agreement for the Exclusion Zone and control of the Parkway, for which WIA paid Russell \$1 million.
160. Accordingly, the parol evidence rule is not applicable to the instant lawsuit.

# **vi. Statute of Frauds**

161. Defendants next argue Statute of Frauds as an affirmative defense.

162. Section 26.01. Texas Business and Commerce Code, "Statute of Frauds":

## **Sec. 26.01. PROMISE OR AGREEMENT MUST BE IN WRITING.**

- (a) A promise or agreement described in Subsection (b) of this section is not enforceable unless the promise or agreement, or a memorandum of it, is
  - (1) in writing; and (2) signed by the person to be charged with the promise or agreement or by someone lawfully authorized to sign for him.
- (b) Subsection (a) of this section applies to:
  - (1) a promise by an executor or administrator to answer out of his own estate for any debt or damage due from his testator or intestate;
  - (2) a promise by one person to answer for the debt, default, or miscarriage of another person;
  - (3) an agreement made on consideration of marriage or on consideration of nonmarital conjugal cohabitation;
  - (4) a contract for the sale of real estate;
  - (5) a lease of real estate for a term longer than one year;
  - (6) an agreement which is not to be performed within one year from the date of making the agreement;
  - (7) a promise or agreement to pay a commission for the sale or purchase of: (A) an oil or gas mining lease; (B) an oil or gas royalty; (C) minerals; or (D) a mineral interest; and
  - (8) an agreement, promise, contract, or warranty of cure relating to medical care or results thereof made by a physician or health care provider as defined in Section 74.001, Civil Practice and Remedies Code. This section shall not apply to pharmacists.

163. WIA is not trying to enforce an oral agreement. WIA is trying to enforce the two 2016 Mediation Settlement Agreements and the 2016 Agreed Final Judgment that contains a



permanent injunction prohibiting Russell from putting up signs and other objects in the Exclusion Zone.

164. WIA is entitled to summary judgment on this affirmative defense.

**vii. Necessity**

165. Lastly, Defendants throw out the affirmative defense of "necessity."
166. In tort common law, the defense of necessity gives the state or an individual a privilege to take or use the property of another. A defendant typically invokes the defense of necessity only against the intentional torts of trespass to chattels, trespass to land, or conversion. The Latin phrase from common law is *necessitas inducit privilegium quod jura privata* ("Necessity induces a privilege because of a private right"). A court will grant this privilege to a trespasser when the risk of harm to an individual or society is apparently and reasonably greater than the harm to the property. Unlike the privilege of self-defense, those who are harmed by individuals invoking the necessity privilege are usually free from any wrongdoing. Generally, an individual invoking this privilege is obligated to pay any actual damages caused in the use of the property but not punitive or nominal damages. An example of this necessity defense would be a sky diver who landed in a field of corn and damaged the farmer's crop: the sky diver would have a defense of necessity but would have to pay the farmer for the damage to his crop.
167. While an individual may have a private necessity to use the land or property of another, that individual must compensate the owner for any damages caused. In American law, the case most often cited to explain the privilege of private necessity is *Vincent v. Lake Erie Transp.*

Co., 109 Minn. 456, 124 N.W. 221 (1910). So far a Texas case allowing this defense has not been located by Plaintiff.

168. WIA brings this lawsuit not for a tort cause of action, but rather to enforce mediation agreements and the 2016 Agreed Final Judgment. Accordingly, WIA is entitled to summary judgment on the Defendants' claimed affirmative defense of necessity. There is not evidence to support any claim of necessity.

**H. As a matter of law, Plaintiff is entitled to summary judgment on Defendants' counterclaim of "Frivolous Lawsuit".**

169. Plaintiff incorporates by reference, the same as if repeated herein, ¶¶ 1-168, in support of this motion for summary judgment as to Defendants' counterclaim of "frivolous lawsuit."
170. Defendants assert a counterclaim, entitled "A. Frivolous Lawsuit", pursuant to Chapters 9 and 10 of the Texas Civil Practice and Remedies Code, in which they allege:

3. Given that the Mediated Settlement Agreement and resulting Agreed Judgement (sic) nowhere prohibit the painting of trees, particularly not when done in compliance and reliance on Texas law, this action is frivolous as it was clearly brought in bad faith having no basis in law or fact.

4. The Mediated Settlement Agreement ("MSA") and resulting Agreed Judgement prohibit signs that are not approved or agreed to or other items being placed within 200 feet of certain roadways. Plaintiff's Petition expressly admits and states that the order and MSA prohibits "the placement of signs" only. See, e.g., P1's Pet. at p.2, ¶ 2. The MSA was an arms' length transaction with counsel on both sides. If WIA had desired to prohibit painting, WIA should have bargained for that provision. Its absence renders this action -frivolous in fact.

5. The action is frivolous in law as well because painting purple markings on trees is statutorily prescribed as a method of marking land to ward off trespassers. Texas Penal Code Section 3005 provides: [not copied here].

6. Texas law differentiates between signs and purple marks, making this action frivolous in law, particularly given that Texas' trespass law prescribes the use of purple paint marking to provide notice to potential trespassers.

7. Defendants hereby requests (sic) recovery of court costs and all reasonable and necessary attorney's fees incurred in connection with the defense of this claim pursuant to Chapters 9 and 10 of Texas' Civil Practice and Remedies Code and TRCP 13.<sup>103</sup>

171. Russell is seeking sanctions by this Court against both WIA and its counsel, under Chapters 9 and 10 of the Texas Civil Practice and Remedies Code and Rule 13 of the Texas Rules of Civil Procedure. Russell alleges that the instant lawsuit is frivolous "particularly given that Texas' trespass law prescribes the use of purple paint marking to provide notice to potential trespassers."
172. As is shown herein, the *Fourth Russell Lawsuit* was made necessary by Russells' breach of the contract, including the February 8, 2017 email, and his actions in violation of the prior Mediation Agreements and the specific provisions of the permanent injunction in the 2016 Agreed Final Judgment. Such lawsuit does not violate Chapter 9, Chapter 10 nor Rule 13. Arguably it is the multiple number of affirmative defenses alleged by Russell in their Original Answer (as discussed *supra* under ¶¶ 82, 83) that have no evidence to support them, and the filing of this "frivolous lawsuit" counterclaim, and the "abuse of process" claim, that arguably are frivolous, without any basis in law or fact. Such frivolous pleadings by Defendants have greatly escalated the legal fees of WIA, in having to put together the Second Amended Petition and this Motion for Summary Judgment, to respond to such groundless allegations.<sup>104</sup>

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<sup>103</sup> Plaintiff's Exhibit No. 44.

<sup>104</sup> Affidavit of Travis E. Kitchens, Jr., Plaintiff's Exhibit No. 52.



173. Generally, courts presume that pleadings and other papers are filed in good faith. *GTE Commc'ns Sys. Corp. v. Tanner*, 856 S.W.2d 725, 730 (Tex.1993). The party seeking sanctions bears the burden of overcoming this presumption of good faith. *Id.* at 731.
174. Further, there is a presumption under Rule 13 that papers are filed in good faith. *T.R.C.P. 13*. Therefore, the burden is on the party moving for sanctions to overcome this presumption. *GTE Communications Sys. Corp. v. Tanner*, 856 S.W.2d 725, 731 (Tex. 1993).
175. Chapters 9 and 10 of the Texas Civil Practice and Remedies Code and Rule 13 of the Texas Rules of Civil Procedure allow a trial court to sanction an attorney or a party for filing motions or pleadings *that lack a reasonable basis in fact or law*. (emphasis added).
176. Rule 13 authorizes the imposition of the sanctions listed in Rule 215.2(b), which only provides for a monetary penalty based on expenses, court costs, or attorney's fees." *Low v. Henry*, 221 S.W.3d 609, 614 (Tex. 2007). In other words, if otherwise entitled, Russell gets either Chapter 9 or Chapter 10 and Rule 13.
177. The term "bad faith" under Civil Procedure Rule 13 has been held to mean not simply bad judgment or negligence, but the conscious doing of a wrong for a dishonest, discriminatory, or malicious purpose. *Stites v. Gillum*, 872 S.W.2d 786, 794-796 (Tex. App.--Fort Worth 1994, den.); *cf. Campos v. Ysleta General Hosp., Inc.*, 879 S.W.2d 67, 71 (Tex. App.--El Paso 1994, den.).
178. "Groundless" means that there is no basis in law or fact for the pleading and it is not warranted by a good-faith argument for the extension, modification, or reversal of existing law. *T.R.C.P. 13*; *see also Donwerth v. Preston II Chrysler-Dodge, Inc.*, 775 S.W.2d 634,

637 (Tex. 1989) (term "groundless" under T.R.C.P. 13 has same meaning as "groundless" under DTPA; *see also* Bus. & Com. C. § 17.50(c).

179. For whatever reason, the Legislature substituted the phrase "non-frivolous argument" for "good-faith argument," in Chapter 10; otherwise the language is identical. *See* C.P.R.C. §10.001(2).

180. Chapter 9, in relevant part, provides:

Sec. 9.001. DEFINITIONS. In this chapter: ... (3) "Groundless" means: (A) no basis in fact; or (B) not warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law.

Sec. 9.011. SIGNING OF PLEADINGS. The signing of a pleading as required by the Texas Rules of Civil Procedure constitutes a certificate by the signatory that to the signatory's best knowledge, information, and belief, formed after reasonable inquiry, the pleading is not: (1) groundless and brought in bad faith; (2) groundless and brought for the purpose of harassment; or (3) groundless and interposed for any improper purpose, such as to cause unnecessary delay or needless increase in the cost of litigation.

181. Chapter 10, in relevant part, provides:

Sec. 10.001. SIGNING OF PLEADINGS AND MOTIONS. The signing of a pleading or motion as required by the Texas Rules of Civil Procedure constitutes a certificate by the signatory that to the signatory's best knowledge, information, and belief, formed after reasonable inquiry:

- (1) the pleading or motion is not being presented for any improper purpose, including to harass or to cause unnecessary delay or needless increase in the cost of litigation;
- (2) each claim, defense, or other legal contention in the pleading or motion is warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;
- (3) each allegation or other factual contention in the pleading or motion has evidentiary support or, for a specifically identified allegation or factual contention, is likely to have evidentiary support after a reasonable

opportunity for further investigation or discovery; and

- (4) each denial in the pleading or motion of a factual contention is warranted on the evidence or, for a specifically identified denial, is reasonably based on a lack of information or belief.

Sec. 10.002. MOTION FOR SANCTIONS.

- (a) A party may make a motion for sanctions, describing the specific conduct violating Section 10.001.
- (b) The court on its own initiative may enter an order describing the specific conduct that appears to violate Section 10.001 and direct the alleged violator to show cause why the conduct has not violated that section.
- (c) The court may award to a party prevailing on a motion under this section the reasonable expenses and attorney's fees incurred in presenting or opposing the motion, and if no due diligence is shown the court may award to the prevailing party all costs for inconvenience, harassment, and out-of-pocket expenses incurred or caused by the subject litigation.

182. Rule 13 of the Texas Rules of Civil Procedure. "Effect of Signing Pleadings, Motions and

Other Papers: Sanctions" provides:

The signatures of attorneys or parties constitute a certificate by them that they have read the pleading, motion, or other paper; that to the best of their knowledge, information, and belief formed after reasonable inquiry the instrument is not groundless and brought in bad faith or groundless and brought for the purpose of harassment. Attorneys or parties who shall bring a fictitious suit as an experiment to get an opinion of the court, or who shall file any fictitious pleading in a cause for such a purpose, or shall make statements in pleading which they know to be groundless and false, for the purpose of securing a delay of the trial of the cause, shall be held guilty of a contempt. If a pleading, motion or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, after notice and hearing, shall impose an appropriate sanction available under Rule 215-2b, upon the person who signed it, a represented party, or both.

Courts shall presume that pleadings, motions, and other papers are filed in good faith. No sanctions under this rule may be imposed except for good cause, the particulars of which must be stated in the sanction order. "Groundless" for purposes of this rule means no basis in law or fact and not warranted by good faith argument for the extension, modification, or reversal of existing law. A



general denial does not constitute a violation of this rule. The amount requested for damages does not constitute a violation of this rule.

183. Under Section 10.001, the signer of a pleading or motion certifies that each claim, each allegation, and each denial is based on the signatory's best knowledge, information, and belief, formed after reasonable inquiry. The statute dictates that each claim and each allegation be individually evaluated for support. *Low v. Henry*, at 614. 211 S.W.3d at 615. Each allegation and factual contention in a pleading or motion must have, or be likely to have, evidentiary support after a reasonable investigation. *Id.*
184. Before lawyers bring or defend proceedings, or raise or attack particular issues, they must reasonably believe that there is a nonfrivolous basis for doing so. *State Bar Rules*, Art. 10 § 9, Rule 3.01. A number of examples of pleadings or contentions that are "frivolous" in this context are demonstrated by the comments to the rule: a pleading, motion, or other paper filed with the court is frivolous when the filing is made primarily for the purpose of harassment or to maliciously injure someone. *Id. Comment 2*; filing a document that contains knowingly false statements is frivolous. On the other hand, a filing is not frivolous simply because the facts have not been substantiated fully or because the lawyer expects to develop vital evidence by discovery. Even taking the client's position is not frivolous even though the lawyer believes that the position ultimately may not prevail. *Id. Comment 3*.
185. Even if the relief sought by WIA's lawsuit was ultimately denied, the prosecution of its claims set forth in a pleading is not groundless under Civil Procedure Rule 13. A party has a right to seek a court determination of a claim or defense unless the claim or defense is baseless. A motion for summary judgment asserting that no genuine issue of material fact

exists is not proved groundless or in bad faith merely by the filing of a response that raises an issue of fact, even if the response was or could have been anticipated by the movant. To violate Civil Procedure Rule 13, the movant for summary judgment must file the motion knowing that material facts are disputed. *GTE Communications Sys. Corp. v. Tanner*, 856 S.W.2d 725, 731 (Tex. 1993).

186. The Statement of Facts reflects the extended necessity of the use of process to enforce the rights of WIA from Russell's continued unreasonable actions. The emails of George Russell continually complains of the prior use. As shown herein, WIA has not brought any action, in the current or any of the preceding litigations between the parties, that would be frivolous.
187. There is no genuine issue of material fact that the filing of the instant lawsuit did not violate Chapters 9 and 10, nor Rule 13, and summary judgment on this counterclaim in WIA's favor should be granted.

**I. As a matter of law, Plaintiff is entitled to summary judgment on Defendants' counterclaim of "Abuse of Process".**

188. Plaintiff incorporates by reference, the same as if repeated herein, ¶¶ 1-187 in support of this motion for summary judgment.
189. Russell brings a claim for abuse of process, alleging that "[t]he bringing of this action and the initial TRO obtained constitute the tort of abuse of process as it is legal process brought for a subversive and nefarious reason – to extort additional funds from Collins."<sup>105</sup>

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<sup>105</sup> Defendant's Original Answer and Counterclaim – Plaintiff's Exhibit No. 44; not sure who "Collins" is. The Original Answer filed by Defendant UEC substitutes "UEC" for "Collins".

190. The Statement of Facts reflects the extended necessity of the use of process to enforce the rights of WIA from Russell's continued unreasonable actions. The emails of George Russell continually complains of the prior use. ¶¶ 57, 67, 68, 69, 70, 71, 79, and 81. As shown herein, WIA has not brought any action, in the current or any of the preceding litigations between the parties, that would be an abuse of process.
191. To prosecute a claim for abuse of process, it requires "(1) an illegal, improper, or 'perverted' use of the process, neither warranted nor authorized by the process, (2) an ulterior motive or purpose in exercising such use, and (3) damages as a result of the illegal act. *Preston Gate, LP v. Bukaty*, 248 S.W.3d 892, 897 (Tex.App.-Dallas 2008, no pet.). The "critical aspect" of an abuse of process claim is the improper use of the process *after it has been issued*. *Id.*; *Bossin v. Towber*, 894 S.W.2d 25, 33 (Tex.App.-Houston [14th Dist.] 1994, writ denied). In other words, abuse of process applies to a situation where a properly issued service of process is later used for a purpose for which it was not intended. *Id.* If the claim is that wrongful intent or malice caused the process *to be issued initially*, the claim is one for malicious prosecution, not for abuse of process. *Id.* *Martinez v. English*, 267 S.W.3d 521, 528-529 (Tex. App. – Austin, 2008, pet. denied).
192. The mere issuance of process is not actionable. It is required that there be some uses of the process that is improper. To constitute an abuse of process, Russell is required to prove that "the process must have been used to accomplish an end which is beyond the purview of the process and which compels a party to do a collateral thing which he could not be compelled to do." *Preston Gate, LP v. Bukaty*, 248 S.W.3d 892, 897 (Tex. App. – Dallas 2008, no pet.).



citing *Baubles & Beads v. Louis Vuitton, S.A.*, 766 S.W.2d 377, 379 (Tex.App.-Texarkana 1989, no writ). “The critical aspect of this tort is the improper use of the process after it has been issued. *Bossin v. Towber*, 894 S.W.2d 25, 33 (Tex. App.-Houston [14th Dist.] 1994, writ denied). Stated another way, the original issuance of process is justified, but the process itself is later used for a purpose for which it was not intended. *Hunt v. Baldwin*, 68 S.W.3d 117, 130 (Tex.App.-Houston [14th Dist.] 2001, no pet.). When the process is used for the purpose for which it was intended, even though accomplished by an ulterior motive, no abuse of process has occurred.” *See id.*

193. Russell complains about the bringing of WIA’s lawsuit and the initial TRO obtained constitutes the basis for their abuse of process claim. However, so long as WIA uses the process properly, the fact that a person has an improper ulterior motive in securing the process is immaterial. *Preston Gate, Id.* at 897. There is no abuse of process based on an allegation that the defendant used a lawsuit to “coerce” a settlement. The purpose of all lawsuits is to obtain a settlement or a judgment. *Detenbeck v. Koester*, 886 S.W.2d 477, 481 (Tex. App. Houston [1<sup>st</sup> Dist.] 1994, no writ). Neither is there abuse of process for the filing of a lawsuit that is ultimately unsuccessful. *Sharif-Munir-Davidson Dev. Corp. v. Bell*, 788 S.W. 2d 427, 431 (Tex. App. – Dallas 1990, writ denied).
194. The improper use of process must occur after the process is issued. *Preston Gate, Id.* at 897. Russell is required to establish that WIA had an ulterior motive or purpose in using the process improperly. *Martinez v. English, Id.* at 897. However, even if there is an ulterior motive, so long as the process is used for what is it intended, there is no abuse of process.

*Montemayor v. Ortiz*, 208 S.W.3d 627, 760 (Tex. App. – Corpus Christi 2006, pet. denied).

*Klien & Assocs. Political Relations v. Port Arthur ISD*, 92 S.W.3d 889,898 (Tex. App. – Beaumont 2002, pet. denied).

195. Lastly, Russell is required to show he suffered injury. Nothing in the history of the litigation between WIA and Russell reflects any injury by Russell. The first three lawsuits resulted in mediation settlement agreements. ¶¶ 38, 39, 43, 44, 52, and 53. There was, accordingly, no injury suffered by Russell in the prior lawsuits. As noted by the authorities cited above, there is no abuse of process for bringing a lawsuit and seeking settlement or judgment. As concerns the fourth (current) lawsuit, the actions by George Russell and his employee Mike Zeltner, in just 2 days painting 207 purple paint signs in the Exclusion Zone and in violation of the 2016 MSAs and the 2016 Agreed Final Judgment. Most of these signs were painted after Thomas Readal saw Russell painting signs around 11:00 a.m., on February 22, 2017. By the time the lawsuit could be filed and TRO issued on February 23, 2017, Russell and his employee had painted some 207 trees. ¶¶ 72-76. Had they not been stopped when they were, dozens or hundreds of more would have been painted, all in violation of the Court's 2016 Agreed Final Judgment and the permanent injunction contained there.
196. In asserting his abuse of process claim, Russell neither alleges nor presents evidence that service of process was used illegally or improperly after it was issued. Rather, his claim is that WIA brought the legal process "for a subversive and nefarious reason – to extort additional funds from Collins [per George Russell's answer] and UEC [per UEC's answer]." Such a claim is essential one for malicious prosecution, not abuse of process. *See id.* Because

Russell has presented no evidence of abuse of process, the Court should grant summary judgment on Russell's claim of abuse of process.

197. For these reasons, Plaintiff is entitled to summary judgment because there is no evidence to support one or more of the essential elements of the cause of action of abuse of process.

#### **V. CONCLUSION AND REQUEST FOR RELIEF**

For the reasons stated above, Plaintiff requests this Court to grant its Motion for Summary Judgment on (1) its cause of action to hold Defendants in contempt of court; (2) its cause of action for permanent injunction, (3) its cause of action that Defendants breached the 2016 Agreed Final Judgment and the January and August 2016 MSA; (4) its cause of action that it be awarded reasonable attorney's fees under Chapters 37 and 38, Texas Civil Practice and Remedies Code; together with summary judgment on Defendants' affirmative defenses of "waiver, laches and estoppel, along with unclean hands, the parole (sic) evidence rule, statute of frauds, and necessity" and Defendants' counterclaims of frivolous lawsuit and abuse of process. In the alternative, Plaintiff requests the Court to enter its Order specifying the facts that are established as a matter of law, and grant Plaintiff such other and further relief to which it may be entitled.



Respectfully submitted,

  
\_\_\_\_\_  
TRAVIS E. KITCHENS, JR.

Lawyer

State Bar No: 11541100

14330 US Highway 190 West

P.O. Drawer 1629

Onalaska, Texas 77360

Phone (936) 646-6970

Fax: (936) 646-6971

Email: tklaw1@eastex.net

Phone (936) 646-6970

Lawyer for Plaintiff,

Waterwood Improvement Association, Inc.

**CERTIFICATE OF SERVICE**

I certify that a true copy of the above was served on each attorney of record or party in accordance with the Texas Rules of Civil Procedure, on May 9, 2017.

  
\_\_\_\_\_  
TRAVIS E. KITCHENS, JR.

NO. CV14,902

WATERWOOD IMPROVEMENT  
ASSOCIATION, INC.

VS.

GEORGE H. RUSSELL and  
UNIVERSAL ETHICIAN CHURCH

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IN THE DISTRICT COURT OF

SAN JACINTO COUNTY, TEXAS

258<sup>TH</sup> JUDICIAL DISTRICT

**APPENDIX "A"**

NO. CV14,902WATERWOOD IMPROVEMENT  
ASSOCIATION, INC.

VS.

GEORGE H. RUSSELL and  
UNIVERSAL ETHICIAN CHURCH\*  
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IN THE DISTRICT COURT OF

SAN JACINTO COUNTY, TEXAS

258<sup>TH</sup> JUDICIAL DISTRICTINDEX TO PLAINTIFF'S EXHIBITSExhibit

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NO. CV14,902

WATERWOOD IMPROVEMENT  
ASSOCIATION, INC.

VS.

GEORGE H. RUSSELL and  
UNIVERSAL ETHICIAN CHURCH

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IN THE DISTRICT COURT OF

SAN JACINTO COUNTY, TEXAS

258<sup>TH</sup> JUDICIAL DISTRICT

**APPENDIX "B"**

## GOVERNMENT CODE \* TITLE 2. JUDICIAL BRANCH

### SUBTITLE A. COURTS \* CHAPTER 21. GENERAL PROVISIONS

#### Sec. 21.001. INHERENT POWER AND DUTY OF COURTS.

- (a) A court has all powers necessary for the exercise of its jurisdiction and the enforcement of its lawful orders, including authority to issue the writs and orders necessary or proper in aid of its jurisdiction.
- (b) A court shall require that proceedings be conducted with dignity and in an orderly and expeditious manner and control the proceedings so that justice is done.
- (c) During a court proceeding a judge may not request that a person remove an item of religious apparel unless:
  - (1) a party in the proceeding objects to the wearing of the apparel; and
  - (2) the judge concludes that the wearing of the apparel will interfere with:
    - (A) the objecting party's right to a fair hearing; or
    - (B) the proper administration of justice; and
    - (3) no reasonable alternative exists under which the judge may:
      - (A) assure a fair hearing; and
      - (B) protect the fair administration of justice.

Acts 1985, 69th Leg., ch. 480, Sec. 1, eff. Sept. 1, 1985. Amended by Acts 1997, 75th Leg., ch. 54, Sec. 1, eff. Sept. 1, 1997.

#### Sec. 21.002. CONTEMPT OF COURT.

- (a) Except as provided by Subsection (g), a court may punish for contempt.
- (b) The punishment for contempt of a court other than a justice court or municipal court is a fine of not more than \$500 or confinement in the county jail for not more than six months, or both such a fine and confinement in jail.
- (c) The punishment for contempt of a justice court or municipal court is a fine of not more than \$100 or confinement in the county or city jail for not more than three days, or both such a fine and confinement in jail.
- (d) An officer of a court who is held in contempt by a trial court shall, on proper motion filed in the offended court, be released on his own personal recognizance pending a determination of his guilt or innocence. The presiding judge of the administrative judicial region in which the alleged contempt occurred shall assign a judge who is subject to



assignment by the presiding judge other than the judge of the offended court to determine the guilt or innocence of the officer of the court.

- (e) Except as provided by Subsection (h), this section does not affect a court's power to confine a contemner to compel the contemner to obey a court order.
- (f) Article 42.033, Code of Criminal Procedure, and Chapter 157, Family Code, apply when a person is punished by confinement for contempt of court for disobedience of a court order to make periodic payments for the support of a child. Subsection (h) does not apply to that person.
- (g) A court may not punish by contempt an employee or an agency or institution of this state for failure to initiate any program or to perform a statutory duty related to that program:
  - (1) if the legislature has not specifically and adequately funded the program; or
  - (2) until a reasonable time has passed to allow implementation of a program specifically and adequately funded by the legislature.
- (h) Notwithstanding any other law, a person may not be confined for contempt of court longer than:
  - (1) 18 months, including three or more periods of confinement for contempt arising out of the same matter that equal a cumulative total of 18 months, if the confinement is for criminal contempt; or
  - (2) the lesser of 18 months or the period from the date of confinement to the date the person complies with the court order that was the basis of the finding of contempt, if the confinement is for civil contempt.

Acts 1985, 69th Leg., ch. 480, Sec. 1, eff. Sept. 1, 1985. Amended by Acts 1989, 71st Leg., ch. 2, Sec. 8.44(1), eff. Aug. 28, 1989; Acts 1989, 71st Leg., ch. 560, Sec. 1, eff. June 14, 1989; Acts 1989, 71st Leg., ch. 646, Sec. 1, eff. Aug. 28, 1989; Acts 1989, 71st Leg., 1st C.S., ch. 25, Sec. 34, eff. Nov. 1, 1989; Acts 1995, 74th Leg., ch. 262, Sec. 87, eff. Jan. 1, 1996; Acts 1997, 75th Leg., ch. 165, Sec. 7.24, eff. Sept. 1, 1997; Acts 2001, 77th Leg., ch. 1297, Sec. 71(4), eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 425 Sec. 1, eff. June 20, 2003.

**NO. CV14,902**

WATERWOOD IMPROVEMENT  
ASSOCIATION, INC.

VS.

GEORGE H. RUSSELL and  
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IN THE DISTRICT COURT OF  
  
SAN JACINTO COUNTY, TEXAS  
  
258<sup>TH</sup> JUDICIAL DISTRICT

## **PLAINTIFF'S EXHIBITS**


Plaintiff hereby files its Exhibits in support of its PLAINTIFF'S SECOND AMENDED PETITION FOR ENFORCEMENT BY CONTEMPT, FOR INJUNCTIVE RELIEF and DECLARATORY JUDGMENT and PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT.

Respectfully submitted,

  
\_\_\_\_\_  
TRAVIS E. KITCHENS, JR.

### **CERTIFICATE OF SERVICE**

I certify that a true copy of the above was served on each attorney of record or party in accordance with the Texas Rules of Civil Procedure on May 9, 2017, VIA EFILE.

  
\_\_\_\_\_  
TRAVIS E. KITCHENS, JR.

**NO. CV14,902**

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IN THE DISTRICT COURT OF

SAN JACINTO COUNTY, TEXAS

258<sup>TH</sup> JUDICIAL DISTRICT

**APPENDIX "A"**



**NO. CV14,902**

WATERWOOD IMPROVEMENT ASSOCIATION, INC.	*	IN THE DISTRICT COURT OF
	*	
	*	
VS.	*	SAN JACINTO COUNTY, TEXAS
	*	
GEORGE H. RUSSELL and	*	
UNIVERSAL ETHICIAN CHURCH	*	258 <sup>TH</sup> JUDICIAL DISTRICT

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IN THE DISTRICT COURT OF

SAN JACINTO COUNTY, TEXAS

258<sup>TH</sup> JUDICIAL DISTRICT

## PLAINTIFF'S EXHIBIT 1



NO. CV13,946

WATERWOOD IMPROVEMENT	*	IN THE DISTRICT COURT OF
ASSOCIATION, INC.	*	
	*	
VS.	*	SAN JACINTO COUNTY, TEXAS
	*	
GEORGE H. RUSSELL and	*	
SUZANNE B. RUSSELL	*	411 <sup>TH</sup> JUDICIAL DISTRICT

AGREED FINAL JUDGMENT

On the 14 day of March, 2016 the Court heard this case [by submission].

Appearances

WATERWOOD IMPROVEMENT ASSOCIATION, INC., (referenced as "Plaintiff" and/or "WIA"), appeared through its President, JACK B. ZIMMERMANN, and through attorneys of record, TRAVIS E. KITCHENS, JR., and CORY REED, with Thompson, Coe, Cousins & Irons, L.L.P., and announced ready.

GEORGE H. RUSSELL, SUZANNE B. RUSSELL, THE ETHICIAN FOUNDATION, and the UNIVERSAL ETHICIAN CHURCH, (collectively referenced as "Defendants"), appeared through their attorneys of record, J. Hans Barcus, Lanny D. Ray, and C. Bryan Cantrell, with the law firm of Cantrell, Ray & Barcus, LLP, and announced ready.

Jurisdiction

The court, after examining the pleadings, and having heard the evidence and argument of counsel, finds that all necessary prerequisites of the law have been legally satisfied and that the Court has jurisdiction of this case and of all the parties and further finds that the parties have reached a Mediated Settlement Agreement, ("2016 Mediated Settlement Agreement"), resolving all issues before the Court, including all counterclaims and Third Party claims of Defendants, asserted in the above entitled and numbered cause. The 2016 Mediated Settlement Agreement, dated January 18, 2016, is incorporated herein by reference the same as if fully copied and set forth at length herein. The Court has determined that the 2016 Mediated Settlement Agreement should be approved by the court and made enforceable as provided for by Texas Law.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the 2016 Mediated Settlement Agreement reached in the above entitled and numbered lawsuit, be and the same is hereby approved by the Court and all of the terms and conditions set forth therein are incorporated into this Agreed Final Judgment and enforceable the same as if they had been set forth at length herein.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that, based on the 2016 Mediated Settlement Agreement, all counterclaims and third party claims of Defendants asserted against WIA in this lawsuit shall be, and are hereby dismissed with prejudice.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that, based on the 2016 Mediated Settlement Agreement, all prior maintenance fees owed by Defendants and due for the period ending December 31, 2014 (the 2015 maintenance fees being billed January 2016), are deemed to have been paid in full, and all Waterwood Parkway rentals due by WIA to Defendants under the 2012 Mediated Settlement Agreement, dated May 22, 2012, and Agreement to Lease and Maintain the Waterwood Parkway dated June 20, 2012, and filed at Vol. 2012003345, pages 13041, et seq., Official Public Records of San Jacinto County, Texas, shall be deemed paid in full.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that, based on the 2016 Mediated Settlement Agreement, George H. Russell and Suzanne B. Russell shall pay all future annual fees as stipulated in the Waterwood General Warranty Deed for any properties they currently own, and/or any properties they may acquire in the future, and thereafter remain current on all annual fees payments. The lien provided by the dedicatory instruments applicable to all such property shall remain in full force and effect.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that, based on the 2016 Mediated Settlement Agreement, that neither The Ethician Foundation nor the Universal Ethician Church shall be responsible for any annual maintenance dues on any property currently titled in the name of The Ethician Foundation and/or the Universal Ethician Church, and/or purchased in the future in the name of The Ethician Foundation and/or the Universal Ethician Church, in the Park

Forest Village Subdivision of the Waterwood Community, provided the property is used as a non-profit venture. WIA will not now or in the future be responsible for providing utilities, other than those presently in place, for those properties exempt from annual maintenance fees. Neither The Ethician Foundation nor the Universal Ethician Church shall be entitled to vote on any lots that maintenance fees are not paid on pursuant to this Agreement.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that, based on the 2016 Mediated Settlement Agreement, all interest of Defendants in the "Waterwood Parkway" and including all signs, flag poles, and other improvements that are located on the Waterwood Parkway, shall be conveyed to the Waterwood Improvement Association, Inc., for the consideration set forth in the 2016 Mediated Settlement Agreement.

As defined herein, the "Waterwood Parkway" consists of three sections:

- (a) BEING 18.12 acres of land, more or less, part of the JESSE HARDY SURVEY, A-156, San Jacinto County, Texas, ("Parkway West") and identified by Exhibit "A", attached hereto, occupied by Waterwood Parkway and other public facilities, lying immediately adjacent to and between those certain two tracts of land conveyed by Horizon Development Corporation to Alfred Lehtonen and wife, Lucille F. Lehtonen by two General Warranty Deeds, the first dated March 5, 1979, recorded in Volume 185, Page 634 of the Deed Records, San Jacinto County, Texas, conveying 82.871 acres of land, and the second dated April 30, 1982, recorded in Volume 193, Page 151 of the Deed Records, San Jacinto County, Texas, conveying 21.99 acres of land, to which instruments reference is hereby expressly made for description purposes. The tract of land is currently owned by Russell, and Russell will be conveying their interest in this tract of land by Special Warranty Deed to WIA; and
- (b) A tract of land, beginning at the start of the 2 lane roadway, described in (a) above, to where the Waterwood Parkway intersects with Texas Farm-to-Market Road 980. This tract of land is owned by WIA; and
- (c) A strip of land 180 feet in width situated in the RICHARD BANKHEAD SURVEY, A-70, San Jacinto County, Texas, consisting of being 24.73 acres of land, more or less, part of the JESSE HARDY SURVEY, A-156, San Jacinto County, Texas, ("Parkway East") and identified by Exhibit "B", attached hereto, commencing at the East right-of-way of FM 980 and extending in an easterly direction for a distance of approximately 3,644.95 feet, and being the same property upon which Waterwood Parkway is situated, as shown upon and dedicated to the public on Sheet 2 of the Plat of FAIRWAY ONE-BLOCK 1, a subdivision of San Jacinto County, Texas, as

shown by the Plat of record in Volume 5, Page 32 of the Plat Records, San Jacinto County, Texas. The tract of land is currently owned by Russell, and Russell will be conveying their interest in this tract of land by Special Warranty Deed to WIA.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that, based on the 2016 Mediated Settlement Agreement, and in addition to the conveyance of Defendants' interest in the Waterwood Parkway as set forth above, Defendants will convey to WIA the Billboard sign and the land surrounding the sign, being 0.127 acres as depicted and set forth by the plat and the field note description attached as Exhibit "C", and the property (BEING part of a 3.55 acres of land, more or less, situated in the JESSE HARDY SURVEY, A-156, San Jacinto County, Texas and being the same property described in a deed from Howard T. Harstad to Horizon Properties Corporation, dated February 11, 1983, recorded in Volume 229, Page 346 of the Deed Records, San Jacinto County, Texas, referenced to which instrument is here made for all legal purposes) on which it is located.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that, based on the 2016 Mediated Settlement Agreement, in addition to the conveyance of Defendants' interest in the Waterwood Parkway as set forth above, Defendants will provide WIA an insured title policy.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that, based on the 2016 Mediated Settlement Agreement, that Defendants will not put up any signs, toilets, hearses, cars or other items within 200 feet from the boundary of any right of way of the Waterwood Parkway nor any street in Waterwood that borders on property owned by Russell, unless approved in advance by WIA; such approval shall not be unreasonably withheld. As used herein "any street in Waterwood that borders on property owned by Russell" shall include, but not be limited to, Texas Farm-to-Market 980, the Marina Access Road, together with any roads or streets in the following subdivisions of the Waterwood Community: Augusta Estates, Bass Boat Village A, Bass Boat Village B, Bay Hill, Bay Hill Point, Country Club Estates I, Country Club Estates II, Country Club



Estates III, Fairway One, Fairway Village, Greentree Village XI-A, Lakeview Estates, Park Forest, Piney Point, Putters Point, The Beach, The Villas, Tournament Village, Whispering Pines Village 1, and Whispering Pines Village 2.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that, based on the 2016 Mediated Settlement Agreement, and as between the parties to this litigation, that WIA will have total control over the Waterwood Parkway and Defendants will not interfere with WIA's use of the Waterwood Parkway.

The Court finds that, based on the 2016 Mediated Settlement Agreement, that the following permanent injunction should be entered, and that the clerk of this court issue a writ of injunction, restraining and enjoining Defendants, GEORGE H. RUSSELL, SUZANNE B. RUSSELL, THE ETHICIAN FOUNDATION, and the UNIVERSAL ETHICIAN CHURCH, from interfering with the rights of the Plaintiff, WATERWOOD IMPROVEMENT ASSOCIATION, INC., and those persons acting under the direction of Plaintiff, in performance of Plaintiff's mowing and maintenance of the Waterwood Parkway, including but not limited to the mowing and maintenance of the Waterwood Parkway, and further the Defendants are ENJOINED from putting up any signs, toilets, hearses, cars or other items within 200 feet from the boundary of any right of way of the Waterwood Parkway nor any street in Waterwood that borders on property owned by Russell, (as defined herein), unless approved in advance by WIA, which approval shall not be unreasonably withheld.

This permanent injunction granted herein shall be effective immediately and shall be binding on Defendants; on their agents, servants, employees, and attorneys; and on those persons in active concert or participation with them who receive actual notice of this order by personal service or otherwise.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that, based on the 2016 Mediated Settlement Agreement, the prior Mediation Agreement of May 22, 2012 is superseded by

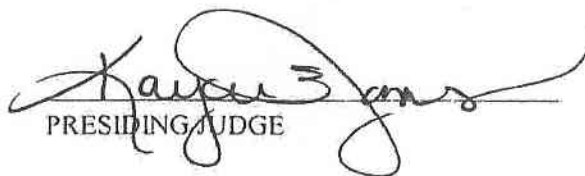
this Mediation Settlement Agreement, and to the extent that the May 22, 2012 Mediated Settlement Agreement, and/or the Agreement to Lease and Maintain Waterwood Parkway conflicts with the 2016 Mediated Settlement Agreement and/or this Agreed Final Judgment, the 2016 Mediated Settlement Agreement and/or this Agreed Final Judgment shall control.

IT IS FURTHER ORDERED AND DECREED that the third party claims of Russell and Heidi are hereby severed and shall be numbered CV13946-A and shall proceed on its own going forward.

IT IS ORDERED AND DECREED that, pursuant to the 2016 Mediated Settlement Agreement, each party shall be responsible for their own attorney's fees, expenses, and costs incurred as a result of legal representation in this case.

IT IS ORDERED AND DECREED that all relief requested in this case and not expressly granted is denied. This is a final judgment, for which let execution and all writs and processes necessary to enforce this judgment issue. This judgment finally disposes of all claims and all parties and is appealable.

SIGNED this 14 day of March, 2016.

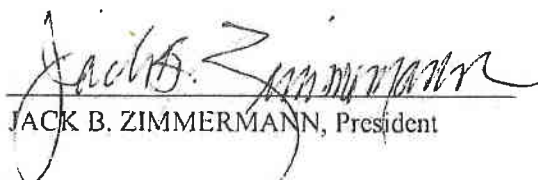
  
PRESIDING JUDGE

**APPROVED AS TO FORM AND SUBSTANCE:**


Plaintiff:

WATERWOOD IMPROVEMENT ASSOCIATION, INC.

By:

  
JACK B. ZIMMERMANN, President

**APPROVED AS TO FORM ONLY:**

  
TRAVIS E. KITCHENS, JR.

Lawyer

State Bar No: 11541100

14330 US Highway 190 West

P.O. Drawer 1629

Onalaska, Texas 77360

Phone (936) 646-6970

Fax: (936) 646-6971

Email: [tklaw1@eastex.net](mailto:tklaw1@eastex.net)

THOMPSON, COE, COUSINS & IRONS, L.L.P.

One Riverway, Suite 1400

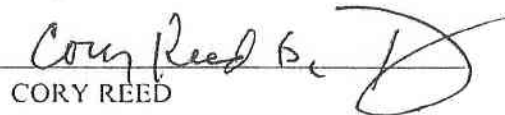
Houston, Texas 77056

Phone: (713) 403-8213

Fax: (713) 403-8299

Email: [creed@thompsoncoe.com](mailto:creed@thompsoncoe.com)

By:


  
CORY REED

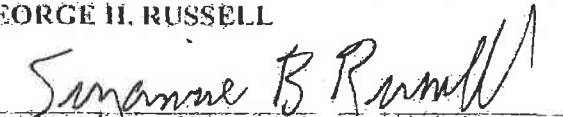
State Bar No. 24076640

Attorneys for Waterwood Improvement Association, Inc.

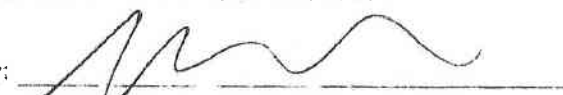
## APPROVED AS TO FORM AND SUBSTANCE:

Defendants:


  
 \_\_\_\_\_  
 GEORGE H. RUSSELL

  
 \_\_\_\_\_  
 SUZANNE B. RUSSELL

## THE ETHICIAN FOUNDATION

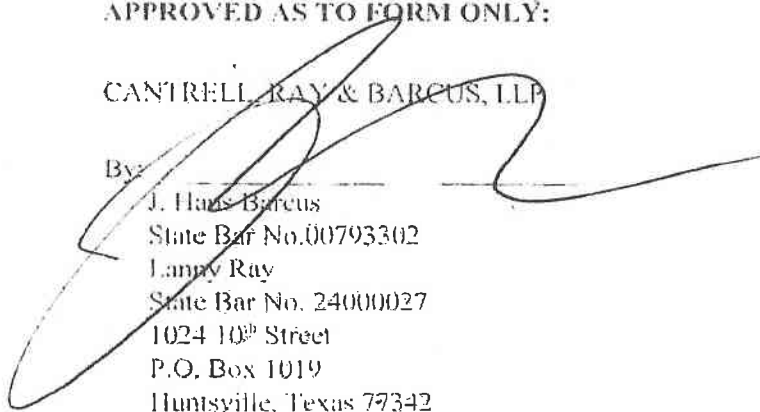
 By:   
 \_\_\_\_\_  
 GEORGE H. RUSSELL,

## THE UNIVERSAL ETHICIAN CHURCH

 By:   
 \_\_\_\_\_  
 GEORGE H. RUSSELL

## APPROVED AS TO FORM ONLY:

## CANTRELL RAY &amp; BARCUS, LLP

 By:   
 \_\_\_\_\_  
 J. Hans Barcus  
 State Bar No. 00793302  
 Lanny Ray  
 State Bar No. 24000027  
 1024 10<sup>th</sup> Street  
 P.O. Box 1019  
 Huntsville, Texas 77342  
 (936) 730-8541  
 Fax: (936) 730-8535

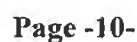
Attorneys for Defendants

Agreed Final Judgment - WLA v. Russell

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EXHIBIT "A"



## FIELDNOTE DESCRIPTION

State of Texas

County of San Jacinto

Being 18.12 acres of land situated in the Jesse Hardy Survey, A-156, San Jacinto County, Texas, and being the same land called 18.104 acres described as "Parcel 11" in deed to George H. Russell and wife, Suzanne B. Russell, recorded under Clerk's File No. 04-1305, Page 5908 of the San Jacinto County Official Public Records, and this 18.12 acre tract being more particularly described by metes and bounds as follows:

Beginning at a 1/2" iron rod set marking the intersection of the east right of way line of Waterwood Parkway with the north right of way line of U. S. Highway No. 190, said point being the southeast corner of said "Parcel 11" and of the herein described 18.12 acres and the southwest corner of the called 82.7436 acres described as "Parcel 1" in said Russell deed;

Thence S 88° 01' 53" W 180.00 ft. along the north right of way line of said U. S. Highway No. 190, same being the south line of said "Parcel 11", to a 1/2" iron rod set marking the southwest corner of the herein described 18.12 acre tract and the southeast corner of the called 21.99 acres described as "Parcel 6" in said Russell deed, said point being the terminal point of the west right of way line of said Waterwood Parkway;

Thence N 01° 58' 07" W 223.00 ft. along the west right of way line of said Waterwood Parkway, same being the common line between said "Parcel 11" and said called 21.99 acre "Parcel 6", to a 1/2" iron rod set marking the P.C. of a curve in said right of way line;

Thence 898.03 ft. in a northeasterly direction along the west right of way line of said Waterwood Parkway, same being the common line between said "Parcel 11" and said called 21.99 acre "Parcel 6", in a curve to the right having a central angle of 40° 04' 22", the radius being 1284.00 ft. and the chord bears N 18° 04' 04" E 879.84 ft. to a 1/2" iron rod set marking the P.T. of said curve;

Thence N 38° 06' 14" E 379.97 ft. along the west right of way line of said Waterwood Parkway, same being the common line between said "Parcel 11" and said called 21.99 acre "Parcel 6", to a 1/2" iron rod set marking the P.C. of a curve in said right of way line;

Thence 473.40 ft. in a northeasterly direction along the west right of way line of said Waterwood Parkway, same being the common line between said "Parcel 11" and said called 21.99 acre "Parcel 6", in a curve to the left having a central angle of 17° 42' 18", the radius being 1532.00 ft. and the chord bears N 29° 15' 05" E 471.52 ft. to a 1/2" iron rod set

Page 2 of 3  
18.12 Acres

marking the P.T. of said curve;

Thence N 20° 23' 56" E, along the west right of way line of said Waterwood Parkway, same being the common line between said "Parcel 11" and said called 21.99 acre "Parcel 6", at 811.70 ft. pass a 5/8" iron rod found marking the east common corner between said called 21.99 acres and the called 2.603 acres described as "Parcel 5" in said Russell deed and continuing along the common line between said "Parcel 11" and said called 2.603 acre "Parcel 5", same being the west right of way line of said Waterwood Parkway, in all a total distance of 1002.23 ft. to a 1/2" iron rod set marking the northwest corner of said "Parcel 11" and the herein described 18.12 acre tract;

Thence S 69° 35' 06" E 200.00 ft. along the north line of said "Parcel 11", over and across said Waterwood Parkway, to a 1/2" iron rod set marking the north common corner between said "Parcel 11" and said called 82.7436 acre "Parcel 1", said point being the northeast corner of the herein described 18.12 acre tract;

Thence S 20° 23' 56" W 1062.12 ft. along the east right of way line of said Waterwood Parkway, same being the common line between said "Parcel 11" and said called 82.7436 acre "Parcel 1", to a 1/2" iron rod set marking the P.C. of a curve in said right of way line;

Thence 545.03 ft. in a southwesterly direction along the east right of way line of said Waterwood Parkway, same being the common line between said "Parcel 11" and said called 82.7436 acre "Parcel 1", in a curve to the right having a central angle of 18° 55' 33", the radius being 1650.02 ft. and the chord bears S 29° 51' 43" W 542.56 ft. to a 1/2" iron rod set marking the P.T. of said curve;

Thence S 39° 19' 25" W 564.49 ft. along the east right of way line of said Waterwood Parkway, same being the common line between said "Parcel 11" and said called 82.7436 acre "Parcel 1", to a 1/2" iron rod set marking the P.C. of a curve in said right of way line;

Thence 571.52 ft. in a southwesterly direction along the east right of way line of said Waterwood Parkway, same being the common line between said "Parcel 11" and said called 82.7436 acre "Parcel 1", in a curve to the left having a central angle of 41° 17' 36", the radius being 793.00 ft. and the chord bears S 18° 40' 41" W 559.23 ft. to a 1/2" iron rod set marking the P.T. of said curve;

Thence S 01° 58' 07" E 100.45 ft. along the east right of way line of said Waterwood



Page 3 of 3  
18.12 Acres

Parkway, same being the common line between said "Parcel 11" and said called 82.7436 acre "Parcel 1", to the place of beginning and containing within these bounds 18.12 acres of land as shown on a plat accompanying this description.

Bearings for this description are based on deed calls for the called 82.7436 acres described in deed to George H. Russell and wife, Suzanne B. Russell, recorded under Clerk's File No 04-1305, Page 5908 of the San Jacinto County Official Public Records.

o Surveyor's Certificate o

The above description was prepared from an actual and accurate survey made on the ground under my supervision and same is true and correct to the best of my knowledge and belief.

Surveyed: March, 2016

**GEOPHYSICAL LAND SERVICES, LLC / ESM SURVEYING**

Texas Surveying Firm Registration No. 10076100

3205 U S Highway No. 59 N Livingston, Texas 77351 Ph: 936/327-4296


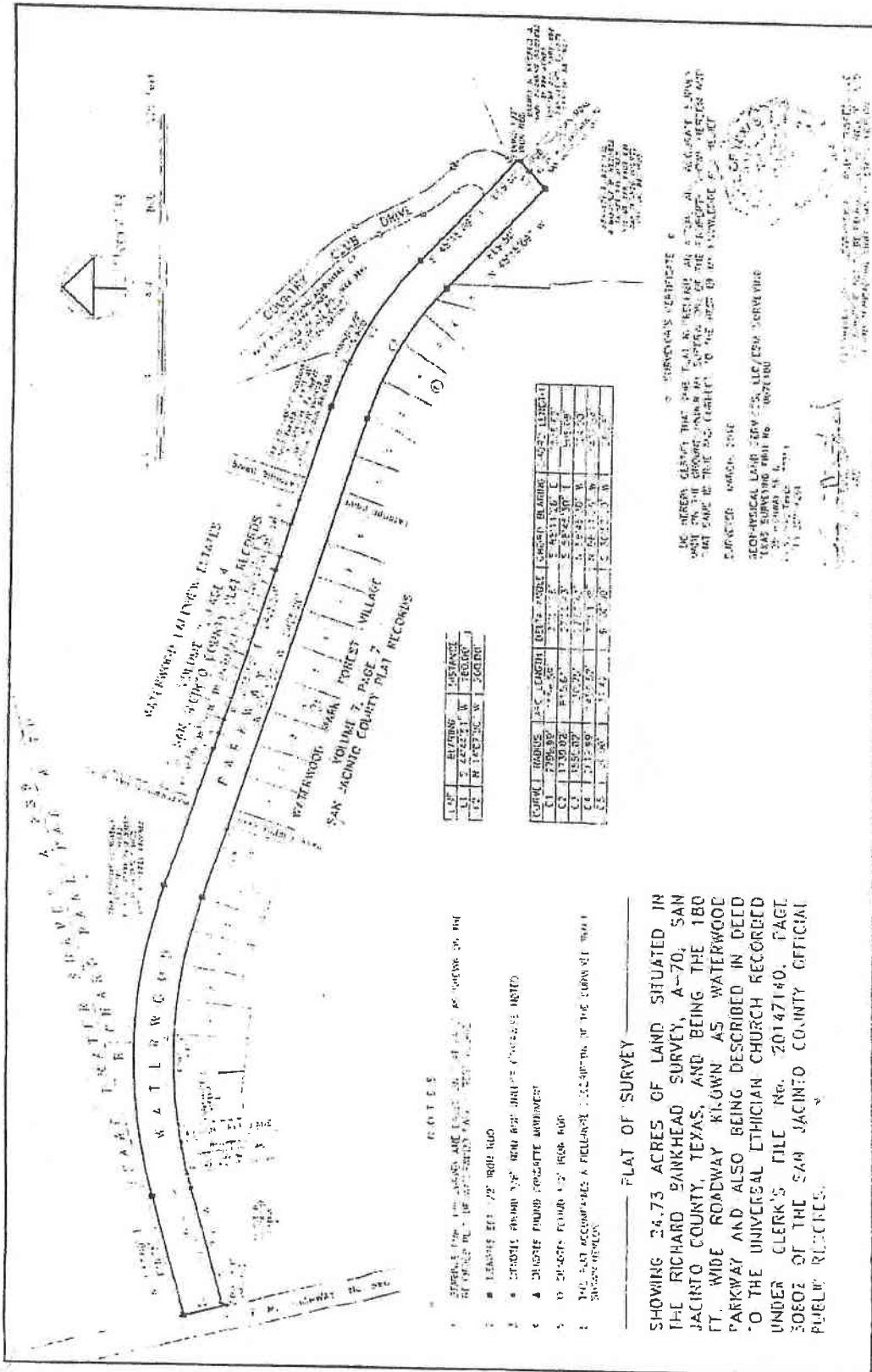
  
Earline McLeod, RPLS  
No. 5774, Texas



EXHIBIT "B"



## FIELDNOTE DESCRIPTION

State of Texas

County of San Jacinto

Being 24.73 acres of land situated in the Richard Bankhead Survey, A-70, San Jacinto County, Texas, and being the 180 ft. wide roadway known as Waterwood Parkway lying east of F. M. Highway No. 980, and also being described in deed to The Universal Ethiopian Church recorded under Clerk's File No. 20147140, Page 30802 of the San Jacinto County Official Public Records, and this 24.73 acre tract being more particularly described by metes and bounds as follows:

Beginning at a 5/8" iron rod found marking the intersection of the south right of way line of said Waterwood Parkway with the east right of way line of F. M. Highway No. 980 as shown on the plat of Waterwood Park Forest Village recorded in Volume 7, Page 7 of the San Jacinto County Plat Records, said point being the most western corner of the area designated as "Unrestricted Reserve A" on said Waterwood Park Forest Village plat and the most southwestern corner of the herein described 24.73 acre tract,

Thence N 14° 07' 00" W 200.00 ft. along the east right of way line of said F. M. Highway No. 980 to a 1/2" iron rod set marking the northwest corner of the herein described 24.73 acre tract and the southwest corner of the called 10 acres described as Tract Sixteen in deed to the Ethiopian Foundation recorded under Clerk's File No. 20147141, Page 30805 of said Official Public Records;

Thence N 75° 53' 00" E 610.15 ft. along the north right of way line of said Waterwood Parkway, same being the south line of said called 10 acres, to a 1/2" iron rod set marking the P.C. of a curve in said right of way line;

Thence 1536.59 ft. in an easterly direction along the north right of way line of said Waterwood Parkway, same being the south line of said called 10 acres, in a curve to the right having a central angle of 31° 51' 08", the radius being 2799.99 ft. and the chord bears S 83° 11' 26" E 1536.62 ft. to a 1/2" iron rod set marking the P.T. of said curve;

Thence S 72° 15' 52" E 2425.20 ft. along the north right of way line of said Waterwood Parkway, common in part with the south lines of said called 10 acres, Waterwood Lake View Estates, a subdivision in said San Jacinto County, as shown on the plat recorded in Volume 7, Page 4 of said San Jacinto County Plat Records and the called 6.000 acres described as "Tract Eleven" in said deed to The Ethiopian Foundation recorded under Clerk's File No. 20147141, Page 30805 of said Official Public Records, to a 1/2" iron rod set marking the P.C. of a curve in said right of way line,



Page 2 of 3

24.73 Acres

Thence 815.61 ft. in an easterly direction along the north right of way line of said Waterwood Parkway, common in part with the south lines of said called 6.00 acres and the 7.442 acres described in deed to Waterwood National Associates, L.P. recorded under Clerk's File No. 01-870, Page 3267 of said Official Public Records, in a curve to the right having a central angle of  $27^{\circ} 00' 43''$ , the radius being 1730.02 ft. and the chord bears  $S 58^{\circ} 45' 30'' E$  608.08 ft. to a 1/2" iron rod set marking the P.T. of said curve;

Thence  $S 45^{\circ} 15' 09'' E$  669.50 ft. along the north right of way line of said Waterwood Parkway, same being the south line of said 7.442 acres, to a 1/2" iron rod found marking the most eastern corner of said Waterwood Parkway, same being a western corner of the 36.934 acres described in deed to George H. Russell and wife, Suzanne Russell, recorded in Volume 311, Page 588 of said Official Public Records;

Thence  $S 44^{\circ} 44' 51'' W$ , along a western line of said Russell 36.934 acres, at 16.58 ft. pass a concrete monument found marking the most northern corner of the 60 ft. wide roadway easement known as Bob Christian Road, at 76.58 ft. pass another concrete monument found marking the most western corner of said 60 ft. wide roadway easement and the west common corner between said Russell 36.934 acres and the called 341 acres described in deed to Kenneth L. Russell and Marjorie H. Russell recorded in Volume 283, Page 639 of said Official Public Records, and continuing along a line of said called 341 acres, in all a total distance of 180.00 ft. to a 1/2" iron rod set marking the most southern corner of said Waterwood Parkway and an interior corner of said called 341 acres;

Thence  $N 45^{\circ} 15' 09'' W$  669.50 ft. along the south right of way line of said Waterwood Parkway, common in part with the north lines of said called 341 acres and said Waterwood Park Forest Village, to a 1/2" iron rod set marking the P.C. of a curve in said right of way line;

Thence 730.75 ft. in a westerly direction along the south right of way line of said Waterwood Parkway, same being the north line of said Waterwood Park Forest Village, in a curve to the left having a central angle of  $27^{\circ} 00' 43''$ , the radius being 1550.02 ft. and the chord bears  $N 58^{\circ} 45' 30'' W$  724.00 ft. to a 1/2" iron rod set marking the P.T. of said curve;

Thence  $N 72^{\circ} 15' 52'' W$  2425.20 ft. along the south right of way line of said Waterwood Parkway, same being the north line of said Waterwood Park Forest Village, to a 1/2" iron rod set marking the P.C. of a curve in said right of way line, said point being the north common corner between Lots 5 and 6, Block 2 of said Waterwood Park Forest Village;

Page 3 of 3  
24.73 Acres

Thence 1450.52 ft. in an westerly direction along the south right of way line of said Waterwood Parkway, same being the north line of said Waterwood Park Forest Village, in a curve to the left having a central angle of  $31^{\circ} 51' 08''$ , the radius being 2619.99 ft. and the chord bears  $N 88^{\circ} 11' 26'' W$  1437.84 ft. to a  $5/8$ " iron rod found marking the P.T. of said curve;

Thence  $S 75^{\circ} 53' 00'' W$  590.15 ft. along the south right of way line of said Waterwood Parkway, same being the north line of said Waterwood Park Forest Village, to a  $3/8$ " iron rod found marking the P.C. of a curve in said right of way line;

Thence 31.42 ft. in an southwesterly direction along the south right of way line of said Waterwood Parkway, same being the north line of said Waterwood Park Forest Village, in a curve to the left having a central angle of  $90^{\circ} 00' 00''$ , the radius being 20.00 ft. and the chord bears  $S 20^{\circ} 53' 00'' W$  28.28 ft. to the place of beginning and containing within these bounds 24.73 acres of land as shown on a plat accompanying this description.

Bearings for this description are based on plat calls as shown on the plat of Waterwood Park Forest Village recorded in Volume 7, Page 7 of the San Jacinto County Plat Records.

o Surveyor's Certificate o

The above description was prepared from an actual and accurate survey made on the ground under my supervision and same is true and correct to the best of my knowledge and belief.

Surveyed: March, 2010

**GEOPHYSICAL LAND SERVICES, LLC / ESM SURVEYING**  
Texas Surveying Firm Registration No. 10076100  
3205 U S Highway No. 59 N Livingston, Texas 77351 Ph: 936/327-4296


  
Earline McLeod, RPLS  
No. 5774, Texas



EXHIBIT "C"





## FIELDNOTE DESCRIPTION

State of Texas

County of San Jacinto

Being 0.127 acre of land situated in the Jesse Hardy Survey, A-156, San Jacinto County, Texas, and being out of the called 3.55 acres described as "Fourth Property" in deed to George H. Russell and Suzanne B. Russell recorded under Clerk's File No. 00-5580, Page 18783 of the San Jacinto County Official Public Records, and this 0.127 acre tract being more particularly described by metes and bounds as follows:

Beginning at a 1/2" iron rod set marking the northeast corner of said called 3.55 acres and the northeast corner of the herein described 0.127 acre tract, located at the intersection of the south right of way line of U. S. Highway No. 190 with the west right of way line of Palmetto Road (a 60 ft. wide roadway easement), said point bears S 89° 48' 38" W 62.67 ft. from a 5/8" iron rod found marking the northwest corner of the called 4.75 acres described in deed to George H. Russell and Suzanne B. Russell recorded under Clerk's File No. 04-6435, Page 28319 of said Official Public Records;

Thence 13.57 ft. along the east line of said called 3.55 acres, same being the west right of way line of said Palmetto Road in a curve to the right having a central angle of 02° 54' 57", the radius being 266.68 ft. and the chord bears S 19° 54' 38" W 13.57 ft. to a 1/2" iron rod set marking the P.T. of said curve;

Thence S 21° 22' 06" W 18.55 ft. along the east line of said called 3.55 acres, same being the west right of way line of said Palmetto Road, to a 1/2" iron rod set marking the most eastern southeast corner of the herein described 0.127 acre tract;

Thence S 89° 48' 38" W 14.55 ft. over and across said called 3.55 acres to a 1/2" rod set marking an interior corner of the herein described 0.127 acre tract;

Thence S 00° 11' 22" E 14.51 ft. over and across said called 3.55 acres to a 1/2" iron rod set marking the most southern southeast corner of the herein described 0.127 acre tract;

Thence S 89° 48' 38" W 110.66 ft. over and across said called 3.55 acres to a 1/2" rod set marking the southwest corner of the herein described 0.127 acre tract;

Thence N 00° 11' 22" W 44.51 ft. over and across said called 3.55 acres to a 1/2" rod set marking the northwest corner of the herein described 0.127 acre tract, located on the north line of said called 3.55 acres, same being the south right of way line of said U. S. Highway No. 190;

Page 2 of 2

0.127 Acre

Thence N 89° 48' 36" E 136.69 ft. along the north line of said called 3.55 acres, same being the south right of way line of said U. S. Highway No. 190, to the place of beginning and containing within these bounds 0.127 acre of land as shown on the plat accompanying this description.

Bearings for this description are based on deed call for the north line of the called 3.55 acres described as "Fourth Property" in deed to George H. Russell and Suzanne B. Russell recorded under Clerk's File No. 00-5580, Page 18783 of the San Jacinto County Official Public Records.

o Surveyor's Certificate o


The above description was prepared from an actual and accurate survey made on the ground under my supervision and same is true and correct to the best of my knowledge and belief.

Surveyed: March, 2016

**GEOPHYSICAL LAND SERVICES, LLC / ESM SURVEYING**

Texas Surveying Firm Registration No. 10076100

3205 U S Highway No. 59 N Livingston, Texas 77351 Ph: 936/327-4296

  
Earline McLeod, RPLS  
No 5774, Texas



From: Bonnie D Rush Law

936\*295\*3330

01/20/2016 11:47

#176 P.002/005

NO. CV13,946WATERWOOD IMPROVEMENT  
ASSOCIATION, INC.

§

IN THE DISTRICT COURT OF

§

VS.

§

SAN JACINTO COUNTY, TEXAS

GEORGE H. RUSSELL and  
SUZANNE B. RUSSELL

§

411<sup>TH</sup> JUDICIAL DISTRICTMEDIATION SETTLEMENT AGREEMENT

1. The parties hereto agree to settle pursuant to T.R.C.P Rule 11. All parties agree to waive notice and presentment.
2. As used herein "Russell" means George H. Russell, Suzanne B. Russell, The Ethician Foundation and the Universal Ethician Church. "WIA" means the Waterwood Improvement Association.
3. The consideration to be given for this settlement is as follows: The above entitled and numbered pending lawsuit will be settled upon the following terms and conditions:
  - A. Russell will dismiss its counterclaims with prejudice against WIA. WIA will dismiss all claims alleged in this lawsuit against Russell.
  - B. Waterwood Parkway consists of the following three portions:
    - a. Beginning at US 190, there is a 4 lane highway that becomes a 2 lane highway. This is an 18 acre plot including the right of way and median. It is currently owned by Russell.
    - b. From the beginning of the 2 lane highway to FM 980, the property is owned by WIA. It will be described as "the WIA Parkway."
    - c. From FM 980 to the Club is a 4 lane highway. This is a 30 acre plot including the 180 foot right of way and median. It is currently owned by Russell, and is currently on lease to WIA for 20 years starting in 2012.
  - C. WIA will pay to Russell the sum of One Million Dollars (\$1,000,000.00) within one hundred and twenty (120) days (or within 30 days of approval of title policy) for purchase of all interest of Russell in the Waterwood Parkway, together with the Billboard sign and the property (to be surveyed at expense of WIA) on which it is located, together with a right of way access to the sign. This agreement includes all signs, flag poles, and other improvements that are located on the Waterwood Parkway.

2016 Mediated Settlement Agreement

- D. Russell will provide WIA a Special Warranty Deed to all property conveyed under this Mediation Settlement Agreement, together with providing an insured title policy.
- E. Russell will not put up any signs, toilets, hearses, cars or other items within 200 feet from the boundary of any right of way of the Waterwood Parkway nor any street in Waterwood that borders on property owned by Russell, unless approved in advance by WIA.
- F. Russell will pay all future annual fees as stipulated in the Waterwood General Warranty Deed and thereafter remain current on all annual fees payments. WIA is waiving any existing claims for maintenance fees alleged in its First Amended Petition.
- G. Russell will drop any and all claims for any damages that have been alleged or could have been alleged by Russell.
- H. Both sides will bear their own legal costs incurred in this litigation.
- I. The prior Mediation Agreement of May 22, 2012 is superseded by this Mediation Settlement Agreement, and to the extent that this Mediated Settlement Agreement conflicts.
- J. WIA will have total control over the Waterwood Parkway and Russell will not interfere with WIA's use of the Waterwood Parkway.
- K. Neither The Ethician Foundation nor the Universal Ethician Church shall be responsible for any annual maintenance dues on any property currently titled in the name of The Ethician Foundation and/or the Universal Ethician Church, or purchased in the future in the Park Forest Village. Neither The Ethician Foundation nor the Universal Ethician Church shall be entitled to vote on any lots that maintenance fees are not paid on pursuant to this Agreement.
- 4. The above styled and numbered case shall be resolved by an agreed judgment incorporating the above terms and conditions to be approved and signed by all parties and their counsel.
- 5. The respective parties agree to release, discharge, and forever hold the other party harmless from any and all claims, demands or suits, known or unknown, fixed or contingent, liquidated or unliquidated whether or not asserted in the above case, as of this date, arising from or related to the events and transactions which are the subject matter of this case, and as set forth in the above terms and conditions.
- 6. This release runs to the benefit of all attorneys, agents, employees, officers, directors, shareholders and partners of each respective party. "Party" as used in this release includes

2016 Mediated Settlement Agreement



From: Bennie D Rush Law

936\*295\*3330

01/20/2016 11:47

#176 P. 004/005

all named parties to this case.

7. Each signatory hereto warrants and represents:
  - A. he or she has authority to bind the parties for whom that signatory acts.
  - B. the claims, suits, rights and/or interests which are the subject matter hereto are owned by the party asserting same, have not been assigned, transferred or sold and are free from encumbrance.
8. Plaintiff's attorney shall deliver drafts of any further settlement documents to the other parties by February 1, 2016. The parties agree to cooperate with each other in the drafting and execution of such additional documents as are reasonably required to implement the terms and spirit of this agreement.
9. This agreement is made and performable in San Jacinto County, Texas and shall be construed in accordance with the laws of the State of Texas.
10. Each signatory to this settlement has entered into it freely and without duress after having consulted with professionals of his or her choice. Each party hereto has been advised by the Mediator that the Mediator is not the attorney for any party that each should have this agreement reviewed by that party's attorney prior to executing it.
11. This Mediated Settlement Agreement will be subject to approval by the Board of Directors of WIA. Prior to such Board action Russell shall not publicly disclose or discuss this Mediated Settlement Agreement nor the terms of same.

SIGNED on January 18, 2016.

PARTIES:

Plaintiff:

WATERWOOD IMPROVEMENT ASSOCIATION, INC.

By: 

JACK B. ZIMMERMANN, President

2016 Mediated Settlement Agreement

From: Bennie D Rush law

936\*295\*3330

01/20/2016 11:47

#176 P.005/005

Defendants:

GEORGE H. RUSSELL  
SUZANNE B. RUSSELL  
THE ETHICIAN FOUNDATION  
UNIVERSAL ETHICIAN CHURCH

By: 

GEORGE H. RUSSELL, Individually and on behalf  
of SUZANNE B. RUSSELL, The Ethician Foundation  
and the Universal Ethician Church

APPROVED AS TO FORM ONLY:



TRAVIS E. KITCHENS, JR.  
State Bar No. 11541100

THOMPSON, COE, COUSINS &amp; IRONS

By: 

CORY REED  
State Bar No. 24076640

Lawyer for Plaintiff

APPROVED AS TO FORM ONLY:

CANTRELL, RAY &amp; BARCUS, LLP

By: 

HANS BARCUS  
State Bar No. 00793302

Attorney for Russells

2016 Mediated Settlement Agreement

NO. CV14,902

WATERWOOD IMPROVEMENT  
ASSOCIATION, INC.

VS.

GEORGE H. RUSSELL and  
UNIVERSAL ETHICIAN CHURCH

\*  
\*  
\*  
\*  
\*  
\*

IN THE DISTRICT COURT OF

SAN JACINTO COUNTY, TEXAS

258<sup>TH</sup> JUDICIAL DISTRICT

## PLAINTIFF'S EXHIBIT 2

No. CV14.606

GEORGE RUSSELL and  
UNIVERSAL ETHICIAN CHURCH.  
Plaintiff

IN THE DISTRICT COURT

V.

258<sup>th</sup> JUDICIAL DISTRICT OF

WATERWOOD IMPROVEMENT  
ASSOCIATION, INC.,  
Defendant

SAN JACINTO COUNTY, TEXAS

MEDIATION SETTLEMENT AGREEMENT

1. The parties hereto agree to settle pursuant to T.R.C.P Rule 11. All parties agree to waive notice and presentment.
2. As used herein "Russell" means George H. Russell and the Universal Ethician Church. "WIA" means the Waterwood Improvement Association. "Cause No. CV13,946" refers to the lawsuit between the parties, settled by mediation on January 18, 2016 and formalized in that certain "Agreed Final Judgment" signed and filed on March 14, 2016.
3. The consideration to be given for this settlement is as follows: The above entitled and numbered pending lawsuit will be settled upon the following terms and conditions:
  - A. The prior Mediation Settlement Agreement of January 18, 2016, in Cause No. CV13,946, shall remain in full force and effect;
  - B. Russell will nonsuit all claims alleged in their lawsuit without prejudice against WIA. WIA will nonsuit all claims alleged in this lawsuit without prejudice against Russell;
  - C. The current Wounded Warrior Cemetery Sign. ("WWCS"). will be removed contemporaneously with the installation of the new sign;
  - D. The WWCS will be replaced with a WIA designed wrought iron sign with letters of comparable size. The new sign will have the wording "Veterans Cemetery";
  - E. Russell agrees to contribute up to \$1,000.00 for the cost of the wrought iron sign and WIA will pay any additional amount, if any, over \$1,000.00;
  - F. WIA will purchase 11 "no trespassing / private property signs" sized 10" x 14" and shall have permission of Russell to enter the property to install the signs on

2016 Mediated Settlement Agreement

Page 1

Filed: 8/25/2016 2:52:54 PM  
Rebecca Capers  
District Clerk  
San Jacinto County, Texas



property of Russell bordering Waterwood Parkway in the approximate location shown by Exhibit "A" attached hereto;

- G. WIA will purchase "no trespassing / private property signs" sized 10" x 14" and shall replace the approximately 22 signs in the Waterwood neighborhoods and shall have permission of Russell to enter the property to install the signs:
4. The above styled and numbered case shall be resolved by an agreed motion for nonsuit.
  5. The respective parties agree to release, discharge, and forever hold the other party harmless from any and all claims, demands or suits, known or unknown, fixed or contingent, liquidated or unliquidated whether or not asserted in the above case, as of this date, arising from or related to the events and transactions which are the subject matter of this case, and as set forth in the above terms and conditions.
  6. This release runs to the benefit of all attorneys, agents, employees, officers, directors, shareholders and partners of each respective party. "Party" as used in this release includes all named parties to this case.
  7. Each signatory hereto warrants and represents: (A) he, she or it she has authority to bind the parties for whom that signatory acts and (B) the claims, suits, rights and/or interests which are the subject matter hereto are owned by the party asserting same, have not been assigned, transferred or sold and are free from encumbrance.
  8. WIA's attorney shall deliver drafts of any further settlement documents to the other parties by September 1, 2016. The parties agree to cooperate with each other in the drafting and execution of such additional documents as are reasonably required to implement the terms and spirit of this agreement.
  9. This agreement is made and performable in San Jacinto County, Texas and shall be construed in accordance with the laws of the State of Texas.
  10. Each signatory to this settlement has entered into it freely and without duress after having consulted with professionals of his or her choice. Each party hereto has been advised by the Mediator that the Mediator is not the attorney for any party that each should have this agreement reviewed by that party's attorney prior to executing it.
  11. In the event of any dispute over the closing documents anticipated by this Agreement, such dispute shall be submitted to Bennie Rush, whose opinion and ruling on any dispute shall be binding on the parties.
  12. This Mediated Settlement Agreement will be subject to approval by the Board of Directors of WIA. Prior to such Board action Russell shall not publicly disclose or discuss this Mediated Settlement Agreement nor the terms of same.

SIGNED on August 24, 2016.

PARTIES:

APPROVED AS TO FORM AND SUBSTANCE:

Plaintiffs:

GEORGE H. RUSSELL  
UNIVERSAL ETHICIAN CHURCH

By: 

GEORGE H. RUSSELL

Individually and on behalf of the Universal Ethician Church

APPROVED AS TO FORM ONLY:

CANTRELL, RAY & BARCUS, LLP

By: 

HANS BARCUS

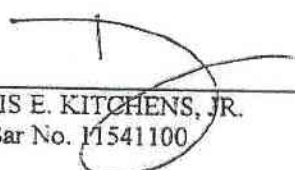
State Bar No. 00793302

Attorney for Plaintiffs

**APPROVED AS TO FORM AND SUBSTANCE:**Defendants:

WATERWOOD IMPROVEMENT ASSOCIATION, INC.

By:

  
JACK B. ZIMMERMANN, President**APPROVED AS TO FORM ONLY:**  
\_\_\_\_\_  
TRAVIS E. KITCHENS, JR.  
State Bar No. 11541100Lawyer for Waterwood Improvement Association, Inc.,  
Defendant





NO. CV14,902

WATERWOOD IMPROVEMENT  
ASSOCIATION, INC.

VS.

GEORGE H. RUSSELL and  
UNIVERSAL ETHICIAN CHURCH

\*  
\*  
\*  
\*  
\*  
\*

IN THE DISTRICT COURT OF

SAN JACINTO COUNTY, TEXAS

258<sup>TH</sup> JUDICIAL DISTRICT

### PLAINTIFF'S EXHIBIT 3

## CERTIFIED COPY

25748

STATE OF TEXAS \*  
COUNTY OF SAN JACINTO \*

04- 5955

**MANAGEMENT CERTIFICATE PURSUANT  
TO SECTION 209.004, TEXAS PROPERTY CODE**

WATERWOOD IMPROVEMENT ASSOCIATION, INC., a Texas Non-profit Corporation and Property Owners' Association as defined by Chapter 209, Texas Property Code, hereby files this management certificate as required by Section 209.004, Texas Property Code:

1. The name of the subdivision is: Waterwood, which is comprised of numerous sections, as identified by Exhibit "A" and "B" hereto.
2. The name of the association is: Waterwood Improvement Association, Inc.
3. The recording data for the subdivisions are attached as Exhibit "A".
4. The recording data for the declarations are attached hereto marked Exhibit "B".
5. The mailing address of the association is or the name and mailing address of the person managing the association is: Joe Moore, Executive Director, 62 Waterwood, Huntsville, Texas 77320.
6. Other information the association considers appropriate is: current Bylaws are attached hereto as Exhibit "C".

SIGNED this 17 day of May, 2004.

WATERWOOD IMPROVEMENT ASSOCIATION, INC.

By: *Jack Zimmermann*  
JACK ZIMMERMANN, President

WATERWOOD/DISK/3MANAGEMENT CERT 2004

EVANS AND KITCHENS, L.L.P.  
LAWYERS  
P.O. DRAWER 310  
GROVETON, TEXAS 75845



A TRUE COPY I HEREBY CERTIFY  
DAWN WRIGHT, COUNTY CLERK  
SAN JACINTO COUNTY, TEXAS  
Date 5/31/07  
By: *Jessie Hinton*  
DEPUTY CLERK

**CERTIFIED COPY**

**25749**

STATE OF TEXAS \*

COUNTY OF SAN JACINTO \*

The above instrument was acknowledged to before me by JACK ZIMMERMANN, President  
of WATERWOOD IMPROVEMENT ASSOCIATION, INC., on this 17<sup>th</sup> day of May, 2004.



Lisa C. Hayman  
NOTARY PUBLIC, STATE OF TEXAS

WATERWOOD/DISK/MAJAGEMENT CERT 2004

2



A TRUE COPY I HEREBY CERTIFY  
DAWN WRIGHT, COUNTY CLERK  
SAN JACINTO COUNTY, TEXAS  
Date 5/3/17  
By Jackie Huter  
DEPUTY CLERK

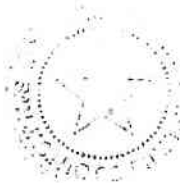
## CERTIFIED COPY

25750

## EXHIBIT "A"

## RECORDING DATA FOR SUBDIVISIONS

Augusta Estates	Vol. 7 Page 3
Bass Boat Village	Vol. 5 Page 28
Bay Hill (replat CCE II)	Vol. 4 Page 28
Bay Hill Point	Vol. 5 Page 26
Beach	Vol. 6 Page 6
Country Club Estates I	Vol. 5 Page 26
Country Club Estates II	Vol. 4 Page 1
Country Club Estates III	Vol. 4 Page 31
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Deer Creek 2	Vol. 1 Page 12
Deer Creek 5	Vol. 2 Page 17
Deer Creek 6	Vol. 2 Page 20
Deer Creek 9	Vol. 3 Page 4
Deer Creek 11	Vol. 1 Page 30
Deer Creek 13	Vol. 1 Page 36
Deer Creek 14	Vol. 1 Page 39
Fairway One	Vol. 5 Page 32,33
Fairway Village	Vol. 7 Page 2
Greentree Village 1	Vol. 2 Page 1
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Greentree Village 3	Vol. 2 Page 7
Greentree Village 4	Vol. 2 Page 9
Greentree Village 5	Vol. 3 Page 7
Greentree Village 7	Vol. 3 Page 19
Greentree Village 8	Vol. 3 Page 10
Greentree Village 9	Vol. 3 Page 16
Greentree Village 11A	Vol. 5 Page 56
Lake View Estates	Vol. 7 Page 4,5,6
Park Forest Village	Vol. 7 Page 7,8,9,10,11,12
Piney Point	Vol. 5 Page 27
Putters Point	Vol. 5 Page 25
Scottish Pines	Vol. 1 Page 4
Tournament Village	Vol. 7 Page 1
Villas (replat of CCE I)	Vol. 7 Page 18
Whispering Pines 1	Vol. 1 Page 4
Whispering Pines 1 Reserve A	Vol. 4 Page 43
Whispering Pines 2	Vol. 1 Page 6
Whispering Pines 2 Reserve F	Vol. 5 Page 16
Whispering Pines 4	Vol. 3 Page 13
Whispering Pines 5	Vol. 3 Page 22



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DAWN WRIGHT, COUNTY CLERK  
SAN JACINTO COUNTY, TEXAS

Date 5/3/17  
By Jackie Fulton  
DEPUTY CLERK



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## EXHIBIT "B"

25751

## PROTECTIVE COVENANTS/DECLARATIONS

## AUGUSTA ESTATES

Declaration of Restrictions

Vol. 201 Page 701

Declaration

Vol. 201 Page 796

Revocation of Declaration of Restrictions

Vol. 209 Page 137

Declaration of Restrictions

Vol. 209 Page 138

## BASSBOAT VILLAGE

GWD &amp; Declaration of Covenants

Vol. 170 Page 74

Protective Covenants

Vol. 170 Page 94

Amendment to Protective Covenants

Vol. 176 Page 17

## BAYHILL

Declaration

Vol. 170 Page 125

Protective Covenants (MF &amp; SF)

Vol. 170 Page 127

## BAYHILL POINT

Revised Declaration of Protective Covenants

Vol. 39 Page 873

## THE BEACH

GWD &amp; Declaration of Covenants

Vol. 170 Page 150

Protective Covenants

Vol. 170 Page 159

Amendment to Protective Covenants

Vol. 176 Page 19

Declaration

Vol. 179 Page 708

Declaration

Vol. 179 Page 711

Declaration

Vol. 179 Page 714

## COUNTRY CLUB ESTATES UNIT I

Protective Covenants (SF)

Vol. 135 Page 854

Protective Covenants (MF)

Vol. 135 Page 864

Revocation of Protective Covenants (MF)

Vol. 136 Page 861

Revocation of Protective Covenants

Vol. 136 Page 862

Protective Covenants

Vol. 136 Page 864

Protective Covenants

Vol. 136 Page 874

Revocation of Protective Covenants (MF)

Vol. 137 Page 410

Protective Covenants (MF)

Vol. 137 Page 436

Revocation of Protective Covenants (SF)

Vol. 140 Page 695

Revocation of Protective Covenants (MF)

Vol. 140 Page 696

Protective Covenants (SF)

Vol. 140 Page 697

Protective Covenants

Vol. 140 Page 706

Declaration

Vol. 140 Page 734

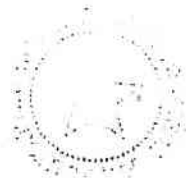
Declaration

Vol. 141 Page 797

Revocation of Protective Covenants (SF)

Vol. 141 Page 799

1



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DAWN WRIGHT, COUNTY CLERK  
SAN JACINTO COUNTY, TEXAS

Date 5/3/17

By Jackie Huber  
DEPUTY CLERK

CERTIFIED COPY 25752

Revocation of Protective Covenants (MF)	Vol. 141 Page 800
Protective Covenants (SF)	Vol. 141 Page 813
Protective Covenants (MF)	Vol. 141 Page 823
Amendment of Protective Covenants (MF)	Vol. 167 Page 578
Declaration	Vol. 167 Page 579
Protective Covenants	Vol. 167 Page 582
Revocation of Protective Covenants	Vol. 168 Page 404
<b>COUNTRY CLUB ESTATES UNIT II</b>	
Protective Covenants (SF)	Vol. 141 Page 813
Protective Covenants (MF)	Vol. 141 Page 823
Amendment of Protective Covenants (MF)	Vol. 170 Page 123
Amendment of Protective Covenants (SF)	Vol. 170 Page 124
<b>COUNTRY CLUB ESTATES UNIT III</b>	
Protective Covenants (SF)	Vol. 141 Page 813
Protective Covenants (MF)	Vol. 141 Page 823
<b>DEER CREEK VILLAGE 1</b>	
Protective Covenants (SF)	Vol. 134 Page 584
Revocation of Protective Covenants (SF)	Vol. 134 Page 880
Protective Covenants (SF)	Vol. 134 Page 881
<b>DEER CREEK VILLAGE 2</b>	
Protective Covenants	Vol. 133 Page 382
<b>DEER CREEK VILLAGE 5</b>	
GWD & Declaration of Covenants	Vol. 135 Page 843
Protective Covenants	Vol. 135 Page 854
Protective Covenants	Vol. 135 Page 864
Revocation of Protective Covenants	Vol. 136 Page 861
Revocation of Protective Covenants	Vol. 136 Page 862
Protective Covenants	Vol. 136 Page 864
Protective Covenants	Vol. 136 Page 874
Revocation of Protective Covenants	Vol. 137 Page 410
Protective Covenants (MF)	Vol. 137 Page 436
<b>DEER CREEK VILLAGE 6</b>	
GWD & Declaration of Covenants (MF)	Vol. 135 Page 843
Protective Covenants (SF)	Vol. 135 Page 854
Declaration of Protective Covenants (MF)	Vol. 135 Page 864
Revocation of Protective Covenants (MF)	Vol. 136 Page 861
Revocation of Protective Covenants (SF)	Vol. 136 Page 862
Protective Covenants (MF)	Vol. 136 Page 864
Declaration of Protective Covenants (MF)	Vol. 136 Page 874
Revocation of Protective Covenants	Vol. 137 Page 410

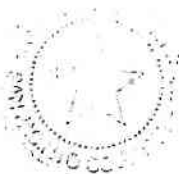


A TRUE COPY I HEREBY CERTIFY  
 DAWN WRIGHT, COUNTY CLERK  
 SAN JACINTO COUNTY, TEXAS  
 Date 5/31/17  
 By Jakei Hutton  
 DEPUTY CLERK

## CERTIFIED COPY

25753

Protective Covenants	Vol. 137 Page 436
<b>DEER CREEK VILLAGE 9</b>	
Protective Covenants (MF)	Vol. 137 Page 121
Protective Covenants	Vol. 137 Page 129
Revocation of Protective Covenants (MF)	Vol. 137 Page 413
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<b>DEER CREEK VILLAGE 11</b>	
Protective Covenants (MF)	Vol. 134 Page 576
Protective Covenants (SF)	Vol. 134 Page 584
Revocation of Protective Covenants	Vol. 134 Page 870
Protective Covenants (MF)	Vol. 134 Page 871
Revocation of Protective Covenants	Vol. 134 Page 880
Protective Covenants (SF)	Vol. 134 Page 881
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Order Granting Partial Abandonment of Plat and Canceling Restrictions	Vol. 129 Page 517
<b>DEER CREEK VILLAGE 14</b>	
Protective Covenants (SF)	Vol. 134 Page 584
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<b>FAIRWAY ONE</b>	
GWD & Declaration of Covenants	Vol. 171 Page 779
Protective Covenants	Vol. 171 Page 788
Articles of Incorporation of Fairway One HOA	Vol. 171 Page 795
Amendment to Protective Covenants	Vol. 176 Page 15
GWD & Declaration of Covenants	Vol. 181 Page 23
Protective Covenants	Vol. 181 Page 32
GWD & Declaration of Covenants	Vol. 188 Page 704
Protective Covenants	Vol. 188 Page 713



A TRUE COPY I HEREBY CERTIFY  
DAWN WRIGHT, COUNTY CLERK  
SAN JACINTO COUNTY, TEXAS  
Date 5/3/17  
By Jackie Hutton  
DEPUTY CLERK

## CERTIFIED COPY

25753 B

## FAIRWAY VILLAGE

Declaration of Restrictions  
 Revocation of Restrictions  
 Declaration of Restrictions  
 Revocation of Restrictions

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 Vol. 205 Page 101  
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 Vol. 221 Page 221

## GREENTREE VILLAGE 1

Protective Covenants (SF)  
 Protective Covenants (MF)

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## GREENTREE VILLAGE 2

Protective Covenants (SF)  
 Protective Covenants (MF)

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 Vol. 135 Page 21

## GREENTREE VILLAGE 3

Protective Covenants (SF)  
 Protective Covenants (MF)

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## GREENTREE VILLAGE 4

Protective Covenants (SF)

Vol. 135 Page 12

## GREENTREE VILLAGE 5

Protective Covenants

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## GREENTREE VILLAGE 7

Protective Covenants (SF)  
 Amendment to Protective Covenants

Vol. 137 Page 426  
 Vol. 209 Page 154

## GREENTREE VILLAGE 8

Protective Covenants  
 Amendment to Protective Covenants

Vol. 137 Page 129  
 Vol. 209 Page 156

## GREENTREE VILLAGE 9

Protective Covenants  
 Protective Covenants

Vol. 137 Page 426  
 Vol. 137 Page 436

## GREENTREE VILLAGE XI-A

Covenants and Restrictions (Protective Covenants)

Vol. 151 Page 556

## LAKEVIEW ESTATES

Declaration of Restrictions  
 Revocation of Restrictions  
 Declaration of Restrictions  
 Amendment of Declaration of Restrictions  
 Amendment of Declaration of Restrictions

Vol. 201 Page 678  
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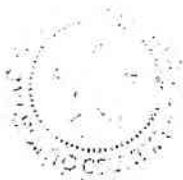
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 SAN JACINTO COUNTY, TEXAS

Date 5/3/17  
 By Jackie Hurlon  
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<b>PARK FOREST VILLAGE</b>	
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Revocation of Restrictions	Vol. 205 Page 102
Declaration of Restrictions	Vol. 205 Page 139
Amendment to Declaration of Restrictions	Vol. 5 Page 203
Amendment to Declaration of Restrictions	Vol. 15 Page 196
<b>PINEY POINT</b>	
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Declaration of Revocation	Vol. 206 Page 680
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Correction of Condominium Declaration	Vol. A Page 24
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Revocation of Declaration of Covenants	Vol. 169 Page 196
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<b>SCOTTISH PINES</b>	
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<b>WHISPERING PINES VILLAGE 1</b>	
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Protective Covenants	Vol. 133 Page 391
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Protective Covenants (MF)	Vol. 137 Page 436



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**WHISPERING PINES VILLAGE 1 (Reserve A)**  
Protective Covenants

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**WHISPERING PINES VILLAGE 2**

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Revocation of Protective Covenants

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Protective Covenants (MF)

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Declaration

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Protective Covenants

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**WHISPERING PINES VILLAGE 2 (Reserve F)**

Protective Covenants

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**WHISPERING PINES VILLAGE 4**

Protective Covenants

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Protective Covenants

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Amendment to Protective Covenants

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**WHISPERING PINES VILLAGE 5**

Protective Covenants (SF)

Vol. 137 Page 426

Amendment to Protective Covenants

Vol. 209 Page 148

Waterwood Policies for Residential Lots, Protective  
Covenants and Declaration of Restrictions Supplement  
with Governing Interpretations and Additional  
Rules, Regulations, and Requirements

Clerk's File # 04-1617

Page 7287-7302

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## Exhibit "C"

AMENDED BYLAWS  
OF  
WATERWOOD IMPROVEMENT ASSOCIATION, INC.

## ARTICLE I - DEFINITIONS

Section 1

"Association" and "WIA" shall mean and refer to the Waterwood Improvement Association, Inc., a non-profit corporation organized and existing under the laws of the State of Texas.

Section 2

The "Properties" shall mean and refer to those properties as set forth and particularly described in Article Four of the Articles of Incorporation of Waterwood Improvement Association, Inc., and such other additions thereto as may hereafter be brought within the jurisdiction of the Association as provided in said Article Four.

Section 3

"WIA Land" shall mean and refer to such part of the properties as may at any time hereafter be owned by the Association for so long as the Association may be the owner thereof.

## ARTICLE II - LOCATION

Section 1

The principal office of the Association shall be located in or near the Waterwood community, the location of such community being described in Article Four of the Amended Articles of Incorporation.

## ARTICLE III - MEMBERSHIP

Section 1

Every person or entity who is the owner of a fee title in a lot or living unit shall be a member of the Association and every person or entity who is purchasing a lot or living unit under a contract for deed or other instrument and who is subject to assessment, either present or future, by the Association, pursuant to the provisions of any recorded instrument relating to such assessment, shall be a member of the Association. For the purpose of determining membership, such ownership will be deemed to have vested upon delivery of a duly executed deed or contract to the grantee or vendee. The legal title retained by a vendor selling under a contract shall not qualify such vendor for membership. Foreclosure of a contract or repossession for any reason of a lot or unit sold under contract shall terminate the vendee's membership, whereupon all rights to such membership shall vest in the new owner of such lot or unit.

Section 2

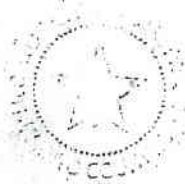
The rights of membership are subject to the payment of the annual charges levied by the Association, the obligation of which annual charges is imposed against each owner of and becomes a lien upon the property against which such annual charges are made as provided in Article IV of the Declaration of Covenants to which the properties are subject and recorded in the Office of the county clerk of San Jacinto County, Texas, and which are fully set forth and governed by the provisions of Article V, Section 5.1 through 5.4 of the Declaration of Covenants.

Section 3

The membership rights of any person whose interest in the properties is subject to the annual charge under Section 1 of this Article, whether or not he be personally obligated to pay such annual charge, may be suspended by action of the Directors during the period when the annual charges remain unpaid; but, upon payment of such annual charge or charges and any interest or penalties thereon, his rights and privileges shall be automatically restored. If the Directors have adopted and published rules and regulations governing the use of any of the WIA land, common properties or facilities, and the personal conduct of any person thereof, as provided in Article III, Sections 3.01 through 3.03 of the Declaration of Covenants covering the property, they may, in their discretion, suspend the rights of any person for violation of such rules and regulations for a period not to exceed thirty (30) days for any such violation.

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## ARTICLE IV - VOTING RIGHTS

Section 1

Members shall be entitled to on (1) vote for each lot or living unit in which they hold the interest required for membership by Article III. Section 1, as shown by the records of the Association as of the sixtieth day prior to the date of the next membership meeting, providing the annual charges levied on the lot or living unit through the previous year have been paid. When more than one person holds such interest or interests in any lot or living unit, all such persons shall be members and the vote for such lot or living unit shall be exercised as they may among themselves determine, but in no event shall more than one vote be cast with respect to any such lot or living unit. Provided, however, that regardless of the number of lots any member may own, such member shall not alter the date payments on assessments are to commence, be eligible to cast a number of votes in excess of ten (10) votes.

For the purpose of determining the votes allowed under this section, when living units are counted, the lot or lots upon which such living units are situated shall not be counted.

Lot or living unit for purposes of voting shall have the meaning set forth in Article I of the Declaration of Covenants.

## ARTICLE V - PROPERTY RIGHTS AND RIGHTS OF ENJOYMENT OF WIA LAND AND COMMUNITY FACILITIES

Section 1

Subject to such rules, regulations, fees and charges as may be established by the Board of Directors, each member shall be entitled to the use and enjoyment of the WIA Land and community facilities as provided in Article III of the Declaration of Covenants applicable to the Properties.

Section 2

Any member may delegate his rights of enjoyment in the WIA Land and community facilities to the members of his family who reside upon the Properties or to any of his tenants who reside there under a leasehold interest for a term of one (1) year or more. Such member shall notify the Secretary in writing of the name of any such person and of the relationship of the member to such member. The rights and privileges of such person are subject to suspension under Article III, Section 3.2 of the Declaration of Covenants to the same extent as those of any member.

## ARTICLE VI - ASSOCIATION PURPOSES AND POWER

Section 1

The Association has been organized for the purposes set forth in its Articles of Incorporation and shall have the powers granted by the Texas Non-Profit Corporation Act.

## ARTICLE VII - BOARD OF DIRECTORS

Section 1

The property and affairs of the Association shall be managed and controlled by the Board of Directors. Subject to the restrictions imposed by law, by the Articles of Incorporation or by these Bylaws, the Board of Directors shall exercise all of the powers of the Association.

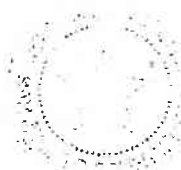
Section 2

The number of Directors shall be nine (9). The number of Directors may be increased or decreased from time to time by amendment to these Bylaws. However, the number of Directors shall not be less than five (5).

Section 3

Vacancies in the Board of Directors shall be filled by the affirmative vote of the remaining Directors and shall hold office only until the next regular or special meeting of the membership.

(Rev. 10/01)



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Section 4

The term of Director shall be two (2) years. A person may serve no more than two consecutive terms.

ARTICLE VIII - ELECTION OF DIRECTORS  
NOMINATING COMMITTEE; BALLOTING PROCEDURES; ELECTION COMMITTEE

Section 1

The election of the Board of Directors shall be by written ballot as hereinafter provided. For such election the members may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of Article III and Article IV. The name(s) receiving the largest number of votes shall be elected.

Section 2

Nominations for election to the Board of Directors shall be made by a Nominating Committee that shall be one of the standing committees of the Association, or by a voting member of the Association provided the nominee submits a written letter to the Nominating Committee requesting that his or her name be placed on the ballot for election to a vacancy on the Board of Directors.

Section 3

The Nominating Committee shall consist of the Chairman, who shall be a member of the Board of Directors, and one or more Association members not of the Directors. The Nominating Committee shall be appointed by the Board of Directors prior to each annual meeting of the members to serve from the close of such annual meeting until the close of the next annual meeting and such appointment shall be announced at each such annual meeting.

Section 4

The Nominating Committee shall submit as many nominations for election to the Board of Directors as it shall solicit/collect, but not less than the number of vacancies that are to be filled. Such nominations shall be made from among members. Nominations shall be placed on a written ballot as provided in Section 5 and shall be made in advance of the time fixed in Section 5 for the mailing of such ballots to the members.

Section 5

All elections of Directors shall be by written ballot. Such ballots shall be provided by the Association and shall (a) describe the vacancies to be filled; (b) set forth the names of those nominated for such vacancies; (c) contain a space for write-in vote by the members for each vacancy; (d) advise the number of votes which the ballot represents; and (e) include such other items as the Board of Directors may order. Such ballot shall be prepared and mailed by the Secretary to the members entitled to vote as provided in Article III and Article IV. The ballots, voting instructions and any other information that the Board the Directors may determine appropriate for the members to receive, shall be postmarked to the members at least fourteen (14) days in advance of the date set forth therein for return of the ballots. Such return date shall be a date not later than the day before the annual meeting, or special meeting, at which the results of the balloting are announced.

Section 6

The completed ballot(s) shall be returned by the member to the W.I.A. office in a sealed envelope, in such a manner that a member's identification and signature to determine entitlement to cast the number of votes allowed is not indicated directly on the ballot. The intended purpose is that each member eligible to vote be allowed to vote a secret ballot. The ballot may be mailed or delivered in person to such address as shall be clearly designated by the Secretary.

Section 7

Upon the receipt of each returned ballot, the Secretary shall immediately place it in a safe place. Not more than twenty-one (21) days prior to the day set for the meeting at which the election becomes effective, the envelopes shall be turned over, unopened, to the Election Committee which consists of three (3) persons appointed by the Board of Directors. All returns thereafter received by the Secretary on or before the date set forth for the ballot's return shall accordingly be turned over to the Election Committee. The Election Committee shall adopt a procedure which shall establish that (a) the member is entitled to cast the number of votes indicated on the ballot; (b) the ballot is signed by the member; (c) the ballot is dated; and (d) the ballot has been marked in accordance with the voting instructions provided.

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(Rev. 10/01)



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After the procedure has been completed relative to a ballot, the count of all valid votes shall be taken. All ballots and any continuing tally of the votes shall be kept confidential and safe by the Election Committee Chairman. Following the election, the Chairman of the Election Committee shall deliver the official tally report to the Board of Directors special meeting prior to the Annual Meeting for the purpose of the canvassing of the election results. The locked ballot box containing the voted ballots, the tally forms recording those votes and all other pertinent election records shall be placed in the custody of the Secretary of the Board of Directors as shall the key to the ballot box. The ballot box shall be unlocked by the Secretary only if a challenge to election procedures or the results are received by the President within ninety (90) days following the election. If no challenge is made by the expiration of that period, the Secretary shall purge the ballot box and destroy the voted ballots.

Section 8

The Chairman of the Election Committee shall report the results of the balloting to the membership at the annual meeting or special meeting (whichever body is in session) by the candidate's name and number of votes received. At the conclusion of the election report, the Chairman of the meeting shall declare the person(s) receiving the highest number of votes per position available as duly elected and stating the term of office(s) to the assembly.

Section 9

The newly elected Director(s) shall begin serving the term elected to upon the adjournment of the meeting declaring the election.

**ARTICLE IX - POWERS AND DUTIES OF THE BOARD OF DIRECTORS**

Section 1

Without limiting the power of the Board of Directors, the Board of Directors shall have the express powers

- (a) to contract for and on behalf of the Association for such duration as it, in its sole discretion, deem necessary or advisable;
- (b) to call special meetings of the members whenever it deems it necessary and it shall call a meeting at any time upon written request of one-fourth (1/4) of the voting membership, as provided in Article XIII, Section 2;
- (c) to appoint and remove at its pleasure all officers and agents and employees of the Association, prescribe their duties, fix their compensation and require of them security or fidelity bonds as it may deem expedient. Nothing contained in these Bylaws shall be construed to prohibit the employment of any member, officer or director of the Association in any capacity whatsoever.
- (d) to establish, levy and assess and collect the annual charges and all other charges referred to in the Declaration of Covenants covering the Property.
- (e) to adopt and publish rules and regulations governing the use of the WJA land or community facilities and the personal conduct of the members and their guests thereon;
- (f) to exercise for the Association all powers, duties and authority vested in or delegated to this Association, except those reserved to the members in the covenants;
- (g) in the event any member of the Board of Directors of this Association shall be absent on three (3) consecutive regular meetings of the Board of Directors, the Board may by action taken at the meeting in which such third absence occurs declare the office of said absent Director to be vacant.

Section 2

It shall be the duty of the Board of Directors

- (a) to cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the members at the annual meeting of the members or at any special meeting when such is required in writing by one-fourth (1/4) of the voting membership as defined in Article III;
- (b) to supervise all officers, agents and employees of this Association, and to see that their duties are properly performed;
- (c) as more fully provided in Article IV of the Declaration of Covenants applicable of the Properties



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- (j) to fix the amount of the annual charge against each lot or living unit for each annual period at least thirty (30) days in advance of such day or period, and at the same time
- (k) to prepare a roster of the Properties and annual charges applicable thereto which shall be kept in the office of the Association and shall be open to inspection by any member, and at the same time
- (l) to send written notice of each assessment to every owner subject thereto:
- (d) to issue or to cause an appropriate officer to issue, upon demand by any person a certificate setting forth whether any annual charge has been paid; such certificate shall be conclusive evidence of any charge therein stated to have been paid.

Section 3

If any Director will, may, or could receive any type of financial benefit beyond that which all members of WIA would receive from a contract or agreement on which the Board of Directors will vote, that Director shall make full disclosure as to any financial interest in the business being voted on, and shall abstain from voting on the matter.

## ARTICLE X - DIRECTOR'S MEETINGS

Section 1

A regular meeting of the Board of Directors shall be held each month at a time, day, date, and location designated in the notice of meeting, at the discretion of the Board of Directors. Whenever possible, the time, day, and location should be consistent from month to month.

Section 2

The agenda for each Board of Directors meeting shall be posted on the bulletin board of the Waterwood Post Office and the Waterwood Country Club not less than three days prior to the meeting.

Section 3

Special meetings of the Board of Directors shall be held when called by any officer of the Association or by any two (2) Directors after not less than three (3) days notice to each Director.

Section 4

The transaction of any business at any meeting of the Board of Directors, however called or wherever held, shall be as valid as though made at a meeting duly held after regular notice, if a quorum is present and, if their before or after the meeting, each Director not present signs a written Waiver of Notice or a consent to the holding of such meeting or an approval of the minutes thereof. All such waivers, consents or approvals shall be filed with the corporate records and made a part of the minutes of the meeting.

Section 5

The majority of the Board of Directors shall constitute a quorum thereof.

Section 6

All regular and special meetings, except for Executive Sessions, of the Board of Directors shall be open to all members. While input is solicited from members on matters of importance to the community, the President may set reasonable time limits on oral presentations to the Board of Directors by persons who are not Directors so as to cause the duration of Board meetings to be reasonable. Written communications from members is also encouraged, and the President will inform the Board of Directors of all written communications received by any member of the Board of Directors since the previous Board meeting.

## ARTICLE XI - OFFICERS

Section 1

The officers shall be a President, Executive Vice President, one or more Vice Presidents, Secretary, one or more Assistant Secretaries and a Treasurer. The President and one of the Vice Presidents shall be members of the Board of Directors.

(Rev. 10/01)



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By Jessie H. Hinton  
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Section 2

The officers shall be chosen by a majority vote of the Directors present at any meeting at which quorum is present. Vacancies shall be filled by the Board at any regular or special meeting thereof.

Section 3

All officers shall be elected for a term of one (1) year.

Section 4

The President shall preside at all meetings of the Board of Directors, shall see that orders and regulations of the Board of Directors are carried out and, unless otherwise provided by the Board, sign all contracts, notes, leases, mortgages, deeds and all other written instruments which may have been approved by the Board or pursuant to authority granted by the Board. Neither the President nor any other member of the Board of Directors is authorized to bind the Association by any of the foregoing written instruments unless expressly designated to do so by a resolution passed by a majority of the Board at a regular or special meeting of the Board of Directors.

Section 5

The Executive Vice President shall perform all of the duties of the President in the President's absence.

Section 6

Each Vice President shall have such power and duties as may be assigned by the Board of Directors. If more than one Vice President is elected, the Board shall designate who is the 1<sup>st</sup> Vice President, who is the 2<sup>nd</sup> Vice President, etc. In the absence of the President and Executive Vice President, the 1<sup>st</sup> Vice President shall perform the duties of the President. Such authority to act for the President shall vest to the Vice Presidents in the order of their numerical designation at the time of their election to such office by the Board of Directors.

Section 7

The Secretary shall be ex officio the Secretary of the Board of Directors, shall record the votes and keep the minutes of all proceedings in a book to be kept for that purpose. The Secretary shall sign all certificates of membership, shall keep the records of the Association, and shall record in a book kept for that purpose the names of all members of the Association together with their addresses as registered by such members.

Section 8

The Treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by a resolution of the Board of Directors, provided however, that a resolution of the Board of Directors shall not be necessary for the disbursements made in the ordinary course of business conducted within the limits of a budget adopted by the Board.

## ARTICLE XII - COMMITTEES

Section 1

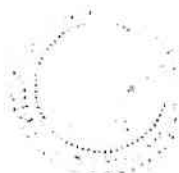
Standing committees of the Association shall be the Architectural Control Board, Audit/Financial, EMS, Maintenance, Municipal Utility District Liaison, Nominations, Real Estate and Security. Unless otherwise provided herein each committee may consist of a Chairman and one or more members and shall include a member of the Board of Directors for Board contact. The committees shall be appointed by the Board of Directors at each annual meeting of Directors, to serve from the close of such annual meeting until the close of the next annual meeting. The Board of Directors may appoint other committees at such other times as it deems desirable.

Section 2

The Nominations Committee shall have the duties and functions described in Article VIII.

Section 3

The Municipal Utility District Liaison Committee shall advise the Board of Directors on all matters relating to the Association's contracts and relations with the Municipal Utility District or Districts serving the Properties and its environs and shall perform such other functions as the Board, in its discretion, determine.



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Section 4

The Maintenance Committee shall advise the Board of Directors on all matters pertaining to the maintenance, repair or improvement on any WIA property and community facilities of the Association, and shall perform such other functions as the Board, in its discretion, determines.

Section 5

The Audit Committee shall supervise the annual audit of the Association's books and approve the annual budget and balance sheet statement to be presented to the membership at its regular annual meeting. The Treasurer shall be an ex officio member of the committee.

The Audit Committee shall review annually the performance and compensation of all employees of WIA and make recommendations to the Board of Directors prior to the adoption of the new budget.

Section 6

With the exception of the Nominations Committee, each committee shall have the power to appoint a subcommittee from among its membership and may delegate to any subcommittee any of its powers, duties, and functions.

Section 7

It shall be the duty of each committee to receive complaints from a member on any matter involving Association functions, duties and activities within the field of its responsibility. It shall dispose of such complaints, as it deems appropriate or refer them to such other committee, director or officer of the Association as is further concerned with the matter presented.

## ARTICLE XIII - MEETINGS OF MEMBERS

Section 1

The regular annual meeting of the membership shall be held on the second Saturday in October at 10:00 a.m., at the Association's principal office, or on any such other day or at such time and place as may, at the discretion of the Board of Directors, be specified in the notice of meeting.

Section 2

Special meetings of the members for any purpose may be called at any time by the President, the Executive Vice President, or by a majority of the Board of Directors, or upon written request of the members who have a right to vote one-fourth (1/4) or more of all votes of the entire membership.

Section 3

Notice of meetings shall be given to the members by the Secretary by sending a copy of the notice through the mail, postage thereon fully prepaid, to the member's registered address appearing on the books of the corporation. Notice of any meeting, regular or special, shall be mailed not less than ten (10) nor more than sixty (60) days in advance of the meeting and shall set forth in general the nature of the business to be transacted, provided however, that if the business of any meeting shall involve an election governed by Article VIII or any action governed by the Articles of Incorporation or by the Declaration of Covenants applicable to the properties, notice of such meeting shall be given or sent as there provided.

Section 4

At any membership meeting the presence, whether in person or by proxy, of members entitled to vote ten percent (10%) of the total membership vote, shall constitute a quorum for the transaction of business. However, should the nature of the business to be transacted be such that a different quorum is required either by the Articles of Incorporation or the Declaration of Covenants, then the quorum therein provided shall govern the action on those matters.

## ARTICLE XIV - VOTING &amp; PROXIES

Section 1

At all Association meetings of members, each member may vote in person or by proxy the number of votes to which the member is entitled. Votes may be cast for all matters which may properly come before the meeting, except for election of Directors as voting on this matter shall be by mail ballot only as described in Article VIII.



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Section 2

A proxy form shall be mailed to each member entitled to vote at the Association meeting called, whether it be an annual meeting or a special meeting. Such mailing shall be postmarked at least fifteen (15) days in advance of the date of the meeting.

Section 3

All proxies shall be in writing and filed with the Secretary prior to the meeting. To be valid for use in voting, the proxy must (a) name the member; (b) identify the lot or living unit which entitles the member that vote; (c) name the person(s) entitled to vote the proxy; (d) be signed and dated by the member; (e) be received by the Secretary by the date set forth on the proxy; and (f) be certified by the Election Committee that the proxy was given by a member who is entitled to vote. No proxy shall extend beyond the period of eleven (11) months from the date signed, and a proxy shall automatically cease upon conveyance by the member of his interest in the lot or living unit which entitled the member the vote granted in the proxy.

Section 4

A member who gives his proxy to the Association may, if he attends the meeting, take back his proxy before the meeting begins and vote in person on those matters which may properly come before the meeting.

**ARTICLE XV - BOOKS AND PAPERS**

Section 1

The books, records and papers of the Association shall at all times, during reasonable business hours, be subject to inspection by any member in good standing.

**ARTICLE XVI - CORPORATE SEAL**

Section 1

The Association shall have a seal in circular form having within its circumference the words: Waterwood Improvement Association, Inc., Texas, 1972.

**ARTICLE XVII - AMENDMENTS**

Section 1

These Bylaws shall be altered, amended, or repealed only by the affirmative vote of the majority of the votes entitled to be cast by the members present or represented by proxy at an annual meeting of the members.

Section 2

Any proposed amendment(s) to the Bylaws which is presented to the members for approval must either be supported by the Board of Directors or be submitted to the Board in a petition signed by at least five percent (5%) of the voting membership who are entitled to vote at the next annual meeting. Such petition shall be received by the Secretary no later than the first day of July so the proposed Bylaw amendment(s) may be mailed to the members with the notice of the annual meeting.

Section 3

In the case of any conflict between the Article of Incorporation and these Bylaws, the Articles shall control; and in the case of any conflict between the Declaration of Covenants applicable to the Properties referred to in Article I, Section 2 of these Bylaws, and these Bylaws, the Declaration of Covenants shall control.

**ARTICLE XVIII - INDEMNIFICATIONS**

Section 1

(a) The Association shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Association) by reason of the fact that the person is or was a director, officer, employee or agent of the Association, against expenses (including attorney's fees).



A TRUE COPY I HEREBY CERTIFY  
DAWN WRIGHT, COUNTY CLERK  
SAN JACINTO COUNTY, TEXAS  
Date 5/3/17  
By Jakei Hutton  
DEPUTY CLERK

CERTIFIED COPY

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judgments, fines and amounts paid in settlement actually and reasonably incurred by that person in connection with such actions, suit or proceeding if that person acted in good faith and in a manner reasonably believed to be in or not opposed to the best interest of the Association, and, with respect to any criminal action or proceeding, had no reasonable cause to believe the conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which that person reasonably believed to be in or not opposed to the best interest of the Association, and, with respect to any criminal action or proceedings, had reasonable cause to believe the conduct was unlawful.

- (b) The Association shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Association to procure a judgment in its favor by reason of the fact that the person is or was a director, officer, employee or agent of the Association, against expenses (including attorney's fees) actually and reasonably incurred by that person in connection with the defense or settlement of such action or suit if that person acted in good faith and in a manner reasonably believed to be in or not opposed to the best interests of the Association and except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable for negligence or misconduct in the performance of their duty to the Association unless and only to the extent that the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which such court shall deem proper.
- (c) Notwithstanding such of the provisions of subsections (a) and (b) of this section as specify standards of conduct to the extent of any person specified in subsections (a) and (b) of this section (and/or their heirs, executors and administrators) has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in subsections (a) and (b) of this section, or in defense of any claim, issue or matter therein, that person shall, in all instances be indemnified against expenses (including attorney's fees) actually and reasonably incurred by that person in connection therewith.
- (d) Expenses incurred in defending a civil or criminal action, suit or proceeding shall be paid by the Association on behalf of the person concerned in a timely manner as such expenses are incurred in the suit or proceeding upon the express understanding that the person concerned shall repay such amount in the event that it shall ultimately be determined that the person is not entitled to be indemnified by the Association as having not met the standards of conduct set forth in subsections (a) and (b) of this section.
- (e) The indemnification provided by this section shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under any agreement, vote of members or disinterested directors or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.
- (f) The foregoing provisions of this section shall be deemed to be a contract between the Association and each person entitled to indemnification by any of the provisions thereof who serves in any of the capacities hereinabove referred to at any time while this section and any relevant provisions of the Texas Corporation Law are in effect; provided, however, that the rights of indemnification provided by this section shall not be deemed exclusive of any other rights to which any person seeking indemnification may now be, or hereafter become, entitled, under any future amendment of these Bylaws or the Texas Corporation Law.

## ARTICLE XIX - PARLIAMENTARY AUTHORITY

## Section 1

The rules of parliamentary practice comprised in ROBERT'S RULES OF ORDER, NEWLY REVISED, shall govern all proceedings of this Association, the Board of Directors and all committees, subject to such special rules as have been or may be adopted, and subject to the provisions of the Texas Non-Profit Corporation Act and related laws, the Deed Restrictions, including but not limited to the General Warranty Deed and Declaration of Covenants, the Articles of Incorporation, as amended, and these Bylaws.

Date: 11/07/01

STATE OF TEXAS  
COUNTY OF SAN JACINTO

Secretary

BEFORE ME, the undersigned notary public, on this day personally appeared Jan Stanley, Secretary of the Waterwood Improvement Association, Inc., known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that she executed the same for the purpose and the capacity therein expressed.

SUBSCRIBED AND SWORN TO BEFORE ME on this the 7th day of November, 2001, to certify which witness my hand and official seal.



Lisa C. Hayman  
Notary Public in and for the State of Texas

11

(Rev. 10/01)



A TRUE COPY I HEREBY CERTIFY  
DAVID WRIGHT, COUNTY CLERK  
SAN JACINTO COUNTY, TEXAS

Date: 5/3/17  
By: Jack Hutton  
DEPUTY CLERK

CERTIFIED COPY

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FILED FOR  
RECORD

2004 AUG 19 P 12:59

*Charlene Vann*  
COUNTY CLERK  
SAN JACINTO COUNTY, TEXAS

CLERK'S NOTICE: ANY PROVISION HEREIN WHICH RESTRICTS  
THE SALE, RENTAL OR USE OF THE DESCRIBED REAL PROPERTY  
BECAUSE OF COLOR OR RACE, IS INVALID AND  
UNENFORCEABLE UNDER FEDERAL LAW.

STATE OF TEXAS  
COUNTY OF SAN JACINTO  
I, Charlene Vann, hereby certify that this instrument was FILED in its  
number sequence on the date and at the time stamped herein by me  
and was duly RECORDED in the official public records of San Jacinto  
County, Texas as indicated hereon by me on

AUG 19 2004



CHARLENE VANN  
COUNTY CLERK  
SAN JACINTO COUNTY, TEXAS



A TRUE COPY I HEREBY CERTIFY  
DAWN WRIGHT, COUNTY CLERK  
SAN JACINTO COUNTY, TEXAS

Date 5/3/17

By Jessie Hutton  
DEPUTY CLERK



NO. CV14,902

WATERWOOD IMPROVEMENT  
ASSOCIATION, INC.

VS.

GEORGE H. RUSSELL and  
UNIVERSAL ETHICIAN CHURCH

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\*  
\*  
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\*  
\*

IN THE DISTRICT COURT OF

SAN JACINTO COUNTY, TEXAS

258<sup>TH</sup> JUDICIAL DISTRICT

**PLAINTIFF'S EXHIBIT 4**



## Office of the Secretary of State

The undersigned, as Secretary of State of Texas, does hereby certify that the attached is a true and correct copy of each document on file in this office as described below:

WATERWOOD IMPROVEMENT ASSOCIATION  
Filing Number: 31013801

Articles of Incorporation  
Articles Of Amendment

July 26, 1972  
March 15, 1973

In testimony whereof, I have hereunto signed my name officially and caused to be impressed hereon the Seal of State at my office in Austin, Texas on May 01, 2017.



A handwritten signature in black ink, appearing to read "R. Pablos".

Rolando B. Pablos  
Secretary of State

FILED  
In the Office of the  
Secretary of State of Texas

JUL 26 1972

Bill Gammmon

Deputy Director, Corporation Division

ARTICLES OF INCORPORATION  
OF  
HORIZON VILLAGES IMPROVEMENT ASSOCIATION, INC.

We, the undersigned natural persons of the age of twenty-one years or more, at least two of whom are citizens of the State of Texas, acting as incorporators of a corporation under the Texas Non-Profit Corporation Act, do hereby adopt the following Articles of Incorporation for such corporation:

ARTICLE ONE

The name of the corporation (which is hereinafter called Corporation) is HORIZON VILLAGES IMPROVEMENT ASSOCIATION, INC.

ARTICLE TWO

The Corporation is a non-profit corporation.

ARTICLE THREE

The period of its duration is perpetual.

ARTICLE FOUR

The purpose or purposes for which the corporation is organized are:

To promote and develop the common good and social welfare of the people of a community and its environs to be developed on all or a portion of the tracts of land specifically described and recorded in Volume 127 at Page 533 of the Map Records of San Jacinto County, Texas and in Volume 243 at Page 694 of the Map Records of Walker County, Texas, presently consisting of 24,399.96 acres of land, more or less, provided, however, only those portions of the above described property as shall hereafter be actually subjected to an agreement of covenants, conditions and restrictions supporting and benefiting the Corporation, together with any additional land, which may hereafter be subjected to such agreement of covenants, conditions and restrictions supporting

and benefiting the Corporation, and adopted by resolution of the Board of Directors of the Corporation, shall be considered as such community (all of such property is herein-after referred to as the "Properties") and the proper object of the powers and purposes of the Corporation.

Without limiting the foregoing general statement of purposes, the Corporation shall have the following specific purposes:

(1) To aid, promote, and provide for the establishment, advancement and perpetuation of any and all utilities, systems, services and facilities for the Properties which tend to promote the general welfare of the inhabitants with regard to health, safety, education, culture, recreation, comfort or convenience to the extent and in the manner deemed desirable by the Board of Directors.

(2) To operate and maintain or provide for the operation and maintenance of any properties which may be from time to time designated or conveyed to the Corporation for the operation and maintenance as areas serving the general welfare of the inhabitants with regard to health, safety, education, culture, recreation, comfort and convenience.

(3) To enforce all covenants, restrictions, reservations, servitudes, profits, licenses, conditions, agreements, easements and liens established for the support and/or benefit of the Corporation, or which it may be legally entitled to enforce, and to disburse and use the proceeds of any such charges and to use and disburse any funds which may come into the hands of the Corporation for the promotion of any and all of the purposes of the Corporation in a lawful manner determined by the Board of Directors.

(4) To do any and all lawful things and acts that the Corporation may from time to time, in its discretion, deem to be for the benefit of the Properties and the inhabitants thereof or advisable, proper or convenient for the promotion of the interest of said inhabitants with regard to health, safety, education, culture, recreation, comfort or convenience of such community.

The Corporation will take action to accomplish the foregoing purposes only when and if such action appears, in the



sole and absolute discretion of the Board of Directors, to be desirable and feasible.

#### ARTICLE FIVE

The street address of the initial registered office of the Corporation is Republic National Bank Bldg., c/o CT Corporation System, Dallas, Texas 75201, and the name of the initial registered agent of the Corporation at such address is CT Corporation System.

#### ARTICLE SIX

The number of directors constituting the initial Board of Directors is five (5) and the names and addresses of the persons who are to serve as the initial directors are:

Joseph Timan	4400 East Broadway Tucson, Arizona 85711
Sidney Nelson	4400 East Broadway Tucson, Arizona 85711
Russell C. Wilde	4400 East Broadway Tucson, Arizona 85711
Leonard E. Steele	4400 East Broadway Tucson, Arizona 85711
Alfred Lehtonen	4400 East Broadway Tucson, Arizona 85711

#### ARTICLE SEVEN

The names and addresses of the incorporators are:

Robert R. Randolph	2100 First City National Bank Bldg. Houston, Texas 77002
Norman D. Radford, Jr.	2100 First City National Bank Bldg. Houston, Texas 77002
Robert J. Bachman	2100 First City National Bank Bldg. Houston, Texas 77002


ARTICLE EIGHT

Except as may otherwise be provided in the bylaws, the Board of Directors of the Corporation is expressly authorized to alter, amend or repeal the bylaws or to adopt new bylaws for the Corporation without any action on the part of the members.

IN WITNESS WHEREOF, we have hereunto set our hands, this 25th day of July, 1972.


  
Robert R. Randolph

  
Norman D. Radford, Jr.

  
Robert J. Bachman

STATE OF TEXAS §  
COUNTY OF HARRIS §

I, Dolena Shaw, a Notary Public, hereby certify that on the 25th day of July, 1972, personally appeared before me Robert R. Randolph, Norman D. Radford, Jr. and Robert J. Bachman, who being by me first duly sworn, severally declared that they are the persons who signed the foregoing document as incorporators, and that the statements therein contained are true.

  
Notary Public in and for  
Harris County, T e x a s

[SEAL]

DOLENA SHAW  
Notary Public in and for Harris County, Texas

CONSENT TO USE OF NAME

HORIZON COMMUNITIES IMPROVEMENT ASSOCIATION, INC.,  
a Texas corporation, hereby consents to the organization  
of HORIZON VILLAGES IMPROVEMENT ASSOCIATION, INC. in the  
State of Texas.

IN WITNESS WHEREOF, the said HORIZON COMMUNITIES  
IMPROVEMENT ASSOCIATION, INC. has caused this Consent to  
be executed on its behalf by its Vice President this  
21st day of July, 1972.

HORIZON COMMUNITIES IMPROVEMENT  
ASSOCIATION, INC.

By *Alfred Lehtonen*  
Alfred Lehtonen, Vice President

THE STATE OF TEXAS §

COUNTY OF HARRIS §

I, H. C. McClendon, a Notary Public, do  
hereby certify that on this, the 21st day of July, 1972,  
personally appeared before me Alfred Lehtonen, who being  
by me first duly sworn, declared that he is the Vice  
President of HORIZON COMMUNITIES IMPROVEMENT ASSOCIATION,  
INC., that he signed the foregoing document, and that the  
statements contained therein are true.

*H C McClendon*  
Notary Public in and for  
Harris County, T e x a s  
H C. McCLENDON  
Notary Public in and for Harris County, Texas

[SEAL]

Corporations Section  
P.O.Box 13697  
Austin, Texas 78711-3697



Rolando B. Pablos  
Secretary of State

## Office of the Secretary of State

The undersigned, as Secretary of State of Texas, does hereby certify that the attached is a true and correct copy of each document on file in this office as described below:

WATERWOOD IMPROVEMENT ASSOCIATION  
Filing Number: 31013801

Articles of Incorporation  
Articles Of Amendment

July 26, 1972  
March 15, 1973

In testimony whereof, I have hereunto signed my name officially and caused to be impressed hereon the Seal of State at my office in Austin, Texas on May 01, 2017.



A handwritten signature in black ink, appearing to read "R. Pablos".

Rolando B. Pablos  
Secretary of State

Phone: (512) 463-5555  
Prepared by: SOS-WEB

Come visit us on the internet at <http://www.sos.state.tx.us/>  
Fax: (512) 463-5709  
TID: 10266

Dial: 7-1-1 for Relay Services  
Document: 732490100003



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ARTICLES OF AMENDMENT  
TO  
ARTICLES OF INCORPORATION  
OF  
HORIZON VILLAGES IMPROVEMENT ASSOCIATION, INC.

FILED  
In the Office of the  
Secretary of State of Texas  
MAR 16 1973  
B. J. Kimbrough  
Deputy Director, Corporation Division

Pursuant to the provisions of Article 4.03 of the Texas Non-Profit Corporation Act, the undersigned corporation adopts the following Articles of Amendment to its Articles of Incorporation, which changes the name of the corporation.

1. The name of the corporation is HORIZON VILLAGES IMPROVEMENT ASSOCIATION, INC.
2. The following amendment to the Articles of Incorporation was adopted by the sole member of the corporation on February 15, 1973.

Article One of the Articles of Incorporation is hereby amended so as to read as follows:

"ARTICLE ONE

The name of the corporation (which is hereinafter called Corporation) is WATERWOOD IMPROVEMENT ASSOCIATION, INC."

3. The amendment was adopted in the following manner:

The amendment was adopted by consent in writing by all members entitled to vote with respect thereto.

Dated: February 16, 1973.

HORIZON VILLAGES IMPROVEMENT  
ASSOCIATION, INC.

By: Joseph Timan  
Its President, Joseph Timan

By: Helen M. Kettelhut  
Its Asst. Secretary,  
Helen Kettelhut

THE STATE OF ARIZONA §

COUNTY OF PIMA §

I, CHARLENE LIDDINGTON, a Notary Public, do hereby certify that on this 16th day of February, 1973, personally appeared before me JOSEPH TIMAN, being duly sworn, declared that he is President of the corporation executing the foregoing document, that he signed the foregoing document in the capacity therein set forth, and that the statements therein contained are true.

IN WITNESS WHEREOF, I have hereunto set my hand and seal the day and year before written.

Charlene Liddington  
Notary Public in and for  
Pima County, Arizona

(Notarial Seal)

My commission expires: 8-11-73

NO. CV14,902

WATERWOOD IMPROVEMENT  
ASSOCIATION, INC.

VS.

GEORGE H. RUSSELL and  
UNIVERSAL ETHICIAN CHURCH

\*  
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\*  
\*  
\*  
\*

IN THE DISTRICT COURT OF

SAN JACINTO COUNTY, TEXAS

258<sup>TH</sup> JUDICIAL DISTRICT

## PLAINTIFF'S EXHIBIT 5

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CERTIFIED COPY

#1874

GENERAL WARRANTY DEED  
AND DECLARATION OF COVENANTS

THE STATE OF TEXAS)  
COUNTIES OF WALKER } ss  
and SAN JACINTO }

KNOW ALL MEN BY THESE PRESENTS:

THAT, WATERWOOD IMPROVEMENT ASSOCIATION, INC., a Texas non-profit corporation ("Grantor", also referred to sometimes hereinafter as "the Association"), for and in consideration of the sum of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration to it in hand paid by HORIZON DEVELOPMENT CORPORATION, a Delaware corporation, qualified to do business in Texas ("Grantee"), the receipt and sufficiency of which are hereby acknowledged, has GRANTED, SOLD and CONVEYED and by these presents does GRANT, SELL and CONVEY unto Grantee, subject to the remaining terms and provisions hereof, those certain tracts or parcels of land situated in the Counties of Walker and/or San Jacinto, State of Texas, and more particularly described in Exhibit "A" attached hereto and made a part hereof for all purposes, together with, all and singular, the rights and appurtenances thereto in anywise belonging.

TO HAVE AND TO HOLD unto the said Grantee, its successors and assigns, forever; and Grantor hereby binds itself, its successors and assigns, to WARRANT and FOREVER DEFEND all and singular the title thereto against every person whomsoever lawfully claiming or to claim the same, or any part thereof, subject, however, to all rights-of-way, easements, reservations, encumbrances and other exceptions of record and further subject to the provisions, covenants, easements, reservations and restrictions contained in the Articles set forth below:

ARTICLE I  
Definitions

For the purposes hereof, unless the context otherwise requires, the terms defined in this Article have the following meanings:

- 1.1. "Association" means the Waterwood Improvement Association, Inc., a Texas non-profit corporation, and any non-profit corporation which succeeds to all or substantially all its assets by any merger, consolidation or transfer of assets.
- 1.2. "Board" means the Board of Directors of the Association.
- 1.3. "Commercial lot" means any lot permitted or designated by any restrictions of record covering the land to be used for commercial or industrial purposes.
- 1.4. "Community Properties" means any property, real or personal, hereafter conveyed to or otherwise acquired by the Association except such property conveyed by this General Warranty Deed and Declaration of Covenants.
- 1.5. "Grantee" means Horizon Development Corporation, a Delaware corporation, and any entity which succeeds to all or substantially all its assets by any merger, consolidation or transfer of assets.
- 1.6. "Land" means those certain tracts or parcels of land described in Exhibit "A" attached hereto, and any other parcel of land owned as of the date hereof or later acquired by the Grantee and subjected to the terms of this Declaration.
- 1.7. "Living Unit" means any building or portion thereof situated upon a Multi-family Lot and designed and intended for use and occupancy by a single family.



A TRUE COPY I HEREBY CERTIFY  
DAWN WRIGHT, COUNTY CLERK  
SAN JACINTO COUNTY, TEXAS

By: *[Signature]*  
Date: *[Signature]*



CERTIFIED COPY

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1.8. "Lot" means any parcel or subdivided portion of the Land (whether described by metes and bounds or by lot and block number in accordance with a plat filed of record) which is held by an Owner.

1.9. "Multi-family Lot" means any Lot permitted by any restrictions of record covering the Land to be used for multi-family purposes.

1.10. "Owner" means any person or entity (whether one or more) who is purchasing or has purchased under contract for deed, deed or other instrument, any parcel of the Land, but Owner shall not mean (i) the United States of America, the State of Texas, or any municipal corporation or political subdivision or agency of the State of Texas; (ii) any person or entity holding only a lien, easement, mineral interest or royalty interest burdening such parcel; (iii) the Association; or (iv) the Grantee.

1.11. "Single Family Lot" means any Lot required by any restrictions of record covering the Land to be used for single family purposes only.

1.12. "Lot Improvement" means any improvement or landscaped area situated upon a lot held by an owner constructed in accordance with restrictions of record applicable to such lot.

# ARTICLE II

## Assessment of Charges

2.1. The Association, by action of the Board, shall have the right to levy and collect certain charges described hereinafter (sometimes referred to herein as "Charges") against each Lot to obtain such funds as the Board shall deem reasonably necessary to satisfy the purposes stated in Section 2.11, 2.12, 2.15 including reasonable reserves for contingencies and for capital improvements to Community Properties, replacements and repairs. Each Owner of a Lot, by execution of a contract for deed covering such Lot, or by acceptance of a deed or other conveyance therefore, whether or not it shall be so expressed in any such contract for deed, deed or other conveyance, shall be deemed to covenant and agree to pay the Association the Charges, which shall be charged on and secured by a continuing lien on the Lot against which such Charges are made. Such Charges, together with such interest thereon and the cost of collection thereof as are hereinafter provided for, shall also constitute the personal obligation of the Owner of such Lot as such charges accrue or become due and payable, notwithstanding any subsequent transfer of such Lot. Such personal obligation shall not pass to such Owner's successors in interest unless expressly assumed by them, but shall be secured by the continuing lien referred to above.

2.2. In each calendar year, a Charge herein sometimes called the "Annual Charge" shall become due and payable on such Lot on the thirty-first day of December of said year, and delinquent on March 31 of the following calendar year. The amount of the Annual Charge on any Lot in the year in which such Lot is purchased or otherwise acquired from the Grantee by the Owner thereof shall be an amount which bears the same relationship to the Annual Charge as the remaining number of months of such year bears to twelve, commencing with the first day of the first calendar month after such purchase or acquisition. The Annual Charge for such year shall be due and payable on December 31 of such year and delinquent on March 31 of the following year.

2.3. The Annual Charge shall be levied on a uniform basis as follows;



A TRUE COPY I HEREBY CERTIFY  
DAWN WRIGHT, COUNTY CLERK  
SAN JACINTO COUNTY, TEXAS

Date 5/3/77  
By [Signature]

CERTIFIED COPY

(i) The Annual Charge for each Single Family Lot shall be \$120.00.

(ii) The Annual Charge for each Multi-family lot shall be \$180.00, so long as there are no living units constructed thereon, and upon application for issuance of a building permit for each such living unit the Annual Charge shall be \$60.00 per living unit provided that in no event shall the Annual Charge for a Multi-family lot be less than \$180.00. The \$60.00 per living unit Annual Charge shall accrue in the year following the issuance of said building permit.

(iii) The Annual Charge for each Commercial Lot shall be \$180.00, unless a lot improvement is constructed thereon in which case the Annual Charge shall be \$.01 per square foot of lot improvement and in the event the lot improvement shall exceed the total square foot area of such lot, then such excess floor area shall be subject to the Annual Charge of \$.01 per square foot to compute the total Annual Charge. The Annual Charge in excess of \$180.00 shall accrue in the year following the issuance of said building permit, provided that in no event shall the Annual Charge for a commercial lot be less than \$180.00.

(iv) Property on which a use is allowed other than residential (single or multi-family, town houses, condominiums, or co-ops) shall be classified as commercial and the Annual Charge made accordingly.

2.4. The Board will cause to be prepared a roster of all lots showing the amount of each Annual Charge, which roster shall be kept in the Office of the Association and shall be open to inspection by any Owner. For a reasonable fee to be paid at the time a request is made, the Association shall furnish, upon request of any Owner, a certificate in writing signed by an officer of the Association setting forth whether there are any unpaid Annual Charges against said lot and the amount of unpaid Annual Charges, if any. Such certificates shall be conclusive evidence of payment of any Annual Charge therein stated to have been paid, as to any third party who in good faith relies thereon to his economic detriment.

2.5. If the Annual Charge is not paid by March 31 immediately following the December 31 on which it becomes due, such Annual Charge shall automatically (without notice) become delinquent, and together with interest at the rate of ten percent per annum and the cost of collection provided for herein shall thereupon be secured by a continuing lien upon the lot against which the Annual Charge was levied, including improvements thereon, which shall bind such property in the hands of the then Owner thereof, his heirs, devisees, personal representatives, successors and assigns; and the Association may bring an action at law against the Owner personally obligated to pay the same or an action at law to foreclose the lien securing the Annual Charge, and there shall be added to the amount of such Annual Charge all reasonable expenses of collection, including the cost of preparing and filing the petition, reasonable attorneys' fees and costs of court.

2.6. The lien securing any Annual Charge provided for herein shall be subordinate to the lien of any mortgage(s) now or hereafter placed upon any of the land subject to the Annual Charge for the purpose of securing the indebtedness incurred to purchase or improve any of such land (including any vendor's lien, right of re-entry or other remedy retained by Grantee as seller of any parcel of such land pursuant to any contract for deed covering same); provided, however, that such subordination shall apply only to the Annual Charges which have become due and payable prior to a sale or transfer of such property pursuant to a decree

- 3 -



A TRUE COPY I HEREBY CERTIFY  
DAWN WRIGHT, COUNTY CLERK  
TARRANT COUNTY, TEXAS

Date: 1/11/2007  
By: [Signature]  
COUNTY CLERK



CERTIFIED COPY

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of foreclosure, a foreclosure by trustee's sale under a deed of trust, a conveyance in lieu of foreclosure or a right of re-entry or repossession by Grantee pursuant to a contract for deed. Such sale or transfer shall not release such property from liability for any Annual Charge thereafter becoming due, nor from the lien securing any such subsequent Annual Charge. In addition to the automatic subordination provided for herein, the Association in the discretion of the Board, may subordinate the lien securing any Annual Charge provided for herein to any other mortgage, lien or encumbrance, subject to such limitations, if any, as the Board may determine.

2.7. With respect to any Lot upon which the Owner thereof erects a lot improvement, the Association shall have the right to levy and collect a one-time Charge herein sometimes called the "Capital Improvement Charge". The Capital Improvement Charge shall become due and payable upon any Owner's application for a permit from the Architectural Control Board or other entity authorized to issue building permits pursuant to any restrictions of record applicable to such Owner's Lot in order to erect any improvement upon such Owner's Lot, and such Architectural Control Board shall not issue such permit unless and until the Capital Improvement Charge is paid in full. The provisions of this Paragraph 2.7 and the following Paragraph 2.8 (and Paragraph 2.9 to the extent applicable to Capital Improvement Charges) shall apply to any parcel of the Land held by the Grantee, or any municipal corporation or political subdivision or agency of the State of Texas or the United States of America.

2.8. The Capital Improvement Charge shall be levied against each Lot upon which a lot improvement is proposed.

A. As to any lot (set forth by schedule in Exhibit A) where the Association shall provide or cause to be provided a fully paved street fronting on such lot as well as access, power, telephone, water and sewer service to said lot:

(i) The Capital Improvement Charge for each Single Family Lot (a) if less than 8,000 square feet shall be \$2,000.00; (b) if 8,000 square feet or more, but less than 20,000 square feet shall be \$2,500.00; and (c) if 20,000 square feet or more shall be \$3,000.00.

(ii) The Capital Improvement Charge for each Multi-family lot shall be \$1,000.00 for each living unit for which a building permit has been applied for.

(iii) The Capital Improvement Charge for each Commercial Lot shall be \$.10 per square foot of lot improvement and in the event the lot improvement shall exceed the total square foot area of such lot, then such excess floor area shall be subject to the Capital Improvement Charge of \$.10 per square foot to compute the total of such charge.

(iv) The Capital Improvement Charge for each commercial lot which may, under the restrictions of record applicable to such lot, be used for other than a commercial purpose shall be classified according to its use and such charge made accordingly.

B. As to lots (set forth by schedule in Exhibit A) where the Association has no obligation to provide a paved street as well as access, power, telephone, water and sewer service to said lot, and such shall be provided by an entity other than the Association:

(1) The Capital Improvement Charge for each Commercial Lot shall be \$.02 per square foot of lot improvement and in the event the lot improvement shall exceed the total square foot

- 4 -



A TRUE COPY I HEREBY CERTIFY  
DAWN WRIGHT, COUNTY CLERK  
SAN JACINTO COUNTY, TEXAS

By *[Signature]*  
OFFICIAL CLERK

CERTIFIED COPY

area of such lot, then such excess floor area shall be subject to the Capital Improvement Charge of \$.02 per square foot to compute the total of such charge.

(ii) The Capital Improvement Charge for each Single Family and Multi-family Lot shall be \$500.00 for each Living Unit for which application for the issuance of a building permit is made.

2.9. Annually, the Board shall increase or decrease the Charges set forth in Section 2.3 and 2.8 above by a fraction the numerator of which is the then current Engineering News Record Cost Index of the Engineering News Record (published by McGraw-Hill), or any successor index and the denominator of which is said Index as of January 1, 1973. In the event publication of said Index (or any successor index) is discontinued by the publisher at any time, the applicable index for determining increases or decreases hereunder shall be designated by the Board.

2.10. The Association shall not be obligated to spend in any calendar year any part of or all the funds collected in such year by way of Charges, or otherwise, and shall carry forward as surplus any balances remaining; nor shall the Association be obligated to apply any such surpluses to the reduction of the amount of the Charges in the succeeding year, but shall carry forward from year to year such surplus as the Board in its discretion may determine to be desirable for the greater financial security of the Association and the effectuation of its purposes.

2.11. The Association shall apply requisite funds received by it, from whatever source, for the purposes set forth below:

A. To repay all principal and interest, when due, and premium, if any, on any notes, bonds, debentures, or other evidences of indebtedness issued and sold by the Association and to meet all contractual obligations of the Association with any municipal utility district;

B. To pay all costs and expenses of the Association;

C. To maintain roads and pathways as constructed by Horizon Properties Corporation, its successors or assigns.

2.12. Subject to the provisions of Paragraphs 2.8A, 2.14 and only after the receipt by the Association of the tenth annual charge due and payable on the lot purchased from the Grantor and upon the lot owner complying with every condition set forth in Paragraph 2.13 below and furnishing evidence of such compliance satisfactory to the Board and within one year after the Board's receipt of a demand by such owner, the Association shall provide or cause to be provided to such owner's lot, from funds received by it from whatever source, the following facilities and services as set forth below:

A. In the event such lot fronts a street right-of-way, 50 feet or less in width, a fully paved street, including curb and gutter, directly fronting on such lot and consisting of a base suitable for 1 1/2" asphaltic pavement wearing surface or equal and to be twenty-eight feet wide back to back of curb.

B. In the event such lot fronts a road right-of-way 51 feet or more in width, a road with a four inch caliche or equivalent all weather surface twenty-four feet in width, which road the Association shall be obligated to maintain or cause to be maintained in good and passable condition, and at such time as all streets (with a right-of-way of 50 feet or less) connecting such road have been paved, such road to be fully paved twenty-four feet in width with a base suitable for 1 1/2" asphaltic paved

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A TRUE COPY I HEREBY CERTIFY  
DAVID WRIGHT, COUNTY CLERK  
SAN JACINTO COUNTY, TEXAS

Date 5-3-77  
By J. L. Adams



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wearing surface or equal and with a 5 foot single penetration asphalt shoulder on each side.

C. Water and sanitary sewage facilities by extension of the central water and sewerage system directly to the front of such lot; provided, however, that if in the sole and uncontrolled judgment of the Board it is economically unfeasible to extend any or all of such facilities to such lot, the Association shall have the right to substitute therefor (but at no cost to such Owner) an alternate facility which the Board, acting upon the advice of a qualified engineer, determines to be economically feasible until such time as such central facility can be extended, such alternate facilities to include but not to be limited to individual water wells, individual storage tanks, individual septic tanks and individual sewage holding tanks.

D. Electric service facilities by request to a utility entity servicing the local area for the extension of service to about such lot in the capacity as required to meet the needs of the lot improvement.

E. Telephone service facilities by request to a utility entity serving the local area for the extension of service to about the lot.

2.13. The rights granted to the Owners set forth above in Paragraph 2.12 shall not accrue to any Owner until such Owner has presented the Board with written evidence satisfactory to the Board of each of the following:

(i) That such Owner has paid in full the Capital Improvement Charge attributable to the lot for which such Owner is requesting facilities;

(ii) That such Owner has received from the Architectural Control Committee or other entity authorized to issue building permits a permit authorizing the construction of a lot improvement(s).

2.14. Notwithstanding any other provision of this Declaration, failure (in whole or in part) or delay on the part of the Association or the Board or the Grantee in the performance of any of the obligations imposed upon any of them hereunder shall be excused and neither the Association, the Board nor the Grantee shall be liable for damages or otherwise on account thereof, when such failure or delay is the direct or indirect result of any of the following causes (herein called "Force Majeure") whether or not existing at the date hereof, and whether or not reasonably within the contemplation of said entities at the date hereof, namely: Acts of God, earthquakes, fire, flood or the elements, malicious mischief, insurrection, riot, strikes, slow-downs, lockouts, boycotts, picketing, labor or employment difficulties; acts of enemies, wars, hostilities, public disorders, sabotage; or compliance with any federal, state, municipal or other law, or with any regulation, order, rules, recommendation, request or suggestion of governmental agencies, authorities or representatives of any government act under claim or color of authority.

2.15. The Association shall apply funds received by it, from whatever source, for the benefit of the land in the manner set forth below, it being understood, however, that unless projected future revenues and funds remaining in hand are sufficient for the purposes set forth in Paragraphs 2.11 and 2.12 nothing herein shall require the Association to apply any funds for any of the purposes set forth below:

A. To improve, beautify, maintain, manage and otherwise develop the land, and to promote the recreation, health, safety, convenience and welfare of the Owners by the acquisition, construction,

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DAWN WRIGHT, COUNTY CLERK  
SAN JACINTO COUNTY, TEXAS

Date: 10/1/11  
By: [Signature]  
COUNTY CLERK

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reconstruction, alteration, enlargement, laying, renewing, replacement, repaid, maintenance, operation and subsidizing of any of the following: projects, facilities, studies, programs, systems and properties relating to parks, recreational areas or services, including lakes, dams, parks, golf courses, tennis courts, zoos, playgrounds, boat basins, marinas, equestrian centers, skeet ranges and bowling alleys; trees, flowers and landscaping, fountains, benches and shelters; water supply and distribution systems, drain systems, facilities for the collection, treatment and disposal of garbage, refuse and sewerage; individual septic tanks, cesspools and water wells; sewerage holding tanks; streets, roads, highways, bridges, walkways, curbing, gutters, sidewalks and streets, road and highway lighting facilities; traffic engineering programs and parking facilities; directional and informational signs; mass transit systems, stations and terminals, air fields, airports, air terminals and associated facilities; facilities for fighting and preventing fire; public utility systems; including plants, systems, facilities or properties used or useful in connection with the manufacture, production, distribution, delivery and storage of electric power and manufacture of natural gas or any other potential power source, and any integral part thereof, utility lines, poles, surface and underground facilities, relay station, cables, pipes, pipelines, ducts, meters and equipment and appurtenances, and/or properties, rights, easements and franchises relating thereto; communication systems and facilities, including all buildings, systems, facilities and properties used or useful in connection with the operation of communications networks and facilities, stations, towers, relay systems and facilities, cables, underground and surface ducts, lines, poles, receiving and transmitting and relay equipment, and appurtenances and all properties, rights, easements and franchises relating thereto; auditoriums, galleries, halls, amphitheaters, theaters, arenas and stadiums, educational buildings and facilities, including equipment, supplies and accessories in connection therewith; office buildings, buildings, storage and maintenance yards, garages and other buildings and facilities deemed necessary or desirable by the Board in connection with the administration, management, control and operation of the Association; hospitals and clinics, including equipment, medicines, supplies and accessories in connection therewith; libraries, including equipment, books, supplies and accessories in connection therewith; facilities for animal rescue and shelter; and any and all other improvements, facilities and services that the Board shall find to be necessary, desirable or beneficial to the interest of the Owners of the Land.

Nothing in Paragraph 2.11, 2.12 and 2.15, however, shall be construed to restrict the rights and powers of the Association to:

- (i) assign and pledge all or any part of any funds received by it from any source whatsoever;
- (ii) enter into a contract with the holders of any notes, bonds, debentures or other evidence of indebtedness issued and sold by the Association, or with any municipal utility district holding contracts with the Association securing the bonds of such district, agreeing for the benefit of such holders (a) to assess or collect the Charges when the same shall become due and payable; to establish sinking funds or other security deposits; to apply all funds received by the Association first to the payment of the costs of collection and then to the payment of all principal and interest, when due, on any such evidences of indebtedness; (b) to establish such collections, payments and lien enforcement procedures as may be required by such holders; and (c) to provide for the custody and safeguarding of all funds received by the Association.

#### ARTICLE III

#### Rights of Enjoyment in Community Properties

3.1. Subject to the provisions of Section 3.2, Grantee



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DAWN WRIGHT, COUNTY CLERK  
SAN JACINTO COUNTY, TEXAS

Date: 5-24-01  
By: [Signature]  
DEPUTY CLERK



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and every Owner shall have a common right and easement of enjoyment in the Community Properties, and such rights shall be appurtenant to and shall pass with every Lot.

3.2. The rights and easements of enjoyment created hereby in favor of Grantee and the Owners shall be subject to the rights and easements now existing in favor of Grantee or others as referred to or provided for herein, and shall also be subject to the following rights of the Association:

(i) The Association shall have the right to borrow money and in aid thereof to mortgage Community Properties, and the enjoyment rights granted under this Article III shall be subordinate to the rights of any such mortgagee;

(ii) The Association shall have the right to take such steps as are reasonably necessary to protect the Community Properties against a foreclosure of any such mortgage;

(iii) The Association shall have the right to suspend the enjoyment rights of any Owner for any period during which any Annual Charge or other amount owed by such Owner to the Association remains unpaid;

(iv) The Association shall have the right to promulgate reasonable rules and regulations governing the Owners' use and enjoyment of the Community Properties, and to suspend the enjoyment rights of any Owner for any period not to exceed sixty days for any infraction of such rules and regulations;

(v) The Association shall have the right to assess and collect the Annual Charge provided for herein and to charge reasonable admission and other fees for the use of any facilities which are a part of the Community Properties and in charging such admission and other fees, to establish reasonable classifications among Owners for the purpose of implementing any rules and regulations promulgated by the Association hereunder;

(vi) The Association shall have the right to rent or lease any part of the Community Properties for the operation (for profit or otherwise) of any service activity intended to serve a substantial number of Owners, such as, but not limited to, child care nurseries.

3.3. Subject to the provisions of (iv) and (v) above, each Owner shall have the right to extend rights and easements of enjoyment vested in him hereunder to the members of his family and/or to his tenants who reside on the land and to such other persons as may be permitted by the Association.

ARTICLE IV

Term

4.1. Except as provided in Paragraph 4.2 below, all covenants set forth or provided for herein shall be deemed covenants running with the Land and/or charges and liens upon the Land and any and every conveyance or transfer of any part of the Land shall be absolutely subject to said covenants whether or not it shall be so expressed in the deed, lease or other conveyance thereof. These covenants shall continue in full force and effect until January 1, 2010, and shall automatically be extended thereafter for successive periods of ten years provided, however, that the holders of fee simple title to two-thirds of the area of the Land may revoke, amend or supplement this Declaration of Covenants on January 1, 2010, or at the end of any successive ten-year period thereafter, by executing and acknowledging an appropriate agreement or agreements,

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A TRUE COPY I HEREBY CERTIFY  
DAWN WRIGHT, COUNTY CLERK  
SAN JACINTO COUNTY, TEXAS

Date: \_\_\_\_\_  
By: \_\_\_\_\_  
DEPUTY CLERK

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in writing, for such purpose and filing the same for record in the office of the County Clerks of Walker and San Jacinto Counties, Texas, at least five years prior to January 1, 2010, or at any time prior to five years preceding the expiration of any successive ten-year period thereafter.

4.2. Notwithstanding any provision of this Declaration, the right of the Association to levy and collect the Charges shall not be subject to termination or reduction by any revocation, amendment or supplement of this Declaration; provided, however, that the Board shall have the authority at any time and from time to time to reduce or eliminate the assessment of the Charges if the Board determines within its sole discretion that the funds received from the collection of the Charges are no longer needed because (i) all obligations have been fulfilled or (ii) adequate funds are available and assured from other sources.

# ARTICLE V

## Miscellaneous

5.1. It is expressly provided that Grantee shall have the right (but not the obligation) to impress the terms and charges imposed by this Declaration upon any other tracts belonging to or later acquired by the Grantee; and that the Grantor shall have the further right to apply the charges collected against the tracts described in Exhibit "A" hereto, and the charges collected against any such other tracts, for the benefit of any or all the land without distinction among tracts so long as the terms of this Declaration are otherwise complied with in such application of Charges, it being understood, however, that the amounts of such charges may vary depending upon the obligation of WATERWOOD IMPROVEMENT ASSOCIATION assumed as to any property of Grantee later impressed as provided herein.

5.2. No change of conditions or circumstances shall operate to extinguish, terminate or modify any of the provisions hereof.

5.3. The determination of any court that any provisions hereof are unenforceable or void shall not affect the validity of any other provision hereof.

5.4. The Association shall be empowered to assign its rights hereunder to any successor non-profit corporation and upon any such assignment, such successor shall have the rights and be subject to all the duties of the Association hereunder and shall be deemed to have agreed to be bound by all the provisions hereof, to the same extent as if such successor had been the original party hereto, and all references herein to the "Board" shall thereupon refer to the Board of Directors of such successor corporation. Any such assignment must be accepted by such successor corporation under written agreement pursuant to which such successor corporation expressly assumes all duties and obligations of the Association hereunder. If for any reason the Association shall cease to exist without having first assigned its rights hereunder, the covenants, easements, charges and liens imposed herein shall nevertheless continue, and any Owner may petition a court of competent jurisdiction to appoint a trustee for the purpose of organizing a non-profit corporation and assigning to it the rights of the Association hereunder.

5.5. All titles and headings to the Articles herein are for the purpose of reference and shall not be deemed to limit, modify or otherwise affect any of the provisions hereof.

EXECUTED in multiple counterparts, each of which shall have



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DAWN WRIGHT, COUNTY CLERK  
SAN JACINTO COUNTY, TEXAS  
Date: 12/31/11  
By: [Signature] DEPUTY CLERK



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the effect of an original, this 14th day of May, 1974.

GRANTOR:  
ATTEST:  
*[Signature]*  
Assistant Secretary

WATERWOOD IMPROVEMENT ASSOCIATION,  
INC., a Texas non-profit corporation  
By *[Signature]*  
Sidney Nelson, Vice President

GRANTEE:  
ATTEST:  
*[Signature]*  
Assistant Secretary

HORIZON DEVELOPMENT CORPORATION  
By *[Signature]*  
L. E. Steele, Vice President

STATE OF ARIZONA }  
COUNTY OF PIMA } ss

BEFORE ME, the undersigned, a Notary Public, in and for said County and State, on this day personally came and appeared Sidney Nelson, Vice President of Waterwood Improvement Association, Inc., a Texas non-profit corporation, known to me to be the person and officer whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, in the capacity therein stated and as the act and deed of said corporation.

Given under my hand and seal of office, this 14th day of May, 1974.

My commission expires:  
May 6, 1976

*[Signature]*  
Notary Public

STATE OF ARIZONA }  
COUNTY OF PIMA } ss

BEFORE ME, the undersigned, a Notary Public, in and for said County and State, on this day personally came and appeared L. E. Steele, Vice President of Horizon Development Corporation, a Delaware corporation, known to me to be the person and officer whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, in the capacity therein stated and as the act and deed of said corporation.

Given under my hand and seal of office this 14th day of May, 1974.

My commission expires:  
May 6, 1976

*[Signature]*  
Notary Public



A TRUE COPY I HEREBY CERTIFY  
DAWN WRIGHT, COUNTY CLERK  
SAN JACINTO COUNTY, TEXAS  
By *[Signature]*  
DEPUTY CLERK

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EXHIBIT A

R/2

The following described tracts or parcels of land are subject to the Capital Improvement Charge set forth in Subsection 2.8.B of the General Warranty Deed and Declaration of Covenants:

All lots in Replat Unit II Waterwood Country Club Estates EXCEPT Lot 1 of Block 2 and Lots 1 and 2 of Block 14, a subdivision in San Jacinto County, Texas, according to the plat thereof of record in the Office of the San Jacinto County Clerk; and

All lots in Replat Unit III Waterwood Country Club Estates, a subdivision in San Jacinto County, Texas, according to the plat thereof of record in the Office of the San Jacinto County Clerk.

FILED FOR RECORD on the 20th day of May A.D. 1974, at 3:00 o'clock P.M.  
 JULY RECORDED THIS the 23rd day of May A.D. 1974, at 1:00 o'clock P.M.  
 FILE NO. 1874 RECORDED: VOL. 141 PAGE 802 et seq.

*Mrs. Simone H. Chapp*  
 COUNTY CLERK, SAN JACINTO COUNTY, TEXAS.

A TRUE COPY I HEREBY CERTIFY  
 DAWN WRIGHT, COUNTY CLERK  
 SAN JACINTO COUNTY, TEXAS

Date 5-3-74  
 By *L. D. Adams*

NO. CV14,902

WATERWOOD IMPROVEMENT  
ASSOCIATION, INC.

VS.

GEORGE H. RUSSELL and  
UNIVERSAL ETHICIAN CHURCH

\*  
\*  
\*  
\*  
\*  
\*

IN THE DISTRICT COURT OF

SAN JACINTO COUNTY, TEXAS

258<sup>TH</sup> JUDICIAL DISTRICT

## PLAINTIFF'S EXHIBIT 6

NO. CV13,14

WATERWOOD IMPROVEMENT  
ASSOCIATION, INC.

VS.

GEORGE H. RUSSELL and  
SUZANNE B. RUSSELL,

\* IN THE DISTRICT COURT OF  
\*  
\*  
\* SAN JACINTO COUNTY, TEXAS  
\*  
\*  
\* 411<sup>TH</sup> JUDICIAL DISTRICT

**PLAINTIFF'S ORIGINAL PETITION FOR  
DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF**

TO THE HONORABLE JUDGE OF SAID COURT:

WATERWOOD IMPROVEMENT ASSOCIATION, INC., brings this action complaining of GEORGE H. RUSSELL, and SUZANNE B. RUSSELL, and files this Plaintiff's Original Petition, and for cause would respectfully show the Court the following:

**A. Discovery Level**

Discovery in this case is intended to be conducted under level 2 of rule 190 of the Texas Rules of Civil Procedure.

**B. Parties**

1. WATERWOOD IMPROVEMENT ASSOCIATION, ("Plaintiff"), is a Texas Non-Profit Corporation and is the property owners association for the Waterwood development subdivision in San Jacinto County, Texas, as said subdivision is depicted upon a plat thereof recorded in the Plat Records of San Jacinto County, Texas.
2. GEORGE H. RUSSELL, ("Defendant George Russell"), with a mailing address of 1401 19<sup>th</sup> Street, Huntsville, Texas 77340. Defendant George Russell may be served with process at

Plaintiff's Original Petition

FILED  
On 14<sup>th</sup> Day of June AD 2011  
Time 4:00pm  
REBECCA CAPERS Page 1  
Clerk District Court San Jacinto County, Texas  
Holly King Deputy



at that address.

3. SUZANNE B. RUSSELL, ("Defendant Suzanne Russell"), with a mailing address of 1401 19<sup>th</sup> Street, Huntsville, Texas 77340. Defendant Suzanne Russell may be served with process at that address.
4. Defendants George Russell and Suzanne Russell are collectively referred to herein as "Defendants".

### C. Plaintiff's Exhibits and Definitions

The following exhibits are incorporated herein by reference the same as if fully copied and set forth at length herein. Certified Copies of these documents will be introduced into evidence at trial.

<b>Exhibit No.</b>	<b>Date</b>	<b>Document</b>
1.	2/13/1978	Plats (referred to herein as "Plat") for Fairway One- Block 1, filed February 13, 1978 at Vol. 5, pages 32 and 33. Page 33 of the Plat sets forth the roadways from US Highway 190 (referred to herein as "US190 Parkway") and from Farm-to-Market 980 (referred to herein as "FM980 Parkway")
2.	5/30/1979	"Easement" dated May 30, 1979 from Horizon Properties Corporation and Horizon Development Corporation (referred to herein as "Developer") to the County of San Jacinto, State of Texas, filed at Vol. 185, page 161, Deed Records, San Jacinto County, Texas (referred to herein as "Easement")
3.	6/11/1979	Minutes of "Commissioners' Court Docket", Regular June 11, 1979, acceptance of Easement to roadways in precinct #4 from Waterwood (referred to herein as "Acceptance")

4. 1/28/83 "Summary Judgment" in Cause No. 6768, entitled "Horizon Development Corporation, et al vs. Alfred Lehtonen, et ux", from the 2<sup>nd</sup> 9<sup>th</sup> Judicial District Court of San Jacinto County, Texas (referred to herein as "No. 6768")
5. 8/31/2000 "Deed Without Warranty" from Horizon Properties Corporation to George H. Russell and Suzanne B. Russell, dated August 31, 2000, filed at Vol. 2000-5582, pages 18791 et seq, Official Public Records, San Jacinto County, Texas, concerning property of easement from FM 980 (referred to herein as "Deed FM980")
6. 2/24/2004 "General Warranty Deed (With Vendor's Lien Retained)", (referred to herein as the "Russell deed"), from Lehtonen Investments II, Ltd., to George H. Russell and Suzanne B. Russell, dated February 24, 2004, filed at Vol. 2004-1305, pages 5908 et seq., Official Public Records, San Jacinto County, Texas, concerning, in part, the conveyance of the US190 Parkway
7. 7/22/2009 "Agreement to Maintain Waterwood Parkway" (referred to herein as "Agreement") between Waterwood Improvement Association and San Jacinto County, Texas, filed Vol. 09-4818, pages 18604, et seq., Official Public Records, San Jacinto County, Texas
8. 7/22/2009 Minutes of Commissioners' Court Minutes for July 22, 2001
9. 7/28/2009 Letter to George Russell with copy of Agreement, sent certified mail, return receipt requested
10. June 2011 Photographs

#### D. Statement of Facts

1. The Plat (page 2 of the plat, recorded at Vol. 5, page 33 of the Plat records) established two roadway easements for Waterwood Parkway: (a) an easement extending 2,425.20 feet from FM 980, with a width of 180 feet; and (b) an easement extending 564.49 foot from US Highway 190, with a width of 180 feet at US 190, and ending with a width of 290 feet. The Plat dedicated "to the public use the roads and to utility companies, both public and private, the utilities easements, provided that all utilities shall be underground utilities, and the right of the utility company shall be limited to ingress, egress and regress for maintenance, repair and construction and the right to trim interfering trees and shrubs. [See Plaintiff's Exhibit No. 1].
2. On May 30, 1979 the Developer conveyed to San Jacinto County ("the County") an "Easement" of certain roads in the Waterwood community, including the two portions of the Waterwood Parkway involved in this controversy. The Easement "GRANTED, SOLD and CONVEYED" to the County "an Easement for public Road right-of-way purposes, including the right to construct, reconstruct, maintain, and use public road and street facilities thereon, upon, over and across all of those streets and roads shown and described upon the subdivision plats of those portions of Waterwood, situated in San Jacinto County, Texas". Among the streets and roads were the portions of the Waterwood Parkway from FM 980 and US 190. [See Plaintiff's Exhibit No. 2].
3. As required by law, the San Jacinto County Commissioner's Court voted to accept the easement on June 11, 1979, and has maintained the road, with contributions from WIA, since then. [See Plaintiff's Exhibit No. 3].

4. Street lights were installed on the Parkway in 1978-1979, or thereabouts, and the Waterwood National Country Club thereafter paid the electric bill. The light poles were in existence when the Russell family bought the Parkway property in 2000.
5. On January 28, 1983, the Honorable John Martin, then Judge of the 2<sup>nd</sup> 9<sup>th</sup> Judicial District Court, signed a "Summary Judgment" in No. 4768. [See Plaintiff's Exhibit No. 4]. This summary judgment provided, in part as follows:

...the Court having considered the pleadings on file, together with such affidavits and argument of counsel, makes the following findings of fact and conclusions of law:

1. Plaintiffs have developed a subdivision in San Jacinto County, Texas, known as Waterwood;

2. The tract of land in dispute (the "Disputed Tract") consists of 18.104 acres, being the land upon which Plaintiffs have constructed the beginning segment of a thoroughfare and entrance way to the Waterwood subdivision known as Waterwood Parkway, granting entrance into said subdivision commencing at a point on US Highway 190, and the same has been dedicated to the public;

3. Plaintiffs executed and delivered a General Warranty Deed on March 5, 1979 to Defendants, conveying 82.871 acres of land more or less, situated in the Jesse Hardy Survey, A-156, San Jacinto County, Texas, which Deed is recorded in Volume 185, Page 634, Deed Records, San Jacinto County, Texas;

4. Plaintiffs executed and delivered a General Warranty Deed on April 30, 1980 to Defendants, conveying 21.99 acres of land more or less situated in the Jesse Hardy Survey, A-156, San Jacinto County, Texas, which deed is recorded in Volume 193, Page 151, Deed Records, San Jacinto County, Texas;



5. Upon execution and delivery of said deeds Plaintiffs conveyed all of the abutting contiguous lands to the east and west boundaries of the Disputed Tract to Defendants. Attached hereto is a plat of the above described property on which the property conveyed on March 5, 1979 is designated Tract "A" and the property conveyed on April 30, 1980 is designated Tract "B", the Disputed Tract being the tract lying between tracts A and B;

6. Said deeds are plain, clear and unambiguous on their face;

7. There is no evidence that the deeds were executed as the result of mutual mistake. To the contrary, Plaintiffs' pleadings (Paragraph VI of Plaintiffs' Original Petition) constitute a judicial admission that Defendants have consistently maintained that title to the Disputed Tract was conveyed to them by said deeds.

8. Barring allegations and evidence of fraud, misrepresentation, accident or mutual mistake an instrument clear and unambiguous on its face will not be set aside or reformed. The only allegation and/or evidence of mistake is in Plaintiffs' pleadings (First Count of Plaintiffs' Original Petition) wherein it states that it "...was not its intention to convey..." the Disputed Tract to the Defendants, and in the Affidavits attached to Plaintiffs' Motion for Partial Summary Judgment. In light of the finding in Paragraph 7 supra, this can establish no more than evidence of unilateral mistake on the part of Plaintiffs which does not entitle Plaintiffs to the remedy of reformation as sought under Plaintiffs' First Count;

9. A conveyance of land bounded by a public highway carries with it the fee to the center of the road, unless the inference that it was so intended is rebutted by the express terms of the grant. The deed in question here, although executed some thirteen (13) months apart and by two different Presidents of Plaintiff corporations, each state in plain and clear language "This conveyance is further made subject to any and all valid easements insofar as the same affect the said property but including all of Grantor's rights and interests with respect thereto and in the lands covered thereby."

Further, each of said deeds provide "TO HAVE AND TO HOLD the above described property, together with all and singular the rights and appurtenances therein anywise belonging unto the said Grantees, their heirs and assigns forever..." The deeds in question do not have an express reservation of the underlying fee in the Disputed Tract, but to the contrary have an express grant of all Plaintiffs' rights and interests with respect to the land covered thereby;

It appearing to the Court upon consideration of the arguments of counsel and upon review of the Plaintiffs' and Defendants' Motions for Partial Summary Judgment, and the supporting Affidavits thereto, together with pleadings and papers in file in this cause at the time of hearing, that there is no genuine issue as to any material fact and that Summary Judgment should be granted. It further appearing to the Court upon consideration of said opposing motions for Summary Judgment that the Plaintiffs' Motion for Partial Summary Judgment should be denied, the Court thereafter on January 5, 1983, made a docket entry reciting this decision and directing the Clerk of the Court to notify counsel for the parties of the Court's ruling.

It further appearing to the Court upon consideration of the Plaintiffs' Motion for Judgment filed herein that the fee simple ownership in the subject property prior to the conveyance of the adjacent property to the Defendants by those two General Warranty Deeds described in Plaintiffs' Original Petition and attached thereto as Exhibits was subject to certain rights of the public as created by dedication by subdivision plat, certain rights of Waterwood Improvement Association, Inc. as reserved by a certain General Warranty Deed and Declaration of Covenants, and certain rights existing in favor of the County of San Jacinto by virtue of an easement conveyance and that the title to be declared vested in the Defendants is subject to these prior rights and should be set forth in this judgment.

It further appearing to the Court that upon motion by the Plaintiff that the issues contained in the Third Count of Plaintiffs' Original Petition have been severed from this cause and docketed under Cause No. 6768-A, and the Summary Judgment to be hereby granted will dispose of all matters left pending in issue in this cause.

It appearing to the Court that upon severance of Plaintiffs' Third Count the Motions herein presented are motions for final judgment.



It is, therefore, ORDERED, ADJUDGED, and DECREED that the Plaintiffs' Motion be and the same is hereby denied.

It is, further ORDERED, ADJUDGED, and DECREED that the Defendants' Motion for Summary Judgment be and it is hereby granted and that Defendants, Alfred Lehtonen and wife, Lucille F. Lehtonen, are hereby declared to be vested with the fee simple title in and to the Disputed Tract being that certain 18.104 acres of land out of and a part of the Jesse Hardy Survey, A-156, San Jacinto County, Texas, occupied by Waterwood Parkway and other public facilities, lying immediately adjacent to and between those two certain tracts of land conveyed by Plaintiffs to Defendants by two General Warranty Deeds, the first dated March 5, 1979, recorded in Volume 185, Page 634, Deed Records of San Jacinto County, Texas, conveying 82.871 acres of land, and the second dated April 30, 1982, recorded in Volume 193, Page 151, Deed Records of San Jacinto County, Texas, conveying 21.99 acres of land, to which instruments reference is hereby expressly made for descriptive purposes.

It is, further, ORDERED, ADJUDGED, and DECREED that the fee simple title hereby declared to be vested in the Defendants, Alfred Lehtonen and wife, Lucille F. Lehtonen, is subject to the existence of the public highway facility thereon commonly known as Waterwood Parkway and other related public facilities and the existing rights of the following parties:

1. The rights of THE PUBLIC therein under the dedication of said 18.104 acres for public road purposes under and by virtue of the subdivision plat of FAIRWAY ONE - Block 1, as shown by the plat approved by the Commissioner's Court of San Jacinto County, Texas on February 13, 1978, and filed for record on said date in Volume 5, Page 32, Plat Records of San Jacinto County, Texas.

2. The rights of WATERWOOD IMPROVEMENT ASSOCIATION, Inc. under and by virtue of the provisions, covenants, easements, reservations and restrictions contained in the General Warranty Deed and Declaration of Covenants from Waterwood Improvement Association, Inc. to Horizon Development Corporation dated February 13, 1978, recorded in Volume 171, Page 779, Deed Records of San Jacinto County, Texas.

3. The easement in favor of the COUNTY OF SAN JACINTO for public road right of way purposes and the rights thereunder created by instrument from Horizon Properties Corporation and Horizon Development Corporation to the County of San Jacinto dated May 30, 1979, recorded in Volume 185, Page 161, Deed Records of San Jacinto County, Texas.
6. Around the year 2000 WIA purchased cement poles and had Sam Houston Electric Cooperative Company ("SHECO") replace them at WIA's cost as they were all rotted wooded poles that had been installed in the 1970s and the Waterwood National Country Club continued to pay the monthly cost to SHECO.
7. Subsequent to the above actions regarding the Waterwood Parkway easements, on August 31, 2000, the Developer sold to George H. Russell and Suzanne B. Russell the underlying fee simple easement of the Parkway identified on the Plat. The "Deed Without Warranty", concerning the FM 980 Parkway, contained the standard language regarding being subject to existing easements of record, and further identified the land "as shown upon and dedicated to the public on Sheet 2 of the Plat of Fairway One-Block 1." [See Plaintiff's Exhibit No. 5].
8. Subsequent to the above actions regarding the Waterwood Parkway easements, on February 27, 2004, Lehtonen Investments II, Ltd. sold to George H. Russell and Suzanne B. Russell certain property in San Jacinto County, Texas, by General Warranty Deed, filed at Vol. 04-1305, pages 5908, et seq., Official Public Records of San Jacinto County, Texas. [See Plaintiff's Exhibit No. 6].
9. During the middle of January 2009, the Waterwood National Country Club had SHECO turn off all the street lights that the Waterwood National Country Club was paying for on the Parkway, Marina Road, and some on Latrobe. The total number of lights was about 126. A committee from WIA toured these areas at night and decided for security reasons it would



be best if the account was transferred to WIA so they could remain on. SHECO then changed the billing on 108 of these lights to WIA; the 18 lights that were not transferred to WIA were lights on the Parkway from US 190, which the Board did not feel were beneficial to the Waterwood Community.

10. In July 2009 WIA and the County of San Jacinto, Texas, entered into an "Agreement to Maintain Waterwood Parkway". This Agreement was approved and executed by the San Jacinto County Commissioner's Court and by WIA. The Agreement was filed July 28, 2009 at Vol. 09-4818, pages 18604, et seq., Official Public Records of San Jacinto County, Texas.

The Agreement provided, in part, as follows:

The County of San Jacinto and the Waterwood Improvement Association hereby agree as follows:

1. This Agreement is effective immediately and shall continue until such time as either party gives the other party thirty (30) days written notice of its intent to terminate this Agreement;
2. WIA agrees to maintain the Waterwood Parkway easement, from US Highway 190 through to the end of the Waterwood Parkway at the Waterwood National Resort and Golf Club, by planting vegetation, mowing grass, cleaning the right of way, and illuminating some or all the street lights, all at WIA's expense;
3. Any mowing of the Parkway shall be at the sole discretion of WIA;
4. The planting of vegetation and cleaning the right of way of the Parkway shall be in the sole discretion of WIA;
5. The parties agree to indemnify and hold harmless the other party from any liability that may arise from their actions in furtherance of their rights and obligations under this agreement; and
6. This agreement is effective upon the date of the approval and execution by the Waterwood Improvement Association, Inc. and the County of San Jacinto.

[See Plaintiff's Exhibit Nos. 7 and 8].

10. By letter dated July 28, 2009, notice of the Agreement was given to Defendants of the Agreement. [See Plaintiff's Exhibit No. 9].
11. Notwithstanding the Agreement, Defendants have set upon a course of action to interfere with the rights of WIA under the Agreement. These have included interfering with employees of WIA and contractors for WIA. Most recently Defendants interfered with WIA's mowing of the Parkway, pursuant to the Agreement, and also placed a sign on the Waterwood Parkway easement at Farm-to-Mark Road No. 980 stating "private road travel at your own risk." Further, Defendants, or persons acting under his direction, has painted the Waterwood granite signs at the entrance to the Waterwood subdivision. Photographs evidencing this is attached to this Petition as Plaintiff's Exhibit No. 10.

#### **E. Cause of Action for Declaratory Judgment**

12. In support of this cause of action, Plaintiff incorporates paragraphs D.1 through D.11 hereof, together with all exhibits filed hereto, in support of this request for Declaratory Judgment.
13. Plaintiff requests the Court, pursuant to Chapter 37, Texas Civil Practices and Remedies Code, to declare what the rights of WIA are pursuant to the Agreement, as concerns the rights of WIA to use and maintain the Parkway pursuant to the Agreement.
14. Plaintiff requests the Court to declare the rights, duties and responsibilities of the Plaintiff under the Agreement to use and maintain the Parkway pursuant to the Agreement, together with the rights of Defendants in relation to the easement and Waterwood Parkway in issue.

### F. Injunctive Relief Requested

15. In support of this cause of action, Plaintiff incorporates paragraphs D.1 through E.14 hereof, together with all exhibits filed hereto, in support of this request for Declaratory Judgment.
16. Request for Permanent Injunction. For the harm and damage done to Plaintiff, and for the harm and damage that will continue but for the intervention of this Court, Plaintiff has no adequate remedy at law. Such damages are continuing in that Defendant's actions hinder the performance of WIA under the Agreement to maintain the Parkway. Defendants have threatened WIA's employees and contractor workers while they are trying to maintain the Parkway. To a large degree, such damages are intangible and the future loss and damage to WIA and its employees and contractors is difficult to ascertain. Plaintiff requests the Court, after final trial, to enter a permanent injunction (1) prohibiting Defendants from interfering with WIA's maintenance of the Parkway.
17. Request for Temporary Orders and Injunction. Plaintiff requests the Court, after notice and hearing, and to make temporary orders and issue any appropriate temporary injunctions for the preservation of the property and protection of the parties as deemed necessary and equitable. Plaintiff requests that the Court enjoin Defendants from interfering with the rights of WIA under the Agreement to maintain the Parkway.

### G. Attorney's Fees

18. Plaintiff incorporates paragraphs D.1 through F.17, together with all exhibits referenced herein, in support of this request for Attorney's Fees.
19. Defendants are liable to Plaintiff for reasonable attorney's fees, in an amount not less than \$10,000.00 for the necessity of bringing this lawsuit as provided for by Section 37.009, of

the Texas Civil Practices and Remedies Code.

20. In the event of an appeal to the Court of Civil Appeals, Plaintiff would further be entitled to not less than \$10,000.00 as reasonable attorney's fees; in the event of an appeal to the Supreme Court, Plaintiff would further be entitled to not less than an additional \$10,000.00 as reasonable attorney's fees; or, in the alternative, reasonable attorney's fees as determined by the Court.

#### **H. Notice of Intent to Offer Certified Copies of Public Records.**

Notice is hereby given that at the trial of this cause Plaintiff intends to offer into evidence a certified copy of said Public Records, as provided for by Rules 902 and 1005, Texas Rules of Evidence, as identified in this Petition and as may be identified during this litigation.

#### **I. Prayer**

WHEREFORE, Plaintiff requests that this Court set a time and date for hearing on Plaintiff's request for a temporary injunction during the pendency of this legal action, that Defendants be cited to appear and answer, that Defendants show cause why, at such hearing, that a temporary injunction should not be issued enjoining Defendants from directly or indirectly interfering with the rights of WIA under the Agreement to maintain the Parkway, as alleged herein, and that on final trial hereof, Plaintiff have:

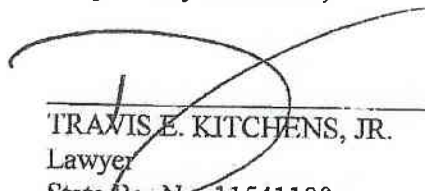
1. A declaratory Judgment that the Agreement between WIA and the County of San Jacinto is valid and Defendants right to the Parkway are subject to the easement in favor of the County of San Jacinto, Texas;
2. A declaratory Judgment of the rights, duties and responsibilities of the Plaintiff under the Agreement to use and maintain the Parkway pursuant to the Agreement, together with the



rights of Defendants in relation to the easement and Waterwood Parkway in issue.

3. A permanent injunction in favor of Plaintiff enjoining Defendants, their agents, servants, and employees from directly or indirectly interfering with the rights of WIA under the Agreement to maintain the Parkway;
4. Reasonable attorney's fees as alleged hereinbefore;
5. Costs of suit; and
6. Such other and further relief to which Plaintiff may be justly entitled.

Respectfully submitted,



\_\_\_\_\_  
TRAVIS E. KITCHENS, JR.  
Lawyer  
State Bar No: 11541100  
14330 US Highway 190 West  
P.O. Drawer 1629  
Onalaska, Texas 77360

Phone (936) 646-6970  
Fax: (936) 646-6971  
Email: tklaw1@eastex.net

Lawyer for Plaintiff

AFFIDAVIT

THE STATE OF TEXAS \*

COUNTY OF POLK \*

BEFORE ME, the undersigned authority, on this day personally appeared JOHN CHARLTON, who being by me duly sworn on his oath deposed and said:

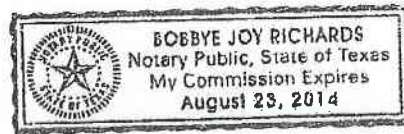
1. "I am the President of the Waterwood Improvement Association, the property owners association for the Waterwood Subdivision in San Jacinto County, Texas, Plaintiff in the above entitled and numbered cause. I am over 18 years of age and have never been convicted of a felony offense.
2. "I am fully qualified and authorized to make this Affidavit. I am also a property owner in the Waterwood Subdivision.
3. "The claim referred to in the foregoing Plaintiff's Original Petition, which is incorporated herein by reference the same as if fully copied and set forth at length herein, arises out of the public records, restrictions and deeds concerning property in the Waterwood Subdivision in San Jacinto County, which public records and deeds are identified in Plaintiff's Original Petition and attached hereto.
4. On behalf of the Waterwood Improvement Association, Inc., I am requesting the Court issue the injunctions requested.

WATERWOOD IMPROVEMENT  
ASSOCIATION, INC.

By:   
JOHN CHARLTON, President

SUBSCRIBED AND SWORN TO BEFORE ME on this 13<sup>th</sup> day of June, 2011, by JOHN CHARLTON, President, Waterwood Improvement Association, Inc., to certify which witness my hand and seal of office.

Bobbie Joy Richards  
NOTARY PUBLIC, STATE OF TEXAS



161

CERTIFIED COPY

EASEMENT

3290

THE STATE OF TEXAS §  
COUNTY OF SAN JACINTO § KNOW ALL MEN BY THESE PRESENTS:

That HORIZON PROPERTIES CORPORATION and HORIZON DEVELOPMENT CORPORATION (hereinafter called "Grantors"), for the sum of Ten & No/100 (\$10.00) Dollars and other good and valuable consideration cash in hand paid by the COUNTY OF SAN JACINTO, of the State of Texas (hereinafter called "Grantee"), the receipt of which is hereby acknowledged, have GIVEN, GRANTED, SOLD and CONVEYED, and by these presents do hereby GIVE, GRANT, SELL and CONVEY unto the Grantee an Easement for public Road right-of-way purposes, including the right to construct, reconstruct, maintain and use public road and street facilities thereon, upon, over and across all of those streets and roads shown and described upon the subdivision plats of those portions of Waterwood, situated in San Jacinto County, Texas, appearing of record as follows:

Unit I, WHISPERING PINES VILLAGE OF WATERWOOD, a subdivision within San Jacinto County, Texas, as shown by the Plat of record in Volume 1, Page 4, Plat Records of San Jacinto County, Texas.

Unit II, WHISPERING PINES VILLAGE OF WATERWOOD, a subdivision within San Jacinto County, Texas, as shown by the Plat of record in Volume 1, Page 5, Plat Records of San Jacinto County, Texas.

Unit I, COUNTRY CLUB ESTATES OF WATERWOOD, a subdivision within San Jacinto County, Texas, as shown by the Plat of record in Volume 4, Page 24, Plat Records of San Jacinto County, Texas.

Unit II, COUNTRY CLUB ESTATES OF WATERWOOD, a subdivision within San Jacinto County, Texas, as shown by the Plat of record in Volume 4, Page 28, Plat Records of San Jacinto County, Texas.

Unit III, COUNTRY CLUB ESTATES OF WATERWOOD, a subdivision within San Jacinto County, Texas, as shown by the Plat of record in Volume 4, Page 31, Plat Records of San Jacinto County, Texas.

Unit XI-A, GREENTREE VILLAGE OF WATERWOOD, a subdivision within San Jacinto County, Texas as shown by the Plat of record in Volume 5, Page 7, Plat Records of San Jacinto County, Texas.

FAIRWAY ONE - BLOCK 1 of Waterwood, a subdivision within San Jacinto County, Texas, as shown by the Plat of record in Volume 5, Pages 32 and 33, Plat Records of San Jacinto County, Texas.





162

CERTIFIED COPY

THE BEACH AT WATERWOOD, a subdivision within San Jacinto County, Texas as shown by the Plat of record in Volume 6, Page 1, Plat Records of San Jacinto County, Texas.

TO HAVE AND TO HOLD an easement upon the streets and roads in the above described subdivision units, together with all rights and appurtenances there unto appertaining, unto the Grantee, its successors and assigns forever.

EXECUTED this 30 day of MAY, 1979.

HORIZON PROPERTIES CORPORATION

By: [Signature]  
ALFRED LEHTONEN,  
EXECUTIVE VICE-PRESIDENT

HORIZON DEVELOPMENT CORPORATION

By: [Signature]  
ALFRED LEHTONEN  
EXECUTIVE VICE-PRESIDENT

THE STATE OF TEXAS §  
COUNTY OF SAN JACINTO §

BEFORE ME, the undersigned authority, on this day personally appeared ALFRED LEHTONEN, EXECUTIVE VICE-PRESIDENT of HORIZON PROPERTIES CORPORATION, known to me to be the person and officer whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, and as the act and deed of said corporation.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this 10<sup>th</sup> day of June, 1979.

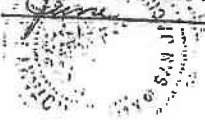


[Signature]  
NOTARY PUBLIC in and for  
San Jacinto County, Texas.

THE STATE OF TEXAS §  
COUNTY OF SAN JACINTO §

BEFORE ME, the undersigned authority, on this day personally appeared ALFRED LEHTONEN, EXECUTIVE VICE-PRESIDENT of HORIZON DEVELOPMENT CORPORATION, known to me to be the person and officer whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed, and as the act and deed of said corporation.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, this 10<sup>th</sup> day of June, 1979.



[Signature]  
NOTARY PUBLIC in and for  
San Jacinto County, Texas.

File No. 3290  
This instrument was filed for record on the 11th  
day of June, 1979, at 11:30 A.M.,  
and duly recorded in Vol. 185, Page 161 of said  
of the Deed Records of this Office.  
Mrs. Imogene H. Trapp  
Clerk of SAN JACINTO COUNTY, TEXAS  
By [Signature] County Clerk



A TRUE COPY  
I hereby certify  
this is a true and correct  
copy of the original  
SAN JACINTO COUNTY TEXAS  
Date 10-14-2011  
By [Signature]

73

**CERTIFIED COPY**  
**COMMISSIONERS' COURT DOCKET.**      REGULAR  
    June 11,      TERM. 19 79

STATE OF TEXAS      1-  
 COUNTY OF SAN JACINTO      1

BE IT REMEMBERED on this the 11th day of June, 1979 at 9:00 A.M.,  
 the Commissioners' Court of San Jacinto County, Texas, met in a REGULAR  
 SESSION, with the following officers present and participating;

- Honorable K. P. Bryant, County Judge
- G. R. McKellar, Jr., Commissioner Precinct #1
- Roy Lewis, Commissioner Precinct #2
- Donald Cox, Commissioner Precinct #3
- Ralph Hilzendager, Commissioner Precinct #4
- J. C. Parker, County Sheriff
- Joe Penner, County Auditor
- Ruth Morrison, Tax-Assessor-Collector (Not Present)
- Kent Morrison, County Treasurer (Not Present)
- Mrs. Imogene H. Trapp

After Court was opened in due form of the law, the following ORDERS  
 were passed:

APPROVAL OF MINUTES:

A motion was made by Commissioner McKellar to approve minutes of  
 REGULAR MEETING, May 14, 1979 and SPECIAL MEETING, May 17, 1979 as stands.  
 Court reporter has not turned in minutes from SPECIAL MEETING, May 25, 1979.  
 Commissioner Cox seconded the motion and it carried unanimously.

COUNTY TREASURERS' REPORT:

• Not turned in.

TAX ASSESSOR-COLLECTORS' REPORT:

Judge Bryant read the following Tax Assessor-Collectors' report:

	MAY 1979	
COUNTY:		
Current	\$8,462.21	
Supplement	3,862.74	(1974 Horizon Acreage)
Delinquent	2,186.10	and Cape Royale Owner 11st.
Voters Dist. and Liquor	705.50	
Tax Certificate	336.00	
TOTAL COUNTY TAX DEPT.		\$15,572.55
School		13,860.82
Auto Dept.		26,925.20
TOTAL MAY COLLECTION		\$56,358.57
County Auto. Year to Date	6/1/79	\$71,124.41
	5/1/79	61,966.56
		\$ 9,157.85 out of the
		\$26,925.20



## COMMISSIONERS' COURT DOCKET.

Regular  
June 11

CERTIFIED COPY

TERM, 19 79

Commissioner Lewis made a motion to approve this report, it was seconded by Commissioner Hilzendager and vote carried unanimously.

COUNTY AUDITOR REPORT:

County Auditor reported there was a shortage of \$3.96 in the Coke machine. Commissioner McKellar made a motion to approve auditor's report as stands. Commissioner Lewis seconded the motion and vote was unanimous.

SHERIFF'S REPORT:

There were five (5) burglaries reported during May. Two (2) burglaries were solved. Property valued at \$13,120.00 was taken with \$11,120.00 recovered. The sheriff's department collected \$14,104.85 in fines and fees during the month. Seventy-six people were arrested during the month.

A motion was made by Commissioner Cox to approve this report. Commissioner Hilzendager seconded the motion and it passed unanimously.

JUSTICE OF THE PEACE AND CONSTABLE REPORTS:

JP Precinct #1	\$ 567.58
JP Precinct #2	\$4,000.00
Constable Precinct #1	\$ 8.00
Constable Precinct #2	\$ 110.00
Constable Precinct #4	\$ 24.00

Commissioner Lewis made a motion to approve this report. It was seconded by Commissioner Cox. Vote was unanimous.

CLAIMS AGAINST THE COUNTY:

A motion was made by Commissioner Cox to approve claims #5731 through #6937 and also the following additional claims:

Xerox Corp.....General.....Monthly Charge.... County Clerk.....\$185.00  
Wynn Schweers Buick....2 County Sheriff Cars.....\$13,000.00  
Joe Curry & Son.....Sheriff Dept.....Repair on Radars.....\$62.75  
Houston Jewelry & Dist. Co.....Recorder for New Jail.....\$188.15  
McMurrey Drug....General.....Supplies.....\$284.22  
Judy Embesi.....Sheriff Dept.....Reimbursement on Travel....\$37.55  
Jerrys Tractor Service....Environmental Protection...2000 gal. Tank..\$100.00  
West Publishing Co.....County Attorney.....Books.....\$63.50  
Mary Johnson....Court Reporter.....Mileage.....\$68.00  
Assoc. Testing Lab.....4 Tests....Unbudgeted.....\$30.00  
Lakeside Home Center.....Pct. #1.....San Mix and Culverts...\$540.83  
Gulf States Utilities.....Electric Bill....Pct. #2.....\$14.40  
Reeves Tire & Appl.....Tires and Tubes...Pct. #2.....\$119.06  
Byrant Metallizing & Machine.....Pct. #2.....PTO Shaft.....\$30.00  
Tommy Walker.....Labor on Dump Truck....Pct. #4.....\$32.50



A TRUE COPY  
I hereby certify  
Angelo Shupe  
COUNTY CLERK  
SAN JACINTO COUNTY TEXAS  
On 1-15-2010  
By Shupe, Angelo  
DEPUTY CLERK

## COMMISSIONERS' COURT DOCKET.

Regular  
June 11

CERTIFIED COPY

TERM, 19 79

75

Nash Construction Co....Payment for May, 1979, to May 31, 1979.....

.....Jail...\$65,986.00

Lufkin Typewriter....Gen....Repair Typewriter.....\$24.15

East Texas Asphalt Co....Pct. #4....8 tons Hot Mix.....\$148.40

Commissioner McKellar seconded the motion and it passed unanimously.

ACCEPTANCE OF EASEMENT TO ROADWAYS IN PRECINCT #4 FROM WATERWOOD:

On March 14, 1979, after inspection of Waterwood roads, Commissioner Hilzendager made a motion to accept these streets for county maintenance, pending conveyance of the roads to the county by an easement. This was seconded by Commissioner Lewis and the motion carried unanimously. Today Judge Bryant read a letter from Mr. Lehtonen of Horizon presenting Commissioners' Court with an easement of the roads in the following units of Waterwood:

- Unit I, Whispering Pines Village of Waterwood
- Unit II, Whispering Pines Village of Waterwood
- Unit I, Country Club Estates of Waterwood
- Unit II, Country Club Estates of Waterwood
- Unit III, Country Club Estates of Waterwood
- Unit XI-A, Greentree Village of Waterwood
- Fairway One - Block 1 of Waterwood
- The Beach at Waterwood

Commissioner Hilzendager made a motion to accept this easement and Commissioner Lewis seconded the motion and the vote carried unanimously.

MACHINERY TIME WARRANTS FOR PRECINCT #4:

Commissioner Hilzendager made a motion to approve Machinery Time Warrants for Precinct #4, in the amount of \$45,000.00 and Commissioner McKellar seconded the motion. Vote was unanimous.

No. 1 of 4 Series A,	June 5, 1980,	\$11,250.00
No. 2 of 4 Series A,	June 5, 1981,	\$11,250.00
No. 3 of 4 Series A,	June 5, 1982,	\$11,250.00
No. 4 of 4 Series A,	June 5, 1983,	\$11,250.00

A motion was made by Commissioner Cox and seconded by Commissioner McKellar to approve a loan of \$6,284.52 from Machinery Revolving Fund to Precinct #3 for one (1) year at 3 1/2% interest.

OPEN BIDS ON EMERGENCY POWER GENERATOR:

Harrison Equipment Co., was the only one to turn in a bid.....

- 1 - Qnan Model 15.DRJQ-18R gasoline engine driven electric plant, 14.0 KW, 18.74 KVA at 9.8 PF, 120/240 VAC, 3 phase, 4 wire, 60 hertz and all equipment and accessories per enclosed materials list.



A TRUE COPY  
I hereby certify  
original is in  
COUNTY CLERK  
SAN JACINTO COUNTY TEXAS  
By Sharon Wickham  
DEPUTY CLERK



COMMISSIONERS' COURT DOCKET, CERTIFIED COPY  
REGULAR  
June 11  
TERM, 19 79

F.O.B. Jobsite.....\$5,844.50

Price is firm for order received within 30 days.

Commissioner Lewis made a motion to accept this bid from Harrison Equipment Co., Commissioner Hilzendager seconded the motion and the vote passed unanimously.

CHANGE PROPOSALS FROM PAGE SOUTHERLAND PAGE FOR PUBLIC SAFETY BUILDING:

Relocation of TVC-1 in Day Room #1.....  
Labor and Material - Subcontractor       \$275.00  
Profit and Overhead                               41.00  
  \$316.00

Commissioner Hilzendager made a motion to approve this change, it was seconded by Commissioner McKellar and motion carried unanimously.

Omit Protective Padding In Violent Cell.....  
deduct       \$(5,850.00)

A motion was made by Commissioner Cox to approve this change.

Commissioner McKellar seconded this motion and it passed unanimously.

Add Upper Shelving In Kitchen and Use "Glamor Top" in lieu  
of Stainless Steel.....

add       \$1,236.00

Eliminate Stainless Steel       deduct       \$ (600.00)

Commissioner Lewis made a motion NOT to approve this change.

Commissioner McKellar seconded the motion and it passed unanimously.

Add Electrical Outlets Per Sheriff For Teletype.....  
add       \$483.00

A motion was made by Commissioner Lewis to approve this change. It was seconded by Commissioner Cox. Vote was unanimous.

A motion was made by Commissioner Hilzendager to order three (3) extra window panes for the Jail to have in reserve. It was seconded by Commissioner Lewis and vote was unanimous.

ANTICIPATED REVENUE FROM U. S. FOREST SERVICE:

County Auditor reports an estimated \$161, 543.00 revenue from U. S. Forest Service.

DATE FOR MEETING TO AMEND 1979 BUDGET:

SPECIAL MEETING, June 29, 1979, 9:00 A.M.     \*\*\* SEE PAGE 78

DATE FOR OPENING BIDS FOR REHABILITATION OF RESIDENCES THROUGH THE

COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM:

Commissioner Lewis made a motion to advertise for bids on five (5) more houses for rehabilitation and to open these bids June 21, 1979 at 10:30 A.M. Commissioner Cox seconded the motion and the vote carried unanimously.



A TRUE COPY  
I hereby certify  
this is a true and  
correct copy of the  
original as filed  
with me.  
SAN DIEGO COUNTY CLERK  
Dated: June 11, 1979  
R. Sheehan, Clerk

COMMISSIONERS' COURT DOCKET.

CERTIFIED COPY  
Regular  
June 11, 1979  
TERM, 1979

RENEWAL OF BOND FOR RESERVE DEPUTY SHERIFF FOREST YOUNG:

Forest Young \$2,000.00

A motion was made by Commissioner Lewis to approve the renewal of this bond for Reserve Deputy Forest Young. Commissioner Hilzendager seconded the motion and it passed unanimously.

RESOLUTION PRESCRIBING ART. 1 AND ART. 2 OF HOUSE BILL 1060:

R E S O L U T I O N

By the Commissioners Court of San Jacinto County

On the 11th day of June 1979 at a regular meeting of the Commissioners Court of San Jacinto County, with a quorum of the Commissioners present, the following business was conducted:

It was duly moved and seconded that the following resolution be adopted:

BE IT RESOLVED by the Commissioners Court of San Jacinto County that the provisions of Article 1 and Article 2 of Texas Legislature House Bill 1060 pertaining to appraisal of agricultural and timber land do not apply to 1979 San Jacinto County Taxes.

/s/ K. P. Bryant  
K. P. Bryant  
County Judge

Commissioner McKellar made a motion to approve this resolution and Commissioner Hilzendager seconded. Vote was unanimous.  
NEXT HOLIDAY, July 4, 1979.

Tax Assessor-Collector Ruth Morrison said she would have the rest of the books ready for review by the next Board of Equalization Meeting, June 15, 1979.

San Jacinto Historical Commissioner presented the Commissioners Court with a print of a painting of the Town of Coldspring.

LETTER FROM TEXAS JUSTICE OF THE PEACE TRAINING CENTER RE: J. T. ELLISORS'

20 HOUR COURSE:

May 23, 1979

Hon. K. P. Bryant  
San Jacinto County  
Courthouse  
Coldspring, Texas 77331

Dear Judge Bryant:

During the week of May 15-18, 1979, Judge J. T. Ellisors successfully completed a twenty hour course in the responsibilities of the office of Justice of the Peace. Article 5972 of the Texas Revised Civil Statutes requires each newly elected/appointed Justice of the Peace to complete a forty hour course in the responsibilities of the J. P. office and additionally to complete a twenty hour course each year thereafter. This article encompasses all justices who took office since August 30, 1963 and are not licensed attorneys. The funding of this program, which provides free room and board for the judges at the seminar, is made possible through a grant from the Governor's Office, Criminal Justice Division.



A TRUE COPY  
I hereby certify  
Angela Smith,  
County Clerk  
SAN JACINTO COUNTY, TEXAS  
Date: June 11, 1979  
By: [Signature] Deputy Clerk

CERTIFIED COPY

COMMISSIONERS' COURT DOCKET.

Regular  
June 11

TERM, 19 79

We at the Training Center realize how important it is to you and the people you serve to insure that your county Justices of the Peace are properly trained and equipped to carry out the duties and obligations of the office. As ninety to ninety-five percent of our citizenry have their one and only contact with a lower court judge, it is imperative that this contact be as judicious as possible.

You may wish to enter this letter in the minutes of your next commissioners court meeting in order that it may become a permanent record. If we at the Training Center can ever be of assistance, please do not hesitate to call.

Sincerely,

/s/ Ronald D. Champion  
Ronald D. Champion  
Executive Director  
ADC/hjm

Commissioner Cox made a motion to put this letter in the minutes. Commissioner McKellar seconded the motion and it passed unanimously.  
CONSIDER ACCEPTANCE OF STREETS IN LAKE RUN-A-MUCK FOR COUNTY MAINTENANCE:

Clayton Malone, lawyer for Wiggins Land Company presented Commissioners' Court with a Deed conveying the streets in Lake Run-A-Muck Subdivision to the county. These streets have not been brought up to county standards for maintenance. After much discussion Commissioner Lewis made a motion not to accept the deed, but to give Wiggins Land Company thirty (30) days to bring the streets up to standard. If they have not done this in that time we would file an Injunctive Suit against them. Commissioner McKellar seconded this motion and the vote passed unanimously.

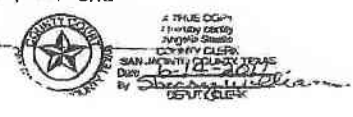
Sheriffs department asked the court for a \$300.00 petty cash. Commissioner Cox made a motion to approve this and Commissioner Lewis seconded the motion. Vote was unanimous.

MEETING ADJOURNED

... NOTICE OF BUDGET HEARING  
STATE OF TEXAS  
COUNTY OF SAN JACINTO

As provided in Article 689a-11 and 29e, Revised Civil Statutes of Texas, notice is hereby given that the Commissioners Court of San Jacinto County, Texas, will meet to consider amendments to 1979 budget, including money received under that State and local Fiscal Assistance Act of 1972, for said county as prepared for the calendar year of 1979, and will conduct a public hearing thereon.

Such meeting and hearing will be held at the regular meeting place of said Commissioners Court in the County Courthouse, in the



COMMISSIONERS' COURT DOCKET, 7.9  
Regular June 11 TERM, 19 79

City of Coldspring, Texas, commencing at 9:00 a.m., June 29, 1979. Any taxpayer of said county has the right to be present and participate in said hearing.

Dated this 11th day of June 1979.

/s/ K. P. Bryant  
K. P. Bryant  
County Judge  
San Jacinto



A TRUE COPY  
Hereby certify  
Angela Shaulo  
COUNTY CLERK  
SAN JACINTO COUNTY, TEXAS  
Date 12-12-2011  
By *Shaulo*  
DEPUTY CLERK



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CERTIFIED COPY



CAUSE NO. 5753

HORIZON DEVELOPMENT  
CORPORATION, ET AL

VS.

ALFRED LEHTONEN, ET UX

IN THE DISTRICT COURT OF

SAN JACINTO COUNTY, TEXAS

2ND 9TH JUDICIAL DISTRICT

SUMMARY JUDGMENT

On the 22nd day of October, 1982, came on to be heard the Motion for Partial Summary Judgment of Defendants Alfred Lehtonen and wife, Lucille F. Lehtonen, and of Plaintiffs Horizon Development Corporation and Horizon Properties Corporation, and it appearing to the Court that such motions have been made in proper form and time, and that the parties have appeared before the Court for a hearing thereon; and it further appearing that the motions are accompanied by affidavits and that opposing affidavits have been served and are before the Court, and the Court having considered the pleadings on file, together with such affidavits and argument of counsel, makes the following findings of fact and conclusions of law:

1. Plaintiffs have developed a subdivision in San Jacinto County, Texas, known as Waterwood;

2. The tract of land in dispute (the "Disputed Tract") consists of 18.104 acres, being the land upon which Plaintiffs have constructed the beginning segment of a thoroughfare and entrance way to the Waterwood subdivision known as Waterwood Parkway, granting entrance into said subdivision commencing at a point on US Highway 190, and the same has been dedicated to the public;

3. Plaintiffs executed and delivered a General Warranty Deed on March 5, 1979 to Defendants, conveying 82.871 acres of land more or less, situated in the Jesse Hardy Survey, A-156, San Jacinto County, Texas, which Deed is recorded in Volume 185, Page 634, Deed Records, San Jacinto County, Texas;

4. Plaintiffs executed and delivered a General Warranty Deed on April 30, 1980 to Defendants, conveying 21.99 acres of land more or less situated in the Jesse Hardy Survey, A-156, San Jacinto County, Texas, which deed is recorded in Volume 193, Page 151, Deed Records, San Jacinto County, Texas;

5. Upon execution and delivery of said deeds Plaintiffs conveyed all of the abutting contiguous lands to the east and west boundaries of the Disputed Tract to Defendants. Attached hereto is a plat of the above described property on which the property conveyed on March 5, 1979 is designated Tract "A" and the property conveyed on April 30, 1980 is designated Tract "B", the Disputed Tract being the tract lying between Tracts A and B;



TIME 11:30 A.M.  
FILED January 28 1983  
EDNA M. COX  
Clerk, District Court, San Jacinto County, Texas  
BY E. L. M. Cox

6. Said deeds are plain, clear and unambiguous on their face;
7. There is no evidence that the deeds were executed as the result of mutual mistake. To the contrary, plaintiffs' pleadings (Paragraph VI of Plaintiffs' Original Petition) constitute a judicial admission that Defendants have consistently maintained that title to the Disputed Tract was conveyed to them by said deeds.
8. Barring allegations and evidence of fraud, misrepresentation, accident or mutual mistake an instrument clear and unambiguous on its face will not be set aside or reformed. The only allegation and/or evidence of mistake is in Plaintiffs' pleadings (First Count of Plaintiffs' Original Petition) wherein it states that it "... was not its intention to convey..." the Disputed Tract to the Defendants, and in the Affidavits attached to Plaintiffs' Motion for Partial Summary Judgment. In light of the finding in Paragraph 7 supra, this can establish no more than evidence of unilateral mistake on the part of Plaintiffs which does not entitle Plaintiffs to the remedy of reformation as sought under Plaintiffs' First Count;
9. A conveyance of land bounded by a public highway carries with it the fee to the center of the road, unless the inference that it was so intended is rebutted by the express terms of the grant. The deeds in question here, although executed some thirteen (13) months apart and by two different Presidents of Plaintiff corporations, each state in plain and clear language "This conveyance is further made subject to any and all valid easements insofar as the same affect the said property but including all of Grantor's rights and interests with respect thereto and in the lands covered thereby." Further, each of said deeds provide "TO HAVE AND TO HOLD the above described property, together with all and singular the rights and appurtenances therein anywise belonging unto the said Grantees, their heirs and assigns forever..." The deeds in question do not have an express reservation of the underlying fee in the Disputed Tract, but to the contrary have an express grant of all Plaintiffs' rights and interests with respect to the land covered thereby;

It appearing to the Court upon consideration of the arguments of counsel and upon review of the Plaintiffs' and Defendants' Motions for Partial Summary Judgment, and the supporting Affidavits thereto, together with pleadings and papers on file in this cause at the time of hearing, that there is no genuine issue as to any material fact and that Summary Judgment should be granted. It further appearing to the Court upon consideration of said opposing motions for Summary Judgment that the Plaintiffs' Motion for Partial Summary Judgment should be denied, the Court thereafter on January 5, 1983, made a docket entry reciting this decision and directing the Clerk of the Court to notify counsel for the parties of the Court's ruling.

It further appearing to the Court upon consideration of the Plaintiffs' Motion for Judgment filed herein that the fee simple ownership in the subject property prior to the conveyance of the

