

09- 4818

AGREEMENT TO MAINTAIN WATERWOOD PARKWAY

THE STATE OF TEXAS §
COUNTY OF SAN JACINTO §

KNOW ALL MEN BY THESE PRESENTS:

A. Preamble

This document evidences an agreement between the County of San Jacinto, State of Texas, by and through its Commissioner's Court duly elected and existing, represented by the Honorable Fritz Faulkner, County Judge and the Honorable Mark Nettuno, Commissioner, Precinct No. 4, and the Waterwood Improvement Association, Inc., ("WIA"), a Texas non-profit corporation and the duly chartered and existing property owners association for property owners in the Waterwood Subdivision, in San Jacinto County, Texas.

B. Intent of the Parties


Whereas, San Jacinto County owns an easement on the Waterwood Parkway, extending from US Highway 190 to the Waterwood National Resort and Golf Club, with a width of 180 feet as set out below, it is the intent of San Jacinto County and WIA that San Jacinto County confer authority to WIA to maintain that easement and its right of way by planting vegetation, mowing grass, cleaning the right of way, and illuminating some or all the street lights, all at WIA's expense.

C. Recitals

WHEREAS, there currently exists a public roadway established by plats filed by Horizon Properties Corporation and Horizon Development Corporation ("Developer"), the Developer of the Waterwood Subdivision in San Jacinto County, Texas, known generally as the "Waterwood Parkway"; and

WHEREAS, that specific plat for Fairway One-Block 1, filed February 13, 1978 at Vol. 5, pages 32 and 33 ("Plat"), established, at page 33, two roadway easements, one beginning at US Highway 190 ("US 190 Parkway") and one beginning at Farm-to market Road 980 ("FM 980

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 A TRUE COPY
I hereby certify
Angela Stewart
COUNTY CLERK
SAN JACINTO COUNTY, TEXAS
Date 7-28-2009
By [Signature]
DEPUTY CLERK

Parkway”) were specifically established by the Developer. 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;” and

WHEREAS, 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 described above. 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 US 190 and FM 980 described above; and

WHEREAS, by that certain document dated June 26, 1995 and filed at Vol. 214, page 610, Official Public Records for San Jacinto County, Texas, and entitled “Dedication of Waterwood Parkway to the Public”, Developer dedicated to the public the Waterwood Parkway; and

WHEREAS, WIA purchased all of the Waterwood Parkway, save and except those portions described above as US 190 Parkway and FM 980 Parkway, from Developer by that certain Deed Without Warranty dated June 3, 1999, and recorded at Vol. 310, pages 310, et seq., Official Public Records, San Jacinto County, Texas; and

WHEREAS, street lights on the Waterwood Parkway were installed in 1978-1979, or thereabouts, and the Waterwood National Resort and Golf Club has, until January 2009, paid the electric bill for said street lights on the Waterwood Parkway; and

WHEREAS, on January 28, 1983, the Honorable John Martin, then Judge of the 2nd 9th Judicial District Court, signed a “Summary Judgment” in No. 6768. This summary judgment provided, in relevant 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



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I hereby certify
Angela Stealy
COUNTY CLERK
SAN JACINTO COUNTY, TEXAS
Date 7-28-2009
By [Signature]
DEPUTY CLERK

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 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;

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.



A TRUE COPY
I hereby certify
Angela Sandoz
COUNTY CLERK
SAN JACINTO COUNTY, TEXAS
Date 12-8-2009
By Cheryl Reed
DEPUTY CLERK

The deeds in question here, although executed some thirteen (13) months apart and by two different Presidents of Plaintiff corporations, each states 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 os 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 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 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



A TRUE COPY
I hereby certify
Angela Owens
COUNTY CLERK
SAN JACINTO COUNTY, TEXAS
Date 7-28-09
R. [Signature]
DEPUTY CLERK

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.***

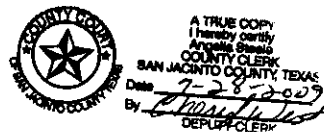
WHEREAS, on or about 1997 WIA purchased cement poles and had the electric company, SHECO, use the cement poles to replace, at WIA's expense all rotted wooden poles that had been installed in the 1970's and the Waterwood National Resort and Golf Club continued to pay the monthly illumination cost to SHECO; and

WHEREAS, subsequent to the above actions regarding the Waterwood Parkway easements, on August 31, 2000, the Developer sold 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"; this Deed Without Warranty from Horizon Properties Corporation to George H. Russell and Suzanne B. Russell was dated August 31, 2000 and was filed at Vol. 2000-5582, pages 18791 et seq, Official Public Records, San Jacinto County, Texas.

WHEREAS, pursuant to that certain General Warranty Deed (With Vendor's Lien Retained) 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 US 190 Parkway; and

WHEREAS, during the middle of January 2009, the Waterwood national Resort and Golf Club had SHECO turn off all the street lights that the Waterwood National Resort and Golf Club was paying for on the Parkway, Marina Road, and some on Latrobe, with the total number of lights being approximately 126; and

WHEREAS, WIA and San Jacinto County believe that it is beneficial to its members and to



the traveling public as a whole, that the street lights be maintained and turned on for public safety and other legitimate reason; and

WHEREAS, it is clear from the foregoing that the easement associated with Waterwood Parkway running from US Highway 190 to the Waterwood National Resort and Golf Club is in favor of San Jacinto County for public road right of way purposes and San Jacinto County is hereby entering into this agreement with WIA.

D. Agreement

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.

WATERWOOD IMPROVEMENT ASSOCIATION, INC.

By: *Jack B. Zimmermann*
JACK B. ZIMMERMANN, President



A TRUE COPY
I hereby certify
Araceli Gomez
COUNTY CLERK
SAN JACINTO COUNTY, TEXAS
Date: 7-28-2009
By: *Araceli Gomez*
DEPUTY CLERK

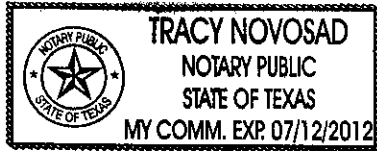
CERTIFIED COPY

THE STATE OF TEXAS §

COUNTY OF SAN JACINTO §

This instrument was acknowledged before me on the 2nd day of July, 2009, by MARK NETTUNO, Commissioner, Precinct No. 4, San Jacinto County, on behalf of San Jacinto County, Texas.

Tracy Novosad
Notary Public, State of Texas



After Recording return to:

Fritz Faulkner, County Judge
San Jacinto County
1 State Hwy 150 Rm# 5
Coldspring, Texas 77331

Evans and Kitchens
Lawyers
P.O. Drawer 310
Groveton, Texas 75845

STATE OF TEXAS
COUNTY OF SAN JACINTO
I, Angelia Steele, hereby certify that this instrument was FILED in
number sequence on the date and time stamped hereon by me, and was
duly RECORDED, in the OFFICIAL PUBLIC RECORDS of San
Jacinto County, Texas as stamped hereon by me on

JUL 28 2009



ANGELIA STEELE
COUNTY CLERK
SAN JACINTO COUNTY, TEXAS

FILED FOR
RECORD
2009 JUL 28 PM 1 30
Angelia Steele
COUNTY CLERK
SAN JACINTO COUNTY, TEXAS



A TRUE COPY
I hereby certify
Angelia Steele
COUNTY CLERK
SAN JACINTO COUNTY, TEXAS
Date July 28 2009
By [Signature]
DEPUTY CLERK

EVANS AND KITCHENS, L. L. P.
LAWYERS

141 SOUTH MAIN STREET
P.O. DRAWER 310
GROVETON, TEXAS 75845
936/642-1818
FAX 936/642-2438

JOE SCOTT EVANS
TRAVIS E. KITCHENS, JR.
SETH EVANS

507 N. WASHINGTON
LIVINGSTON, TEXAS 77351
936/327-0232
FAX 936/327-0233

July 28, 2009

Mr. George Russell
1401 19th Street
Huntsville, Texas 77340-5057

Dear Mr. Russell:

I was asked by the WIA Board of Directors to research the question regarding maintenance of the easement running with the Waterwood Parkway from US 190 to the Waterwood National Resort and Golf Club. The legal documents on file in the San Jacinto County courthouse indicate that the Parkway was dedicated to the county by the original developer, as was the easement, including the two medians where the road is four lanes. This county easement passed with the land on subsequent sales.

When I reported this to the WIA Board, I was requested to contact the San Jacinto County Commissioners Court about the maintenance of the vegetation, grass, and street lights in the easement. On July 22, 2009, the San Jacinto County Commissioners Court unanimously approved an Agreement wherein WIA agreed to maintain the easement for the county. That Agreement was then signed by the President of WIA, and filed of record in the courthouse. A copy is enclosed for your records.

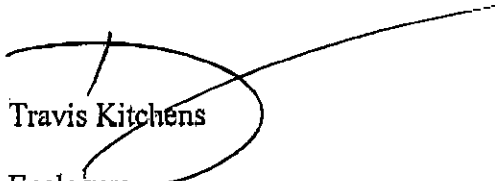
WIA intends to maintain the plants at the entrance signs, and to mow the easement. Some of the street lights will be activated. The mowing will begin at the end of this week.

I have been asked to assure you that WIA intends to preserve the areas where wild flowers and new trees are growing in the median. In the spring, mowing will be delayed until the wild flowers have gone to seed. Until the young trees in the median are better established, the mowing will begin along both sides of the road, and will avoid cutting new trees in the center of the medians.

If you have any questions, please feel free to contact me.

Mr. George Russell
July 28, 2009
Page Two

Sincerely,



Travis Kitchens

Enclosure

***First Class Mail and
Certified Mail 7006 2150 0002 9956 2518 - return receipt requested***

cc: Honorable Fritz Faulkner
County Judge
1 State Hwy 150 RM 5
Coldspring, Texas 77331

Honorable Mark Nettuno
County Commissioner
221 Boat Launch Road
Point Blank, Texas 77364

Honorable Bill Burnett
Criminal District Attorney
One State Hwy 150 RM 21
Coldspring, Texas 77331

Honorable James Walters
Sheriff, San Jacinto County
73 W. Cedar Ave.
Coldspring, Texas 77331

Honorable Alvin Wyatt
Constable, Precinct 4
221 Boat Launch Road
Point Blank, Texas 77364

WIA Board of Directors