

CAUSE NO. 48292

RENE FFRENCH, JOHN RICHARD	§	IN THE DISTRICT COURT
DIAL and STUART BRUCE SORGEN,	§	
	§	
Intervenor Plaintiffs,	§	
	§	
vs.	§	BURNET COUNTY, TEXAS
	§	
FRIENDSHIP HOMES & HANGARS,	§	
LLC, WINDERMERE OAKS WATER	§	
SUPPLY CORPORATION, and its	§	
Directors WILLIAM EARNEST,	§	
THOMAS MICHAEL MADDEN, DANA	§	
MARTIN, ROBERT MEBANE, and	§	
PATRICK MULLIGAN,	§	
	§	
Defendants.	§	33 rd JUDICIAL DISTRICT

SECOND AMENDED ORIGINAL PETITION

*(Including Request to Enjoin or Set Aside Actions in Furtherance of
“Amended and Superseding Agreement Regarding Sale of Piper Lane Property”
and Request to Enforce a Constructive Trust and Other Equitable Relief)*

TO THE HONORABLE JUDGE OF SAID COURT:

COME NOW LAWRENCE RENE FFRENCH, JR., JOHN RICHARD DIAL and STUART BRUCE SORGEN, each as a member/customer and owner of the assets and revenues the water supply and sewer service cooperative operated through the instrumentality known as WINDERMERE OAKS WATER SUPPLY CORPORATION (“WSC”) and, to the extent necessary or appropriate, as a representative pursuant to Section 20.002(c)(2), Tex. Bus. Orgs. Code, as Plaintiffs, file this Second Amended Original Petition complaining of FRIENDSHIP HOMES & HANGARS, LLC, and DANA MARTIN, WILLIAM EARNEST, THOMAS MICHAEL MADDEN, ROBERT MEBANE, PATRICK MULLIGAN, JOE GIMENEZ, DAVID BERTINO, MIKE NELSON, DOROTHY

TAYLOR and NORMAN MORSE, in their official capacities as current or former Directors and/or Officers of the WSC and in their individual capacities. As has always been the case, the WSC entity is a party defendant herein solely to ensure that the property wrongfully diverted or encumbered is restored to its rightful owners and not for the purpose of seeking money damages from the non-Director Owners of the WSC.

THIS SECOND AMENDED PETITION IS FILED TO CORRECT CONFUSION CONCERNING REFERENCES TO THE TEXAS PUBLIC INFORMATION ACT AND THE TEXAS OPEN MEETINGS ACT. Plaintiffs would show the Court as follows:

I.

Discovery Control Plan

1.01 Discovery is intended to be conducted under Level 3, pursuant to Rule 190.4, Texas Rules of Civil Procedure. Plaintiffs have prepared and have circulated to all current parties a proposed order in an effort to develop an agreed discovery control plan tailored to the circumstances of this specific suit. Defendants have insisted upon a ruling on their pleas to the jurisdiction before entertaining Plaintiffs' request.

II.

The Context of This Dispute

Those who place themselves in a position of power over money and property that belong to others take on the duty to exercise that power with the greatest care. They must be good, faithful and honest stewards. They must manage it solely for the owners' benefit; they may not use it for their personal benefit or for the personal benefit of others. They have a duty to use diligence to recover value lost or compromised by

wrongdoing, including their own wrongdoing. The law requires nothing less, and the WSC Board does not fall within an exception.

Unlike a typical corporate enterprise, however, the WSC Directors owe these duties directly to the member/customers they serve. This is because the WSC is a cooperative in which the member/customers don't own interests in a business entity (as do shareholders); rather, collectively the member/customers own the assets themselves and the revenues those assets generate.¹ The Board has the power to manage the assets to provide the Owners with water and sewer service, but for no other purpose. The Board has the duty to maximize the assets' value and productivity. When the Board exceeds its powers or breaches its duties, the Owners -- and not the WSC entity -- pay the price directly out of their pockets through rate or fee increases, assessments under the Tariff or otherwise, based on their levels of patronage.

In 2016, the Board exceeded its powers and breached its duties. Martin, a sitting Director with strict duties to place the Owners' interests ahead of her own, quite literally made out like a bandit. The immediate loss to the Owners was in the range of \$4,500 - \$5,000 per Owner, and the Owners have been struggling to make it up ever since.

Every Board since then has had the duty to recover what the Owners lost or to otherwise make them whole. Every Board since then has done just the opposite. As a result, hundreds of thousands of the Owners' dollars have been wasted with absolutely nothing to show for it. Now, having denied for years there is any dispute between the WSC and Martin, the Board has voted to throw good money after bad to "settle" the dispute they have steadfastly insisted does not exist.

¹ As explained below, this is so because the WSC is required to operate as a water supply and sewer service cooperative. Accordingly, the WSC's member/customers are hereinafter referred to "Owners."

At a special meeting on October 26, 2019, the Directors surprised everyone when they claimed to have negotiated a “mediated settlement agreement” with Martin, her alter ego FHH and Stewart Title (which insured title in the 2016 fire sale and has been defending FHH in this lawsuit). For years, Owners had been begging for the Board to take steps to unwind the egregious 2016 fire sale transaction and its aftermath, with some Owners spending their own money to do what the Board refused to do and watching the Board spend even more of their money trying to prevent them from being successful.

At the October 26 special meeting, the Directors unveiled the terms of their “mediated settlement” proposal, which they described not as a good deal for the Owners but as “a way out” for the Board. They propose to leave largely intact what their attorney’s January 25, 2019 demand letter referred to as a “*self-interested transaction*” by Martin, a fiduciary, taken in *violation of the Open Meetings Act*, procured with a “*fraudulent appraisal*” provided by Martin and “*improper and unfair*” to the Owners, for which many of the same Directors determined to pursue “*all available avenues of relief.*”² (emphasis added) They propose that Martin will give up the illegal right of refusal on the remainder tract, but no court would ever have enforced a right procured without consideration by an interested Director anyway. While they acknowledged Martin and her cohorts on the prior Board committed to furnish taxiway access to the remainder, their proposal does not require Martin to provide a taxiway. Instead, the proposal requires only that Martin try to persuade the Mairs (the buyers from whom Martin made a profit) to furnish a 50’ taxiway and 25’ setback on their property. Unless

² A copy of the Board’s demand letter, sent to Martin and her alter ego FHH, is attached as Exhibit 1. All Exhibits identified herein are incorporated herein by reference. The Board’s attorney has never shared any different opinion with the Owners.

the Mairs are complicit (and it's likely they are) they have no incentive to take steps that will make their property virtually unbuildable. Ironically, these Directors propose to give Martin an additional ½ acre of valuable airport property – Piper Lane – a conveyance that could separate the Mair taxiway (if there is one) from the runway and once again landlock the remainder. The “mediated settlement” proposal provided that the Board would burden the Owners’ remainder tract with a restrictive covenant for the benefit of Martin’s Spicewood Pilots’ Association. Martin will give a release of claims that do not exist (and certainly have never been asserted) and would agree to “bear her own attorneys’ fees,” which have already been paid with the Owners’ money. This is a better deal for Martin than the 2016 fire sale.

The Directors could not justify what they were about to do. They made lots of excuses for what the Board had done, what it hadn’t done and what it was about to do. Here are just a few of the Board’s excuses, and the truth about them:

<u>Excuse</u>	<u>Truth</u>
<i>We need to stop spending money on legal fees.</i>	<i>The Board exceeded its powers by spending the Owners’ money to defend the Directors’ statutory violations and their excesses and breaches of duty. The Directors are personally accountable for the money they spent doing that. They had a duty to use the Owners’ money to pursue relief for the Owners’ loss, or to get out of the way when others pursued such recovery and not spend any money.</i>
<i>We might not have won a lawsuit against Martin.</i>	<i>Why on Earth would anyone think that? A sitting Director pocketed over a half million dollars that belonged to the Owners. The other Directors were complicit, resulting in further loss. The Board’s attorney opined in writing the</i>

case against Martin is very strong. The attorney has never issued a different opinion and the facts haven't changed.

It is not illegal for the WSC to do business with a Director.

False. It is illegal when the transaction is grossly unfair (even fraudulent, according to the Board's attorney) and the Board has failed to comply with the legal requirements for approval of interested Director transactions.

It is legal for the Board to dispose of surplus property by any process and in any manner it chooses.

Absolutely false. The Board has a duty to obtain the highest possible price for all surplus property. All transfers must be properly (and actually) approved by Directors acting diligently and authorized by an "appropriate resolution." None of that happened in the 2016 Martin fire sale transaction.

The Board's 2018 appraisal was "influenced" by other litigants.

False, and what difference (if any) did that supposedly make anyway? The Board neglected to inform Bolton that it sold a comparable hangar lot just across Piper Lane in May 2015 for \$12.75 per SF. At that price, the 2 platted hangar lots Martin obtained for herself were worth well over \$1 million. Bolton's appraisal is low.

Setting aside the transfer of the hangar lots and ROFR isn't worth the effort.

False. At \$12.75 per sq. ft., Martin got hangar lots worth more than \$1 million (after a hefty "volume discount") for \$200,000. Separated from the taxiway, the remainder was damaged by more than \$500,000. The Owners lost well over \$1,000,000, an amount well worth pursuing by anyone's standards.

Restricting the remainder of the airport land to require aviation purchasers to

False. Provided the Owners keep Piper Lane, purchasers don't need to incur

assume the obligations of a Class A member of Martin's Pilots' Assn. will make it more marketable as hangar property.

costs associated with membership in Martin's Assn. to have full access to and use of runway. Covenant would benefit Martin but would make land less marketable and would provide ZERO benefit to Owners.

WSC is obligated to give "correction deed" conveying the Piper Lane taxiway to Martin.

False. The Board never approved a deal to transfer Piper Lane to Martin. Martin, an experienced real estate professional, did not make a "mistake" when she had the Board deed 2 platted hangar lots to her. She didn't pay nearly enough for the hangar lots and ROFR she got; giving her more land for nothing compounds this wrong.

At the end of the meeting, the Directors voted to leave largely intact what their attorney unequivocally opined is, at minimum, a transaction the Owners can and should avoid. They did not approve the restrictive covenant on the remainder tract, but that is inconsequential. With ownership and control of the Piper Lane taxiway, Martin can hold WSC purchasers (and others) hostage far more effectively than she could with the covenant.

No judge or jury has ever scrutinized the substance of the March 2016 fire sale transaction.³ The TOMA suit examined only the Board's misconduct in taking action (or claiming to take action) that had not been properly noticed. No judge or jury has considered the impact of the January 2019 demand letter detailing Martin's wrongful conduct, written by the same legal counsel who opposed the granting of relief just a few

³ The Board's claim that the court "validated" the fire sale in the TOMA case is completely false. The Court chose not to exercise discretion set the transaction aside solely for TOMA violations; the egregiously unfair, improper and financially devastating consequences of Martin's misconduct was not before the Court. The Supreme Court may well determine that the March 2016 fire sale transaction should have been set aside as a result of the blatant statutory violations found in the TOMA lawsuit. Plaintiffs' requests for relief in this lawsuit, however, are not premised on the relief provisions of TOMA.

months earlier. No judge or jury has had the benefit of the report prepared by the Board's appraiser reflecting the loss in excess of \$1 million or the Board's sale of a comparable hangar lot just across Piper Lane for \$12.75 per square foot just months before the same Directors allegedly approved the Martin fire sale transaction. That is about to change, and that change will likely change everything.

This is a suit to hold the current and former Directors responsible for whatever portion of the loss cannot otherwise be recovered, and they surely saw it coming.⁴⁴ But for the egregious misconduct of the Directors themselves, no one would need a "way out" of this mess. The only proper "way out" is for Martin to return the valuable property and cancel the preferential purchase right she obtained through a fire sale she orchestrated while a sitting WSC Director. Or she can pay the Owners what their valuable property interests are really worth. Or the other Directors can pay what they are unwilling to require Martin to pay.

Wasting money and giving away property that is needed to further the operations of the Cooperative enterprise is not the legitimate business of a water and sewer cooperative. No Board has the discretion, or the power, to do that. Since the Board refuses to do its duty, Plaintiffs have no alternative but to invoke the Court's power to restore the Owners' property and to hold the Directors and others responsible fully accountable for the Owners' loss.

III.

Parties

⁴⁴ They unilaterally increased the limits of their D & O coverage just a month or so ago.

3.01 Plaintiff Lawrence Rene Ffrench, Jr. (“Ffrench”) is a resident of Travis County, Texas. Ffrench is and was at all times relevant hereto recognized as a Member and Customer of the WSC. The last three digits of his driver’s license number are 768. The last three digits of his social security number are 866.

3.02 Plaintiff John Richard Dial (“Dial”) is a resident of Burnet County, Texas. Dial is and was at all times relevant hereto recognized as a Member and Customer of the WSC. The last three digits of his driver’s license number are 446. The last three digits of his social security number are 924.

3.03 Plaintiff Stuart Bruce Sorgen (“Sorgen”) is a resident of Burnet County, Texas. Sorgen is and was at all times relevant hereto recognized as a Member and Customer of the WSC. The last three digits of his driver’s license number are 560. The last three digits of his social security number are 492.

3.04 As and to the extent necessary or appropriate to recover the Owners’ property and/or to prevent further waste and misappropriation of the Owners’ assets, Ffrench, Dial and Sorgen also appear herein as representatives of the WSC, pursuant to Section 20.002(c)(2), Tex. Bus. Orgs. Code, and as members with voting rights pursuant to Section 22.512, Tex. Bus. Orgs. Code.

3.05 Friendship Homes & Hangars, LLC (“FHH”) is a Texas limited liability company owned or controlled by Defendant Martin and her alter ego at all relevant times. FHH has appeared and has answered herein.

3.06 Dana Martin (“Martin”) is a former Director of the WSC who has appeared and has answered herein. Martin is personally accountable to the WSC’s Owners for the full financial and other loss associated with the events giving rise to this lawsuit.

3.07 Defendants William Earnest, Thomas Michael Madden, Robert Mebane and Patrick Mulligan each held a position on the WSC Board of Directors that orchestrated and carried out the March 2016 fire sale transaction. On information and belief, each of these Defendants has accepted illegal distributions of WSC funds to pay the cost associated with defending such wrongful conduct. Each of these Defendants is personally accountable to the Owners for the full amount of such illegal distributions of cooperative funds and for the full financial and other loss associated with March 2016 fire sale transaction. Each has appeared and has answered herein.

3.09 Defendants William Earnest, Joe Gimenez, Mike Nelson, David Bertino, Dorothy Taylor and Norman Morse are or until recently were Directors on the WSC Board. They received the analyses and conclusions of legal experts and independent valuation professionals engaged with the Owners' funds to the effect that the March 2016 fire sale transaction was unfair and illegal and resulted in massive damage to the Owners. They chose not to pursue relief on behalf of the Owners. Instead, they distributed the Owners' funds to pay for the defense of the unfaithful fiduciaries who carried out the fire sale transaction and personally benefitted from it and to throw one roadblock after another in the path of those who were pursuing the interests of the Owners. The Board has now voted to compromise alleged claims between the Board, on the one hand, and Martin and FHH, on the other hand, that the Board has made clear will never be asserted, to the extreme disadvantage of the Owners. As a result of the acts and omissions of these Defendants, the Owners have been dispossessed of hundreds of thousands in property and value and will be dispossessed of even more, and their collectively owned resources continue to be used against them.

3.10 Defendant Joe Gimenez (“Gimenez”) is a Director and the President of the current Board. Gimenez may be served by delivering citation, with a true and correct copy of this First Amended Original Petition attached, to him at 424 Coventry, Spicewood, Texas 78669.

3.11 Defendant Mike Nelson (“Nelson”) was a Director and an Officer in late 2018 and continues to serve in both positions. Nelson may be served by delivering citation, with a true and correct copy of this First Amended Original Petition attached, to him at 424 Coventry, Spicewood, Texas 78669.

3.12 Defendant David Bertino (“Bertino”) was a Director until his recent resignation from the Board. Bertino may be served by delivering citation, with a true and correct copy of this First Amended Original Petition attached, to him at 110 Keswick Drive, Spicewood, Texas 78669.

3.13 Defendant Dorothy Taylor (“Taylor”) is a Director appointed to replace Norman Morse. She has also served as Director and Officer in the past. Taylor may be served by delivering citation, with a true and correct copy of this First Amended Original Petition attached, to her at 424 Coventry, Spicewood, Texas 78669.

3.14 Defendant Norman Morse (“Morse”) has been a Director since 2018 and until very recently, when he apparently was removed for neglecting his duties and excessive absences. Morse may be served by delivering citation, with a true and correct copy of this First Amended Original Petition attached, to him at .131 Bedford Dr., Spicewood, Texas 78669.

3.14 In its capacity as nominal respondent herein, the WSC has appeared and has answered. Plaintiffs do not now, nor have they ever, pursued the WSC for monetary or other relief that would impose a further burden the Owners.

IV.

Jurisdiction

4.01 Plaintiffs' claims are within the jurisdictional limits of the Court.

4.02 Plaintiffs plead their claims and causes of action independently and in the alternative, making no election whatsoever as to any claims and/or remedies and seeking the full recovery to which they may show themselves and the WSC Owners entitled under applicable law and principles of equity.

4.03 Plaintiffs bring this lawsuit to correct the consequences of acts and omissions of the Owners' unfaithful fiduciaries and to restore and prevent further waste of their resources. Should money damages be necessary to restore the Owners, the individual wrongdoers, and not the Owners, must be held accountable. As specifically required by Rule 47, Plaintiffs plead verbatim the following language of that Rule concerning recovery of monetary relief against the WSC's unfaithful fiduciaries: "(4) monetary relief over \$1,000,000."

4.04 The individual Defendants did not act in good faith, with ordinary care or in a manner reasonably believed to be in the best interest of the Owners. Accordingly, they are not statutorily shielded from liability herein.

4.05 Plaintiffs have standing because (i) they seek to recover damages for wrongs done to them individually where the wrongdoers have violated duties arising from contract or otherwise, and owing directly by them to the Plaintiffs, (ii) they are WSC Members seeking under §20.002 to enjoin or annul the performance of an act or the transfer of property by or to the WSC that is *ultra vires*; (iii) they are WSC Members bringing a representative suit under §20.002 against current and former officers and

directors of the WSC for exceeding their authority; and (iv) they are WSC Members bringing suit under §22.516 for a declaration that any purported ratification of the 2016 fire sale transaction is not effective and/or for measures to remedy or avoid harm to any person substantially and adversely affected by a ratification. As co-owners of the property at issue in this lawsuit, Plaintiffs are entitled to receive a full recovery for the benefit of all Owners.

4.06 The business judgment rule does not affect Plaintiffs' recovery in this case because (i) the acts and omissions alleged herein resulted from ultra vires acts, fraud and/or self-dealing, were grossly negligent, constituted an abdication of their responsibilities or otherwise were not within the exercise of the individual Defendants' discretion and judgment, therefore the rule is inapplicable; (ii) there is no presumption of lawfulness in connection with the individual Defendants' acts and omissions alleged herein; (iii) the acts and omissions alleged herein involve assets or property (including causes of action) that belong to the Owners, and not to some corporate entity; and (iv) the acts and omissions alleged herein were not within the honest exercise of the individual Defendants' business judgment and discretion.

4.07 This case is not moot. The Board did not purport to independently approve the transfer of the 2 platted hangar lots, the transfer of the 0.5151 acres that comprise Piper Lane or the omission of an adequate taxiway and setbacks for the remainder tract. It is not at all clear the Board purported to ratify any of the foregoing, however it cannot ratify an act or transaction that was *ultra vires*, fraudulent or otherwise tainted by self-dealing or other misconduct. Ratification of the March 2016 fire sale transaction is no more within the powers of the Cooperative than was the

original approval (if there was any) and the fire sale transaction itself. The Board has a nondiscretionary duty to unwind the illegal performance intact and not to make matters worse by giving Martin even more valuable airport property for no consideration at all. The Directors have personal liability for all damage incurred by the Owners as a result of the 2016 fire sale and the Board's acts and omissions since that time; they cannot avoid that liability via a "settlement" with Martin made in the name of the Cooperative. The Board's latest attempt to foreclose the Owners from the relief to which they are entitled is just as much a breach of fiduciary duty and a fraud as all the attempts that have preceded it.

V.

Venue

5.01 Venue is appropriate in Burnet County, Texas because the WSC and most of the individual Defendants reside in Burnet County and all or a substantial part of the events or omissions giving rise to Plaintiffs' claims occurred in such County.

VI.

Factual Background

A. Ownership of the Assets and Revenues of a Cooperative is Vested in its Member/Customer Owners.

6.01. The WSC is organized under Chapter 67 of the Texas Water Code as the instrumentality that operates the Windermere Oaks water supply and sewer service cooperative ("Cooperative"). The Cooperative is Member-owned and Member-controlled and enables the Owners to provide themselves with service pursuant to Certificates Number 12011 and 20662 (collectively, the "CCN") within the service area

described in the CCN. Membership in the Cooperative is a condition of eligibility to become a Customer; all Owners are Members.⁵

6.02. Pursuant to its governing documents, the WSC has the powers invested in a water supply or sewer service corporation by art. 1434a (now Chapter 67) that are not inconsistent with IRC § 501(c)(12) governing utility cooperatives and “like organizations.” Implicitly, then, the WSC does not possess any powers a 501(c)(12) Cooperative cannot exercise. In recognition of its function as an agency/instrumentality, the WSC’s powers are also expressly limited. Both the certificate of formation and the bylaws provide that the WSC has no power to engage in activities or use assets in a manner that is not in furtherance of the legitimate business of a “water supply cooperative” or “sewer service cooperative.”

6.03. A Cooperative under § 501(c)(12) is a unique form of business enterprise. Unlike a typical corporate enterprise, in which investors own an entity that in turn owns the means of production, in a Cooperative the Owners acquire and own the means of production used to provide themselves with goods or services. The assets used in the enterprise and the profit those assets generate are owned by the Owners, not in proportion to their ownership of capital but in proportion to their level of involvement in the enterprise, or patronage. The Cooperative operates at cost so that its patrons obtain the services for the lowest possible price; revenues that are not needed for operations must be returned or credited to the Owners annually.

6.04. A Cooperative under § 501(c)(12) must keep records of account reflecting each Owner’s ownership interest in the assets of the enterprise.⁶ Upon dissolution, the

⁵ The WSC’s Membership records for the past several years have been requested in formal discovery.

⁶ The WSC’s records of account have been requested through formal discovery. Since each Owner’s ownership interest is based on patronage, the amount of each Owner’s interest is unique.

remaining assets must be distributed to the Owners who own them. The WSC's governing documents include such a provision. To obtain a state ad valorem tax exemption, the governing documents also provide that the Owners will in turn distribute the assets received in dissolution to a charitable entity. It has been held that such a provision does not divest or impair the Owners' ownership interest while the Cooperative is in operation.

6.05. A Cooperative under 501(c)(12) is required to distribute or allocate excess revenues (i.e., excess of revenue, including capital gains, over expenses) annually to the Owners who own them.⁷ This is done based on each Owner's level of patronage during that year. Distributions of income are made in the form of patronage dividends. Excess revenues may be retained in a reserve for reasonable needs of the enterprise, but retained earnings are still owned by the Owners and must be allocated to each Owner's account in the Cooperative's records. The WSC's governing documents include these provisions.

6.06. A Cooperative under § 501(c)(12) is operated through an instrumentality, such as an association, a corporation or an LLC, for the benefit of the Owners. The instrumentality is authorized to operate the assets for benefit of the Owners in pursuit of the Cooperative purposes but not otherwise. The instrumentality collects the revenues as a conduit for the Owners. As stated above, however, the entity does not own the means or proceeds of production. That the assets and revenues of the Cooperative enterprise are owned by the Owners and not by the entity that operates them is considered one of the "basic and distinguishing" features of a Cooperative.

⁷ By statute, a Texas cooperative cannot pay dividends while it has outstanding debt. However, the Cooperative's obligation to pay dividends to the Owners is nondiscretionary.

6.07. The instrumentality (i.e., the WSC) is not a stakeholder in the Cooperative enterprise. It is prohibited from the pursuit of profit. It cannot operate at a loss; the Owners are required to make up any shortfall through increases in rates and fees, assessments or otherwise. This further illustrates why the Directors duties vis-à-vis the Cooperative enterprise and the assets used to operate it run to the Owners, and not to the entity.

6.08. A Cooperative under § 501(c)(12) must be democratically controlled. The Owners themselves must periodically assemble in democratically controlled meetings where each has one vote only. They deal personally with matters affecting the conduct of the cooperative. The WSC's governing documents include such provisions.

6.09. Democratically elected Owners manage the affairs of the Cooperative enterprise as its Board of Directors. The WSC's governing documents include such provisions. The Board has a legal duty to the Owners to preserve and maintain the Cooperative assets in proper working order, to upgrade them as needed, to use them efficiently in furtherance of the purposes of the enterprise, to prevent or avoid waste and to secure the highest price obtainable for assets that are no longer needed for Cooperative purposes.

6.10. The WSC's governing documents prohibit the use or disposition of the Owners' assets in any manner or for any purpose other than to operate a water and sewer Cooperative for the benefit of the Owners.⁸ The WSC Board has no power to authorize or approve any prohibited use or disposition of a Cooperative asset.

⁸ The WSC may not actually qualify for exemption under § 501(c)(12) because of the way its Boards do business. By way of example, the current and prior Boards have caused the WSC to collect "stand-by fees" from non-patrons. These fees amount to more than 15% of the WSC's total annual income and likely do not constitute "patronage-sourced income." Those Boards have nevertheless reported the WSC as a tax-

6.11. Pursuant to Section 67.004, Tex. Water Code, the Texas Non-Profit Corporation Act (“Non-Profit Act”) applies to the WSC to the extent it does not conflict with the provisions of Chapter 67 or the WSC’s governing documents.

B. Management of the Cooperative Assets by the Board of Directors

6.12. The Cooperative’s operations and assets are managed by a Board of Directors elected by and from the Owners. Day to day operations are carried out by Officers elected by the Board from among its Directors. At all times relevant hereto, the Board was comprised of five (5) Directors. The WSC’s Officers included the President, Vice President and Secretary-Treasurer.

6.13. The Directors and Officers have the fiduciary duties of an agent/manager. The Non-Profit Act requires that each Director and Officer shall discharge these duties in good faith, with ordinary care, and in a manner reasonably believed to be in the best interest of the Owners of the Cooperative enterprise.

6.14. The Board can “act” only by public majority vote at an open meeting at which a quorum is present. All Board meetings must be held in compliance with the Texas Open Meetings Act (“TOMA”). Notice of all regular and special Board meetings must be posted in accordance with TOMA.

6.15. The Secretary-Treasurer has a duty to cause TOMA-compliant notices to be posted for all Board meetings, to attend all Board meetings and to create a complete and accurate record of all votes and actions. Once approved by the Board, those records become, and must be maintained as, permanent records of the WSC.

C. Limitations on Power to Convey Cooperative Real Property

exempt entity. The powers of the WSC and its Board are prescribed under § 501(c)(12) regardless how it actually does business.

6.16. The power to convey real property interests held in WSC's name is expressly limited to furtherance of the interests of the Cooperative enterprise. The Board cannot approve or effectuate any conveyance that is contrary to this expressed limitation. The Board has no power to give away a valuable Cooperative asset or to transfer it for a fraction of its market value. To the contrary, in keeping with its agency/managerial role the Board has a duty to secure the highest price obtainable for assets that are no longer needed for Cooperative purposes.

6.17. Under the Non-Profit Act, the power to convey real property interests in the WSC's name is triggered only when such conveyance is authorized by "appropriate resolution" of the Board. The Board can only approve or adopt a resolution by majority vote at a duly noticed open meeting and otherwise in compliance with the WSC's governing documents and applicable law.

6.18. The Directors have no power to authorize, approve or acquiesce in any conveyance of real property or other transaction that is adverse to the interests of the Owners. A transfer of property for a fraction of its market value for the benefit of a sitting Director is an example of an adverse transaction.

6.19. A transaction between the organization and a sitting Director is presumptively adverse. The Board has the power to authorize such a transaction only by valid Board action upon fulfillment of several special conditions. Such special conditions include the Board's receipt of full disclosure by the interested Director of his/her interest in all aspects of the transaction and a determination by a majority of disinterested Directors made in good faith that the transaction is fair to the organization and is in the organization's best interests. The WSC's conflict-of-interest document for 2016 imposes the additional condition that the minutes of the Board meeting at which

action is taken must reflect the interested Director's disclosure and a statement that the Board was aware of the conflict of interest and nevertheless decided the transaction was fair to the WSC and was in the WSC's best interests.

6.20. The Owners have the right, and its Directors have the duty, to rescind any unlawful approval and to prevent and/or annul any conveyance or transaction made pursuant to such unlawful approval. Directors who unreasonably delay or refuse to take such steps breach their duty to act with ordinary care and in a manner reasonably believed to be in the best interest of the enterprise. Their misconduct, however, does not estop the Owners from recovering their property or its value.

D. Limitation on Power to Fund Defense Costs for Unfaithful Fiduciaries.

6.21. The Board has no power under the WSC's governing documents to indemnify a current or former Director or Officer or to advance or reimburse attorneys' fees or other expenses incurred by current or former Director or Officer who is named as a party in a legal proceeding.

6.22. The Non-Profit Act confers limited authority for the WSC Board to advance or reimburse reasonable expenses incurred by a current Director or Officer who is named as a party in a proceeding in advance of final disposition of the case, but only upon strict compliance with the requirements of that Section.

6.23. The Non-Profit Act does not authorize advancement of litigation expenses for former Directors or Officers in those capacities under any circumstances.

E. The Board's Ultra Vires and Otherwise Illegal Actions.

1. WSC Fiduciaries Acknowledge Duty to Obtain Highest Possible Price for Airport Tract.

6.24. In 2013, the Board voted to upgrade the WSC's wastewater treatment facilities and to relocate them from an approximately 10-acre tract within the Spicewood Airport community (the "Airport Tract"). As reflected by the minutes from the August 13, 2013 meeting, the Directors agreed unanimously that relocating the facilities to an area east of Exeter Road would free the valuable Airport Tract for sale, which was considered the "highest and best use" of the Tract. The sale of the 10-acre Airport Tract was identified as one of the key components for funding the upgraded wastewater treatment plant improvements and other Cooperative needs.⁹

6.25. The Airport Tract was indeed very attractive real estate. At that time, the Spicewood Airport featured a well maintained 4,185' x 30' asphalt runway with fueling and maintenance service available onsite. The Airport Tract was within a highly developed gated airport community where hangar lots were in demand. The Airport Tract was one of the few vacant areas available within the airport and its size made the Airport Tract amenable to subdivision into multiple smaller hangar lots. The Airport Tract was surrounded by restricted aviation properties including well maintained hangars of relatively new construction. The Airport Tract had ready access to the airstrip and over 500 feet of paved taxiway frontage providing aircraft access to every part of the Tract. The Airport Tract is not encumbered by the Windermere Airport restrictions that govern the lots surrounding it or by the requirements and regulations of the Spicewood Pilots Association. Accordingly, purchasers could have ready access to and enjoyment of the many benefits and amenities of the airport, including the runway,

⁹ The current Directors readily acknowledged this at the October 26, 2019 meeting.

without the financial burden of membership fees, impact fees, assessments and other obligations attendant to membership in the Pilots' Association.¹⁰

6.26. The Board committed to the Owners that the Airport Tract would be sold for the best possible price and the proceeds would be used to defray the cost of the new facilities and for other Cooperative purposes. Following the August 2013 meeting, the Directors (including Mulligan, Earnest and Madden) claim to have gathered deeds and other records in preparation to engage a real estate professional to market the Airport Tract. At the Board's February 18, 2014 meeting, Defendant Mulligan was directed to obtain a survey and appraisal of the land to be sold. They did none of these things.

6.27. It was clear from the discussion at the October 26, 2019 special meeting that the Board never listed or advertised the Airport Tract or otherwise marketed the Tract. It is claimed that some of the Directors spoke with unidentified "real estate people," but they never actually marketed the Airport Tract for sale to the highest bidder.

6.28. Around this same time Martin, a local real estate agent and one of the owners of Windermere Airport, LLC ("Windermere"), put together a proposal for Windermere's purchase a 0.558-acre tract within the airport from the Windermere Oaks Property Owners' Association ("POA") at "fair market value." As described in her email, Martin's fair market value offer price was based on a recent sale of a 1.415-acre hangar lot on Cessna Lane for \$185,000, or \$3.00 per square foot.

6.29. For quite some time, POA members had used a 30,000 square foot portion of the Airport Tract (the "Storage Tract") for storage of boats and other items. As a

¹⁰ The Board acknowledged at the October 26, 2019 special meeting that this provided a clear marketing advantage for the Airport Tract.

stand-alone parcel in its then current condition, the Storage Tract was not particularly desirable as a hangar site. By email dated April 3, 2014, Taylor notified Mebane of the Board's vote to market the Airport Tract as single parcel and requested that the POA items be removed. She expressly acknowledged the Board's "fiduciary responsibility to our members," which prohibited the Board from taking any action that would "compromise our ability to obtain the 'best' offer from any potential buyer."¹¹

6.30. Around this same time, Martin (who was not yet on the WSC Board) became involved in the POA's efforts to acquire the Storage Tract from the WSC. In this process, Martin obtained a copy of the WSC's 2006 appraisal of a 7-acre vacant portion of the Airport Tract, including the Storage Tract.¹² The appraisal concluded that as of December 1, 2006, the vacant 7-acre portion was worth \$350,000, or \$1.15 per square foot, for light industrial (i.e., hangar) development specifically related to the airport.

6.31. In late 2014, the TCEQ approved the WSC's Closure Plan for the old WWTP.¹³ This should have cleared the way for prompt and aggressive marketing and market value sale of the Airport Tract. We now know, however, that the Directors never followed through with any listing or other marketing.

2. Martin Joins the WSC Board.

6.32. Martin was elected to the WSC's Board in 2015. Shortly thereafter, she made use of her positions of authority as a co-owner of Windermere and as a WSC Director to orchestrate the sale of Tract G, a Cooperative-owned hangar lot across from

¹¹ Taylor acknowledged these matters during the October 26, 2019 meeting.

¹² The 7-acre portion also included the hangar lots Martin later obtained from the WSC Board.

¹³ The Board hinted at the October 26, 2019 special meeting that they recently discovered the closure may have been mishandled and that there may be residual problems on the Airport Tract. None of them has ever shared that information with the Owners. It does not appear to have influenced decision-making in 2016 or thereafter.

the Airport Tract. The nominal grantee in the transaction was The Anne McClure Whidden Trust, an entity with which Martin regularly did business.¹⁴ The WSC's 2015 Form 990 reported receipt of \$95,000 in gross sale proceeds from this transaction, which equates to a sale price of \$12.75 per square foot.¹⁵

6.33. There is no record the Board ever voted on, or even considered, any transaction involving Tract G. That topic does not appear to have been included on any posted notice or agenda or in any of the Board minutes. While the deed appears to have been signed by Defendant Mebane as WSC President, there is not (and never has been) any Board resolution purporting to authorize any conveyance of Tract G.

6.34. Thereafter, Martin was again involved with efforts by the POA to purchase the Storage Tract. The POA's proposed price was around \$20,000 - \$25,000.00, or in the range of \$0.66 - \$0.83 per square foot. The minutes of the Board's July 16, 2015 meeting reflect that the Directors (including Martin, Mebane, Earnest, Madden and Mulligan) discussed the POA's offer in executive session but that no action was taken at that meeting. The POA's offer does not appear to have been included on any posted notice or meeting agenda. It is not mentioned in any other Board minutes. So far as Plaintiffs are aware, the Board rejected the POA's offer.

3. *Martin and Her Allies Orchestrate Secret Fire Sale Involving 3.8 Acres*

6.35. At some point thereafter, it appears Martin presented the other Directors with a document entitled "Appraisal of Real Property" prepared by Jim H. Hinton II and

¹⁴ Martin's personal financial or other benefits from this transaction and from the subsequent sale of Tract G are not yet known and will be learned through discovery.

¹⁵ At the October 26, 2019 special meeting, the Board acknowledged the \$95,000 sale of the hangar lot across the street from the Airport Tract in May 2015, just 6 months before it claims to have approved the Martin contract.

covering the Airport Tract (the “Purported Appraisal”). In his January 25, 2019 demand letter, the Board’s attorney referred to the Purported Appraisal as “fraudulent.”

6.36. There is no indication whether the other Directors were even aware of it. At the October 26, 2019 special meeting, some of the Directors confirmed that the 2016 Board made no use of the Purported Appraisal, yet Martin herself signed a WSC check to Hinton for \$600.00.

6.37. The Purported Appraisal certainly conferred no benefit on the WSC or its Owners. If the Purported Appraisal benefitted anyone, it was sitting Director Martin who specialized in transactions involving real estate in and around the Spicewood Airport and was looking to acquire valuable aviation properties for next to nothing.

6.38. The Purported Appraisal did not claim to state a value for the Airport Tract as of September 2015, when Hinton signed it and presumably gave it to Martin, or as of March 2016, when Martin obtained the premier portion of the WSC’s most valuable disposable asset for pennies on the dollar. The “effective date” of Hinton’s “value conclusion” was September 1, 2014, a full year before Hinton prepared and signed it.

6.39. The Highest and Best Use Analysis within the Purported Appraisal claimed that the Airport Tract “lends itself to single family residential use.” With her experience in the local real estate market, Martin was well aware that hangar lots were worth far more than the residential properties Hinton had relied upon.

6.40. In light of the market data of which the Board was actually aware, together with the glaring frailties of the Purported Appraisal, it is inconceivable that any of the Directors could have considered the Purported Appraisal to be a reliable estimate of the fair market value of the Airport Tract or any portion thereof in February or March

2016. After years of litigation in which it was waved around, the Board acknowledged during the October 26, 2019 special meeting that none of the Directors gave attention to the Purported Appraisal.

6.41. Martin has since claimed that at the time she made her “offer” the Airport Tract had been marketed to “many” prospective purchasers and that the WSC received “many” offers to purchase. The Purported Appraisal reflects that as of its September 2015 preparation date the Airport Tract had never been listed or professionally marketed. No real estate professional was ever engaged to market the Tract, nor was it ever listed or marketed for sale. There is no record of “many,” or any, offers or negotiations involving the Airport Tract aside from the rejected POA offer on the Storage Tract.

4. *Martin Orchestrates a Fire Sale and the Board Makes It Happen*

6.42. For at least the second time since accepting a position of trust and confidence as a member of WSC’s Board of Directors, Martin was at the center of a proposed transaction involving a conveyance of Cooperative property owned by the Owners. This time, however, Martin was involved as both seller (in her capacity as WSC fiduciary) and purchaser (for her own personal financial gain).

6.43. According to Martin, Defendant Mebane (then Board President) decided all by himself that the Airport Tract should not be sold as a single parcel, as the Board had planned for years. She claims Mebane determined the Board should dispose of the most valuable and desirable 3.8 acres of the Airport Tract with all of the Airport Tract’s frontage along the Piper Lane taxiway to a sitting WSC Director for a fraction of its market value.

6.44. Martin also claims the March 2016 fire sale transaction was “negotiated,” and that she made a “good faith” offer to purchase which was countered by the other Directors. The details of Martin’s claimed “good faith” offer and other information concerning the alleged negotiation is not yet known and will be learned through discovery in the case. The Board’s records are devoid of any such negotiations.

6.45. The so-called “disinterested Directors” were the very Directors who had unanimously acknowledged the Board’s fiduciary duty to market the Airport Tract as a whole to obtain the “best possible offer” and who were well-aware the WSC had recently conveyed a comparable airport property for \$12.75 per square foot. None of the Directors disclosed to the Owners before the Board’s December 19, 2015 meeting that they intended to authorize the piecemeal transfer of the premier portion of the Airport Tract and all of the taxiway frontage for a small fraction of the \$12.75/SF sales price comparable WSC airport property had recently commanded.

6.46. The proposed transaction was never mentioned as a discussion or action item on any posted meeting agenda for any Board meeting. Instead, based on the minutes, the Board raised the topic out of the blue at its regular meeting on December 19, 2015. The minutes reflect that after a 5-minute executive session Defendants Mebane, Madden and Mulligan (Defendant Earnest shown as being absent from that meeting) unanimously voted to accept an offer from Martin on behalf of a nonexistent affiliate (FHH) to carve off the highly desirable frontage and separate the remainder of the Airport Tract from all taxiway access for a “net price” of \$200,000, or \$1.19 per

square foot.¹⁶ There was no “appropriate resolution,” or any resolution at all, approved by the Board.

6.47. Nor did the Board fulfill the special conditions that would have been required to trigger the power to approve an interested Director transaction. The minutes of the December 19, 2015 Board meeting did not reflect either (i) the interested Director’s full disclosure of her interest in all aspects of the transaction or (ii) a statement that the Board was aware of the conflict of interest and nevertheless decided the transaction was fair to the Owners and was in their best interests. Indeed, there is no record of any kind that a majority of disinterested Directors (if there were any) actually made a determination at any time that the fire sale transaction was fair to the Owners and was in their best interests.

6.48. Not one of the so-called “disinterested Directors” has ever explained how it could possibly be fair to the Owners to allow an interested Director (or anyone else, for that matter) to acquire the prime portion of the Airport Tract with 100% of the aircraft access for any price lower than the \$12.75 per square foot price received for Tract G, a comparable hangar lot, just a few months earlier.

6.49. There have been claims that Martin’s offer was reflected in a written Unimproved Property Contract. It appears someone prepared a contract document for

¹⁶ Martin now claims that she was to have received 4.3 acres for \$200,000, or a price of \$1.04 per square foot. The “Proposed Amended and Superseding Agreement” contemplates that the WSC will transfer to Martin “a certain .5151 acre +/- portion/tract that was included in the sales contract but not deeded.” As discussed more fully below, if the Board approved any transaction, it was not the transfer of Piper Lane. There still is no “appropriate resolution” authorizing such transfer. Moreover, Martin, a sophisticated real estate professional with years of experience with property within the Spicewood Airport and the person who platted the property before the March 2016 closing, cannot credibly claim that a mistake was made in the conveyance.

the conveyance of an unspecified “4.3+ acres on Piper Lane,” but as discussed below that was not the transaction Martin’s cronies on the Board purported to approved.

6.50. Prior to closing, and at WSC expense, Martin subdivided the land she intended would be conveyed to her into two platted hangar lots. Mebane, as WSC President, signed Martin’s subdivision plat on March 3, 2016. The plat was approved and recorded on March 8, 2016.¹⁷ The plat Martin prepared and processed, and Mebane signed on behalf of the WSC, failed to reserve a taxiway for the remainder of the Airport Tract.

6.51. There are no references in agendas or minutes for subsequent Board meetings to any further consideration of a land transfer to Martin or to the adoption of any resolution authorizing any such transaction. The posted records of the Board do not reflect any resolution adopted by the Board in connection with a land transfer to Martin.

6.52. Nevertheless, on or about March 13, 2016, Defendants Mebane and Madden executed and delivered a document (hereinafter, the “Sham Resolution”) in which they “certified,” as President and Secretary of the WSC, respectively, that the resolution stated therein was “an accurate reproduction of the one made” by the Board and was “legally adopted on the date of the [February 22, 2016] meeting of the Board of Directors, which was called and held in accordance with the law and the bylaws of the corporation, at which a quorum was present.” The Sham Resolution described the property to be conveyed as 2 platted hangar lots by reference to the recorded plat, not as unplatted acreage.

¹⁷ A true and correct copy of the recorded plat is attached as Exhibit 2.

6.53. The posted agenda for the February 22, 2016 meeting did not mention any proposed sale to Martin or the adoption of a resolution to authorize any sale. The minutes for the Board's February 22, 2016 meeting were unanimously approved as a complete and accurate record of the Board's actions at its February 22, 2016 meeting. They reflect that Mebane, Martin, Madden, Mulligan and Earnest were present. They do not reflect any discussion, much less approval, of a resolution or any other authorization for a sale of any property to an interested Director or her nonexistent affiliate. Despite exhaustive requests under the Texas Public Information Act ("TPIA"), Defendants have produced no contemporaneous record reflecting that any resolution was actually adopted, at the February 22, 2016 meeting or any other time.

6.54. Mebane also executed two deeds, each of which purported to convey one platted hangar lot to FHH. FHH was an entity Martin had formed a few days earlier and over which she apparently exercised full and complete control. Copies of these deeds are attached as Exhibit 3. The Anne McClure Whidden Trust, which had purchased Tract G for \$12.75 per square foot, was involved in the transaction as a purchase money lender. The documents suggest that the purchase was funded entirely with loan proceeds. Whether and to what extent Martin has ever invested her own resources in this transaction is not yet known and will be learned through discovery.

5. *The Balloon Should Not Have Made Them Do It*

6.55. On information and belief, some or all the proceeds from Martin's acquisition of the hangar lots were used to make a balloon payment on the WSC's existing debt. Martin and other have suggested from time to time that the WSC might not have made its debt service obligation except by the illegal March 2016 transaction.

6.56. If that is true, then the Defendant Directors who created that situation have far more to answer for than the 2016 fire sale. They had no authority to incur debt on behalf of the organization without adequate provision for repayment in accordance with the loan agreement. They had a duty to monitor the Cooperative's financial performance and to make adjustments in the debt service plan as needed. They certainly cannot rationalize the fire sale of valuable Cooperative assets to mitigate the consequences of their other misconduct.

6.57. Had the WSC's fiduciaries followed through on the plan to market the Airport Tract as a whole and sell it for the highest possible price, the WSC could have retired all of its outstanding debt in March 2016 and had a tidy sum left over to pay additional facilities costs, to acquire and/or upgrade equipment required to provide the Cooperative services in compliance with applicable laws and regulations, to establish or increase the reserve fund set aside for future system upgrades and improvements and to meet any number of other Cooperative needs.

6.58. Instead, the Owners collectively sustained an immediate loss of \$500,000 in cash when the most desirable part of the Airport Tract with all of the taxiway frontage, worth at least \$700,000 at the time, was conveyed to an interested Director for a "net price" of \$200,000. In addition, the remainder tract was rendered unmarketable and its value instantly diminished by \$640,000 when the Cooperative's fiduciaries separated it from all taxiway access and failed to create or secure an adequate alternative.

6. *The Fire Sale Included a Free Right of Refusal for Martin*

6.59. In the March 2016 transaction, Mebane, acting as WSC President, executed and delivered a Right of First Refusal ("ROFR") granting Martin an exclusive

preferential purchase right covering the remainder tract for a stated term of 20 years. A copy of the illegal and unauthorized ROFR, which was also signed by Martin as sole Manager of the newly created FHH, is attached as Exhibit 4. Not even the Sham Resolution mentions the ROFR. The Owners received nothing in exchange for it.

6.60. The mediated settlement proposal apparently contemplates that Martin will extinguish the illegal ROFR. That is not much of a concession, as Martin would never be able to enforce a preferential purchase rights obtained for no consideration in breach of her fiduciary duty as WSC Director. Even if the ROFR were removed tomorrow, however, the Owners have still suffered damage in the form of years of expense and lost opportunities related to the remainder tract. The Board's mediated settlement proposal doesn't provide any recovery for those damages.

F. Martin Capitalizes on the First Sale While the Owners Struggle

6.61. Martin later replatted the hangar lots again to create a third hangar lot. By deed dated April 3, 2017, Martin, as sole Manager of FHH, conveyed the southeastern 1.25 acres (then platted as "Tract H2-A") to Johann and Michael Mair. A copy of the deed from Martin to Mair is attached as Exhibit 5. The Mair property is where Martin's "Amended and Superseding Agreement" apparently proposes to locate a 50' "access easement" and 25' setback to provide a taxiway to the remainder tract.

6.62. The Mair deed reflects that Martin's business associate The Anne McClure Whidden Trust made a \$100,000 purchase money loan in connection with the Mair sale. The total purchase price is not yet known. At a sales price of only \$100,000, however, Martin doubled her money on Tract H2-A within a short time.

6.63. During this same time, the WSC still has the debt that was outstanding in 2016 and has incurred additional debt to pay expenses that could and should have been

covered by the proceeds from the sale of the Airport Tract. The Board has struggled with strategies to restructure the debt; the Directors do not seem to appreciate that the WSC is not permitted to have outstanding debt just because it can. The Board has postponed needed repairs and the acquisition of a generator and other equipment needed to provide the Cooperative services and to remain in compliance with applicable regulations. At the same time, the Board has raised rates, service fees and membership fees. The Board also appears to have allowed the Cooperative to become financially dependent on the extremely questionable practice of collecting standby fees from non-patrons.

G. *New Board Receives Unequivocal Confirmation of Misconduct and Unfairness*

6.64. In 2018, the composition of the Board changed. The newly constituted Board appears to have commissioned a legitimate investigation into the legality of the March 2016 transaction. It also engaged the MAI appraisers at Bolton Real Estate to perform a professional forensic appraisal to analyze the financial impact of the fire sale. Bolton's report confirmed that the Owners sustained an immediate loss of more than \$1,000,000, not counting what Martin should have paid for the ROFR she obtained for free.

6.65. As stated above, the analysis of the WSC's legal counsel confirmed that the March 2016 fire sale was unauthorized, improper and unfair to the Owners and involved breaches of fiduciary duty and other misconduct by Directors.

6.66. The newly constituted Board determined that its fiduciary duties required prompt efforts to recover the misappropriated property or to otherwise make the Owners whole by pursuing "all available avenues of relief." The Board directed the WSC's counsel to send a demand letter to counsel for Martin and FHH. The demand

letter outlined numerous unauthorized and illegal acts that precipitated the fire sale and explained how it was unfair to the Cooperative enterprise and its Owners. A copy of such demand letter is attached as Exhibit 1.

G. *The WSC's Fiduciaries Fail the Owners, Again*

6.67. By all appearances, the Directors were doing exactly what their duties required of them. Those Directors (including Bertino, Morse and Nelson) had expressly acknowledged their fiduciary duties to the Owners and had engaged independent qualified professionals to analyze the facts and to advise them. Upon receiving the conclusions and advice of those qualified professionals, those Directors determined (presumably in good faith and in the exercise of reasonable care) that pursuit of all available avenues of relief was warranted. They prepared to move forward against Martin, FHH and others.

6.68. By all appearances, those very same Directors abruptly ceased all efforts to pursue recovery for the Owners' \$1,000,000 loss and all other relief to which the Owners are entitled. It is not yet known why. Nor is it known why they embraced and defended (with the Owners' money) the unfaithful fiduciaries who caused the loss to begin with. No reasonable explanation is apparent. These matters will be learned through discovery.

6.69. There was another Director election in 2019. Defendant Earnest, who had gone off the Board, was elected to serve as a Director again. Bertino, Morse and Nelson continued on the Board. The WSC's leadership continued use Cooperative resources to oppose efforts to restore the Owners' misappropriated property.

6.70. From and after the March 2016 fire sale, the legitimate business of this Cooperative has been continuously compromised as a result of the acts and omissions of

the agents responsible for managing the assets it uses to operate. Nevertheless, at the Board meeting on June 12, 2019, the Directors voted to have the litigation subcommittee engage defense counsel to “defend any legal claims against any co-defendant co-directors.” They have neither statutory nor organizational authority to use Cooperative resources in that manner. Even if they had the power to do it, using the assets of the victims to provide a defense for the unfaithful fiduciaries who harmed them would be wrong by any standard. The Owners must make their stand somewhere. To draw the line before paying for the defense of one’s unfaithful agents has compelling appeal.

VII.

Causes of Action

Plaintiffs reallege and incorporate by reference all the foregoing allegations in connection with each and every cause of action alleged herein.

Ultra Vires Actions

7.01 Pursuant to Section 20.002(c), Tex. Bus. Orgs. Code, an act that is beyond the scope of the Board’s powers or inconsistent with a limitation on the authority of a Director to act may be enjoined, set aside or otherwise challenged (i) by an Owner in a proceeding for an injunction or to set aside the act, or (ii) by an Owner in a representative suit against current and/or former Directors for exceeding their authority. The procedure and relief for redress of *ultra vires* acts is the same for non-profit organizations as for organizations that operate for profit.

7.02 By definition (§22.501(2)) and common law, *ultra vires* acts cannot be ratified or “re-approved.” Pursuant to §22.512, the Court has broad, but nonexclusive, powers to declare any purported ratification ineffective as to an action that is not within the powers of the Board in the first instance.

A. Unauthorized Conveyance of Property (Current and Former Directors)

7.03 The Cooperative has power to convey real property in its name only when “authorized by appropriate resolution of the board of directors.” The Sham Resolution is a fraud. It was likely never acted on at all and there is certainly no Board record to suggest it was. It certainly was not acted on at the February 22, 2016 meeting, as the plat (which is referenced in the Sham Resolution by recording information) was not recorded until weeks later. If any action was ever taken on the Sham Resolution or any other resolution purporting to approve a transaction with interested Director Martin, the Board is estopped by the minutes it approved and placed in the WSC’s records to claim that such action occurred.

7.04 The Sham Resolution is not an “appropriate resolution of the board of directors,” and thus conferred no power to convey the platted hangar lots. The Sham Resolution does not even mention Piper Lane or any unplatted acreage. The Sham Resolution does not purport to authorize the encumbrance of the remainder tract by the granting of the ROFR. Subject to the intervening rights of bona fide purchasers, if any, acting in good faith and without notice, all such conveyances must be annulled or canceled and unencumbered legal title must be confirmed in the WSC’s Owners.

7.05 The WSC’s Board has power to act only by majority vote with a quorum present at an open meeting that complies with TOMA. It has already been determined that action (if any was taken) on the fire sale transfer to Martin at the February 22, 2016 meeting was in violation of TOMA. Accordingly, none of the actions taken during that meeting constitute actions of the Board of Directors.

7.06 The conveyance of the platted hangar lots and the granting of the ROFR were inconsistent with express limitations on the Board’s authority. Subject to the

intervening rights of bona fide purchasers, if any, acting in good faith and without notice, the Board has a duty to annul or cancel those transfers and to restore unencumbered legal title in the Owners.

7.07 The Board's power was further limited in these circumstances because the conveyance of the platted hangar lots and the granting of the ROFR were interested Director transactions. The Directors' authority to approve and implement a transaction between Martin and the WSC is conditioned on compliance with several requirements. The interested Director must have fully disclosed her interest in all aspects of the transaction. Following such disclosure, a majority of disinterested Directors must have determined in good faith that the transaction was fair to the WSC and was in the WSC's best interests. The minutes of the meeting at which the Board approves an interested Director transaction must reflect both (i) the interested Director's full disclosure and (ii) a finding by the Board that the Directors were aware of the conflict of interest and nevertheless decided the transaction was fair and was in the WSC's best interests. None of these requirements was satisfied or fulfilled in connection with the adoption of the Sham Resolution or any other action purporting to approve the conveyance of the platted hangar lots or the granting of the ROFR to Martin or to an entity she owned and controlled. Subject to the intervening rights of bona fide purchasers, if any, acting in good faith and without notice, such transactions must be annulled or canceled and unencumbered title must be confirmed in the WSC's Owners. Alternatively, the Owners should recover from their unfaithful fiduciaries all amounts required to make them whole.

7.08 The current Board does not have the power to convey the 0.5151-acre portion of Piper Lane as contemplated by its proposed "Amended and Superseding

Agreement.” As the Board presents it, this transfer is to complete an interested Director transaction that was adverse to the Owners and was never authorized by “appropriate resolution” of the Board or by fulfillment of the special conditions required for interested Director transactions. This Board has not adopted an “appropriate resolution” of its own concerning the proposed transfer of Piper Lane for no consideration and has not fulfilled the special conditions required for interested Director transactions.

7.09 Further, the Board does not have the power to transfer Piper Lane to Martin because such transfer is not in furtherance of the legitimate business of the Cooperative. The Cooperative never approved the transfer of Piper Lane to Martin and was never obligated to make any such transfer. Martin did not make a mistake when she obtained deeds to 2 platted hangar lots and not to the portion of Tract H that included Piper Lane (which she herself platted), therefore no “correction deed” is warranted. The entire fire sale transaction was grossly unfair and illegal separate and apart from any transfer of Piper Lane; to transfer Piper Lane for no consideration now just makes a very, very unfair situation worse. It is not within this Board’s discretionary authority to cause the transfer of Piper Lane to Martin.

7.10 Any transfer of Piper Lane (and any other of the Owners’ property) to Martin must be enjoined (or, if already done, must be annulled or canceled) and unencumbered title must be confirmed in the WSC’s Owners. Alternatively, the Owners should recover from their unfaithful fiduciaries all amounts required to make them whole.

B. Ultra Vires Use of Cooperative Assets (Current and Former Directors)

7.11 The assets of the cooperative are owned in common by the Owners. The WSC holds nominal title to the commonly owned assets and is authorized to use them to operate the enterprise but for no other purpose. The Board has no power to use or dispose of the assets in a manner that is not in furtherance of its legitimate business as a water and sewer service Cooperative.

7.12 An integral part of the business of a Cooperative is to make maximally productive use of the assets it manages to provide services to those who own them. The Board has no power to stockpile marketable assets that are no longer needed for Cooperative operations. Those assets must be sold for the highest possible price and the proceeds used for Cooperative purposes or distributed/allocated to the Owners who own them. These duties are non-discretionary.

7.13 Waste of a Cooperative asset does not further the operation of the Cooperative enterprise. Accordingly, this is not within the Board's powers.

7.14 Had the Airport Tract been properly marketed and sold for what it was worth in March 2016, the Owners would have netted well over \$1,000,000. They could have extinguished the outstanding debt, acquired needed equipment, made a healthy allocation to the reserve fund and received a respectable dividend, all in furtherance of the legitimate business of a water supply and sewer service Cooperative. Instead, the Cooperative's unfaithful fiduciaries gave away valuable property interests for next to nothing, devalued other property interests, and now propose not only to leave that transaction intact but to make it worse by giving away the Piper Lane taxiway. The Owners have been burdened with unnecessary debt service and higher rates and fees, and the Cooperative still doesn't have needed equipment and facilities. The Board has no power to manage the Cooperative's assets in this manner.

7.15 The Board has no power to apply Cooperative resources to prevent the recovery of property wrongfully transferred or to pay defense costs for the wrongdoers.

7.16 The Board has no power to release or compromise of the Owners' right to relief, whether direct or derivative, against its unfaithful fiduciaries or FHH. Any release that purports to or is intended to have such effect is *ultra vires*.

7.17 All of these transfers and transactions must be enjoined or, if already done, must be annulled or canceled, and all distributed funds and unencumbered title to property must be returned to the WSC's Owners. Alternatively, the Owners should recover from their unfaithful fiduciaries all amounts required to make them whole.

C. *Adverse Transactions (Former and Current Directors)*

7.18 The Directors have no power to authorize a transaction that is adverse to the WSC. The WSC should have been \$1,300,000 or more to the good from a sale of the Airport Tract. The Directors may not have known precisely how damaging the 2016 fire sale would be, but they had more than enough information before them to know that Martin's \$200,000 "net price" was nowhere near the price received from the sale of Tract G, a comparable hangar lot right across the street. Meeting minutes reflect the Board's awareness of the importance of proper taxiway access, yet they land-locked the remainder tract for aircraft purposes. Burdening the remainder tract with a ROFR for which nothing was paid was outrageous by any standard. The 2016 fire sale transaction might have obviated the need for the Directors to actually do their job to vigorously market the Airport Tract and to achieve the best price available, but none of them believed in good faith and in the exercise of reasonable care that a fire sale of the Cooperative's "nest egg" was in the best interests of the Owners.

7.19 The Directors' expenditure of Cooperative resources to prevent the Owners from recovering their loss and to pay defense costs for the wrongdoers who occasioned the loss is adverse to the Owners and the Cooperative purposes and is beyond the Board's power.

7.20 The proposed "Amended and Superseding Agreement" is adverse to the Owners and the Cooperative purposes and is beyond the Board's power.

7.21 All of the foregoing transfers and transactions must be enjoined or, if already done, must be annulled or canceled, and all distributed funds and unencumbered title to property must be returned to the WSC's Owners. Alternatively, the Owners should recover from their unfaithful fiduciaries all amounts required to make them whole.

D. Disbursements of Cooperative Funds to/for the Benefit of Directors (Current and Former Directors)

7.22 The Board has no power to pay or reimburse attorneys' fees or other litigation expenses incurred by a Director not currently in office. Accordingly, all such disbursements are *ultra vires*.

7.23 The Board's power to pay or reimburse attorneys' fees or other litigation expenses incurred by the current Directors in advance of final disposition of the proceeding is limited. The exercise of such power is conditioned on the current Directors' strict compliance with the requirements of Section 8.104 of the Non-Profit Act. Any other payment or reimbursement is *ultra vires*.

7.24 There is no indication in the records of the WSC or otherwise that any of the current Directors have provided either the written affirmation or the written

undertaking that Section requires. Further, none of these Directors *can* fulfill the conditions precedent in Section 8.104.

7.25 All such disbursements must be enjoined or, if already done, must be annulled or canceled, and all distributed funds must be returned to the WSC's Owners. Alternatively, the Owners should recover from their unfaithful fiduciaries all amounts required to make them whole.

E. *Failure to Rescind Sham Resolution, Annul Fire Sale Transaction and Recover Loss*

7.26 The Board had – and continues to have -- a nondiscretionary duty to rescind the illegal Sham Resolution, to annul the 2016 Martin/FHH fire sale and recover from those who caused or participated in the transaction all loss and damage the Owners sustained as a result. This applies where, as here, the Directors themselves are accountable for the damage.

7.27 The Board has a nondiscretionary duty to rescind its approval of the “Amended and Superseding Agreement” and to annul any and all transfers, agreements and other acts taken in furtherance thereof.

7.28 The Directors' refusal or failure to perform such nondiscretionary duty is defalcation, which constitutes willful or intentional misconduct and a breach of each Director's duties to the Owners. The undisputed facts, Martin's clear conflict of interest and enormous personal financial benefit, the clearly fraudulent Sham Resolution and the uncontroverted opinions of the WSC's own professionals conclusively establish the Directors' liability for such breach.

7.29 Plaintiffs seek an injunction setting aside the 2016 fire sale transaction and the Board's approval of the “Amended and Superseding Agreement,” in whole or in

part, and awarding to the Owners compensation for loss or damage in connection therewith, as authorized by Section 20.002(d), Tex. Bus. Orgs. Code. Martin/FHH are barred by the doctrine of unclean hands and by the statute of limitations from seeking restoration of the amount paid in connection with the 2016 transaction. The Owners are entitled to confirmation and enforcement of a constructive trust as and to the platted hangar lots transferred in 2016 and all other of their property transferred to or for the benefit of Martin and to an offset for all amounts and benefits received by Martin/FHH in connection with the wrongfully acquired property, including, without limitation, the \$100,000 or more received from the Mairs.

7.30 Plaintiffs also seek an order enjoining any further disbursement of Cooperative funds to pay or reimburse litigation costs for the Directors and requiring that the recipient(s) of such disbursements made in the past restore all such amounts to the Cooperative.

Breach of Fiduciary Duty

7.31 As they have acknowledged in the past, the individual Defendants stand in a fiduciary capacity vis-à-vis the Owners of the WSC and owe fiduciary duties directly to them. In particular, they act as agents in connection with their management of property held in the name of the WSC for the benefit of the Owners, who are the owners of such property and the revenues it generates. As such, the Directors' actions must be fair and equitable to the Owners, the Directors must make reasonable use of the confidence placed in them by the Owners, they must act in utmost good faith and exercise the most scrupulous honesty toward the Owners, they must place the interests of the Owners ahead of their own interests and not use the advantage of their position to gain any

benefit for themselves at the expense of the Owners, and they must fully and fairly disclosed all important information to the Owners.

7.32 From the moment she got on the Board, Martin engaged in a pattern of misconduct involving the Owners' property that breached her fiduciary duties to the Owners; these are summarized above. This culminated with her acquisition of valuable platted hangar lots for pennies on the dollar, platting shenanigans that land-locked the remainder of the Airport Tract and her acceptance of a ROFR that would enable her to capitalize on the Owners' loss. Thereafter, she accepted illegal disbursements of Cooperative funds to defend her against the consequences of her misconduct. When the Board made demand on her in January 2019 to return what she had misappropriated in her fiduciary capacity, she apparently refused. She still refuses to return the Owners' property to them. Instead, she demands that they convey even more valuable airport property on the strength of the unauthorized, adverse, interested director fire sale transaction she claims the Board approved in March 2016.

7.33 The Directors who participated in, sanctioned, defended and now propose to "complete," including a full release of Martin/FHH for the consequences of their misconduct, likewise breached their duties to the Owners. Mebane and Madden, who signed the Sham Resolution, also engaged in actual and constructive fraud. Whether these Directors received financial or other benefits remains to be seen.

7.34 The Board's fiduciary duties are continuing notwithstanding periodic changes in its composition. Accordingly, the current Directors have fiduciary duties with respect to the recovery of the misappropriated hangar lots (or their value) and the extinguishment of the illegal ROFR. They have disregarded the opinions and recommendations of the professionals they engaged at the Owners' expense and are not

only refusing to annul the transfer of 3.8 acres but are using Cooperative resources to prevent the Owners' recovery of their property and other losses and to defend those whose misconduct caused the loss.

7.35 Plaintiffs seek an order to annul the illegal 2016 transaction in all respects, including confirmation and enforcement of a constructive trust and restoration of title to the hangar lots in the name of the Owners, cancellation of the ROFR and, as appropriate, recovery into the account held in the name of the Owners of all proceeds from the sale or disposition of Tract H2-A and other benefits received by Martin or FHH.

7.36 Plaintiffs further seek an order enjoining any further disbursement of funds from an account in the name of the WSC for the purpose opposing Plaintiffs' recovery or defending the individual Defendants herein, requiring that each recipient of funds in connection with litigation disgorge all such disbursements and restore such funds to the account from which they were taken, and holding the current Directors personally and individually liable for the amount of all funds not so restored. The one-satisfaction rule does not preclude the recovery of both actual damages and the equitable remedy of disgorgement, as these remedies are intended to address separate and distinct injuries.

Constructive Fraud

7.37 Constructive fraud encompasses those breaches of legal or equitable duty that the law condemns as "fraudulent" merely because they tend to deceive others, violate confidences, or cause injury to public interests, the actor's mental state being immaterial. It does not require an intent to defraud. Constructive fraud occurs when a party violates a fiduciary duty or breaches a confidential relationship.

7.38 The acts and omissions of the individual Defendants and FHH alleged above constitute constructive fraud.

7.39 Plaintiffs are entitled to recover all loss and damage occasioned by such constructive fraud and also to have such equitable relief is required to make them whole for their loss. As co-owners of the property involved in the fraud, Plaintiffs are entitled to recover the full amount of the loss for the benefit of themselves and their cotenants.

VIII.

Joint and Several Liability

8.01 Plaintiffs reallege and incorporate by reference all the foregoing allegations.

8.02 On information and belief, FHH is Martin's alter ego. It exists for no purpose other than as an instrumentality to serve her personal interests and does not have an existence separate and apart from Martin. Martin has liability for the acts and omissions of FHH.

8.03 FHH knowingly participated in and benefitted from the breaches of fiduciary duty and other misconduct by Martin and the other Directors named herein. Each of the Directors named as Defendants herein knowingly participated in and benefitted from the breaches of fiduciary duty and other misconduct by the others.

8.04 The individual Defendants and FHH are coconspirators. The Directors then in office conspired to cause the 2016 fire sale transaction and the others perpetuated it and may now claim to have ratified it. In addition, the Directors conspired to disburse Cooperative funds to each other for the benefit of themselves. Finally, certain of the individual Defendants have conspired to deprive the Owners of relief for the loss they have sustained at the hand of their unfaithful fiduciaries.

8.05 The individual Defendants and FHH are jointly and severally liable for all loss and damage resulting from the acts and omissions described above.

IX.

Exemplary Damages

9.01 Plaintiffs reallege and incorporate by reference all the foregoing allegations.

9.02 Exemplary damages may be awarded if there is clear and convincing evidence that the harm caused results from: “(1) fraud; (2) malice; or (3) wilful act or omission ...” See Tex. Civ. Prac. & Rem. Code Ann. § 41.003.

9.03 The individual Defendants and FHH behaved with malice in conspiring with each other to transfer valuable Cooperative assets and rights to a sitting Director for very little consideration in 2016, to disburse Cooperative resources to protect the transaction and to deprive the Owners of relief for the loss they have sustained at the hand of their unfaithful fiduciaries. Their actions, when viewed objectively from the standpoint of the individual Defendants and FHH at the time of such actions and their acts of civil conspiracy, involved an extreme degree of risk, considering the probability and magnitude of the potential harm to the Owners. The individual Defendants and FHH had actual, subjective awareness of the risk involved, but nevertheless proceeded with conscious indifference to the rights of the Owners. Exemplary damages are necessary to serve as a punishment for the individual Defendants and FHH and as a deterrent for others who may be inclined to engage in the same conduct.

9.04 The limitation on recovery set forth in § 41.008 does not apply because Plaintiffs seek recovery of exemplary damages based on conduct described as a felony in

Penal Code § 32.45 (misapplication of fiduciary property) that was committed knowingly or intentionally.

X.

Attorneys' Fees

10.01 Plaintiffs seek recovery from the individual Defendants and FHH of Plaintiffs' reasonable and necessary attorneys' fees and other expenses associated with this litigation as permitted by applicable law.

XI.

Conditions Precedent

11.01 All conditions precedent to Plaintiffs' right to recover herein have occurred or have been fulfilled.

WHEREFORE, premises considered, Plaintiffs respectfully pray that the additional Defendants joined hereby and herein be cited to appear and to answer and that upon final trial Plaintiffs have judgment as aforesaid and such other and further relief, at law or in equity, to which they may show themselves justly entitled.

Respectfully Submitted,

THE LAW OFFICE OF KATHRYN E. ALLEN,
PLLC
114 W. 7th St., Suite 1100
Austin, Texas 78701
(512) 495-1400 telephone
(512) 499-0094 fax

By: /s/ Kathryn E. Allen

Kathryn E. Allen
State Bar ID No. 01043100
kallen@keallenlaw.com

Attorneys for Plaintiffs/Intervenors

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document has been sent via electronic service to all lead counsel of record on this 5th day of November 2019.

/s/ Kathryn E. Allen

Kathryn E. Allen



816 Congress Avenue, Suite 1900
Austin, Texas 78701
Telephone: (512) 322-5800
Facsimile: (512) 472-0532
www.lglawfirm.com

Mr. de la Fuente's Direct Line: (512) 322-5849
Email: jdelafuente@lglawfirm.com

January 25, 2019

Via Email: mollym@abdmllaw.com

and Via USPS Regular Mail

Molly Mitchell

ALMANZA, BLACKBURN, DICKIE & MITCHELL, LLP

2301 S. Capital of Texas Highway, Bldg. H

Austin, Texas 78746

Re: Friendship Homes & Hangars, LLC purchase of real property interests
from Windermere Oaks Water Supply Corporation

Dear Molly,

I am writing to you on behalf of my client, the Windermere Oaks Water Supply Corporation ("WOWSC") in connection with real property transactions by Friendship Homes & Hangars, LLC ("Friendship Homes") relating to approximately 10.85 acres of property located on Piper Lane in Spicewood, Texas ("the property"). This letter is sent to you as counsel for Dana Martin and Friendship Homes as a matter of professional courtesy; if you contend that it should be addressed directly to Ms. Martin and/or Friendship Homes, please let me know and we will re-send it as instructed.

As you know, by a contract for sale dated January 19, 2015, closing in early 2016, and continuing until final addendum on February 16, 2017, Friendship Homes purportedly acquired two separate real property interests from WOWSC: 1) title in fee simple to approximately 3.86 acres along the west side of Piper Lane, in Spicewood, Texas, and 2) a "right of first refusal" to purchase an additional approximately 7.01 acres immediately to the west of the purchased property (collectively, "the transactions"). The total price paid by Friendship Homes to WOWSC for both interests was \$203,000.

The circumstances surrounding the transactions are problematic for several reasons.

Lloyd Gosselink Rochelle & Townsend, P.C.

January 25, 2019

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Self-interested transaction: First and foremost, the managing member of Friendship Homes is Dana Martin. At all times relevant to the transactions, Ms. Martin also was a member of the board of the seller, WOWSC. While she purportedly recused herself from the ultimate vote on a portion of the transaction on December 19, 2015, at all times she remained a member of the board, and by virtue of that office had a fiduciary duty and a duty of loyalty to WOWSC, which requires that there be no conflict between duty and self-interest.

Actions taken in violation of the Texas Open Meetings Act: As a WOWSC Board member, Ms. Martin is charged with knowledge of the requirements of the Texas Open Meetings Act, and knowing that the meeting notice for the December 19, 2015 meeting was legally insufficient, did not speak up or note for the remainder of the Board that the meeting notice did not meet the requisite legal standard. Instead, she allowed her self-interest to be paramount, so that the meeting could go forward and she could enter into a contract for sale of the property. Further, Ms. Martin was surely aware that the purported "right of first refusal" was not mentioned in the meeting notice, and thus could not be considered or acted upon by the WOWSC Board at that meeting without violating the Texas Open Meetings Act. Again, Ms. Martin allowed her self-interest to be paramount, so that the meeting could go forward and she could obtain that right of first refusal, paying no additional consideration for that real property interest. These matters have been litigated, and are the subject of a final judgment in Cause No. 47531, *TOMA Integrity, Inc. v. Windermere Oaks Water Supply Corporation*, in the 33rd District Court of Burnet County, Texas.

Actions regarding improper appraisal: Prior to the transactions, on information and belief, Ms. Martin worked with Jim Hinton to present what was purported to be an objective appraisal of the property to the WOWSC Board ("the Hinton appraisal") on or about September 1, 2015. This was done so that the WOWSC Board could consider the market value of the property and determine whether to sell the property, and under what price and other terms such transaction should be conducted.

The Hinton appraisal represented that it was intended to comply with all applicable rules and standards, and that its conclusion as to value was to be based on the "Highest and Best Use." The Hinton appraisal concluded that the present use of the property was "vacant land," and further concluded that remained the "highest and best use" for the property. The three comparable properties that were analyzed to determine the open market valuation were likewise "vacant land" properties.

Importantly, the property was (and still is) located amidst multiple hangar facilities at a private airport, Spicewood Airport, and had significant frontage on a taxiway for Spicewood Airport. In such circumstances, and considering the factors of legal permissibility, physical possibility, financial feasibility, and maximum

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productivity, the actual highest and best use of the property is for division into multiple airport hangar lots, not simply to be used as "vacant land." Notably, the Hinton appraisal did not take into account any comparable sales of hangar lots in the area. Its **improper characterization** of the highest and best use of the property, and selection of comparable properties consistent with that improper characterization, resulted in a **significant under-valuation of the property**. Upon information and belief, these defects violate applicable USPAP standards and render the Hinton **appraisal fraudulent**, and it was presented to **fraudulently induce** the WOWSC Board into taking action contrary to the best interests of WOWSC.

The WOWSC Board received the Hinton appraisal for the purpose of evaluating and conducting a potential sale of the property. On information and belief, Ms. Martin was aware of this purpose and intended use when the Hinton appraisal was provided to WOWSC. Also on information and belief, Ms. **Martin** conferred with Mr. Hinton regarding the appraisal before it was submitted to the WOWSC Board, **knew that the actual market value** of the property was **well above the value presented** in the Hinton appraisal, and failed to disclose that information to the WOWSC Board. Upon further information and belief, she was aware that the most likely buyer of the property was an enterprise that she had yet to form, Friendship Homes.

The resulting improper and unfair transactions: In reliance on the appraisal, the WOWSC Board elected to sell approximately 3.86 acres of the property for a **price of \$203,000** to Ms. Martin's enterprise, Friendship Homes, realizing a value of just over \$52,000 per acre. In reality, based on the proper highest and best use of airport hangar lots, the **value** of the 3.86 acres of the property sold was **\$700,000**, yielding a true value of approximately **\$181,000 per acre**. In addition, in further reliance on the under-valuation of the property contained in the appraisal, the WOWSC Board also transferred a **"right of first refusal"** to Ms. Martin's enterprise for the remaining 7.01 acres of the property for **no additional consideration**, with that transaction being completed on February 16, 2017.

Thus, as a result, the WOWSC Board at the very least sold property with a proper **market value of \$700,000** for a price of **\$203,000**, a **difference of \$497,000**. As a result of the actions related to the Hinton appraisal, material facts as to the transaction were not disclosed to, and upon information and belief, purposefully concealed from, the WOWSC Board. The resulting transaction, being for a price **significantly lower than the proper market value at the time**, was **not fair** to WOWSC. The circumstances above would constitute a **breach of Ms. Martin's fiduciary duty** to WOWSC as a member of the WOWSC Board. Further, to the extent that the actions of Ms. Martin and Friendship Homes relating to the Hinton appraisal were committed in concert with and with the knowledge of Mr. Hinton, they may give rise to an **action for civil conspiracy**.

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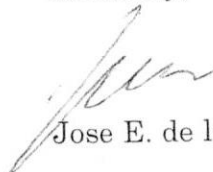
Finally, pursuant to the Unimproved Property Contract and as consideration for the transactions, Friendship Homes agreed to grant a 50-foot easement to run from Piper Lane to the west property line of the 3.86 acres that Friendship Homes acquired in fee simple. An inspection of the Burnet County property records finds no such valid and enforceable easement that has been created or granted to WOWSC, indicating that Friendship Homes has failed to perform this contract obligation. The absence of such easement significantly reduces the value of the remaining property. This works to Friendship Homes' significant advantage; absent an easement, the current market value of the remaining property is quite low, and if WOWSC attempts to sell it for its current reduced market value, Friendship Homes can execute its right of first refusal and acquire that portion of the property for a fraction of its potential value. Friendship Homes can then extend an easement through the property it currently owns, which will dramatically increase the value of the remaining property. Thus, by virtue of actions solely within Ms. Martin's and Friendship Homes' control, they will realize a significant appreciation in value on the property which value properly belongs to WOWSC.

This letter is the WOWSC's Board's notice and demand that you 1) preserve all documents, correspondence, records, and communications (including emails, text messages, and phone records) that you have had with Mr. Hinton or with any past or current member of the WOWSC Board regarding the property, the Hinton appraisal, or the transactions, and 2) to meet and confer promptly with WOWSC through its legal counsel to discuss WOWSC's claims against Ms. Martin and Friendship Homes, and a proper resolution thereof.

Please reply in writing indicating that you understand WOWSC's demands and will preserve all information described above, and will agree to meet and confer with WOWSC through its legal counsel within the next thirty days. In the event that you fail to do so, WOWSC will have no choice but to pursue all available avenues of relief, including pursuing litigation against Ms. Martin and Friendship Homes.

We look forward to your prompt response to this correspondence.

Sincerely,



Jose E. de la Fuente

JEF:cad

TRACT H ON PIPER LANE

4.3839 ACRES OUT OF THE MARIA SALINAS SURVEY NO. 17, BURNET COUNTY, TEXAS

STATE OF TEXAS: COUNTY OF BURNET: KNOW ALL MEN BY THESE PRESENTS: That Windermere Oaks Water Supply Corporation (WOWSC), being the owner of 4.3839 acres of land (more or less) out of the Maria Salinas Survey No. 17, Burnet County, Texas, part of a 7.0255 acre tract conveyed to WOWSC by deed, recorded in Volume 752, Page 199, Burnet County Deed Records, does hereby dedicate this plat of said 4.3839 acres as shown hereon, and does hereby adopt this plat to be known as "TRACT H ON PIPER LANE" as the official plat on same, acting by and through WOWSC President, Robert Mebane.

WITNESS MY HAND this 3 day of MARCH 2016. Robert Mebane, President
424 Coventry Road
Spicewood, TX 78669

STATE OF TEXAS: COUNTY OF BURNET: Before me, the undersigned Notary Public in and for said County and State, on this day personally appeared Robert Mebane, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged that she executed same for the purposes and consideration therein expressed and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 3rd day of March 2016.
KARRI GIBSON
Notary Public in and for the State of Texas
My Commission Expires March 20, 2020

STATE OF TEXAS: COUNTY OF BURNET: The attached plat of a 4.3839 acre portion of the Maria Salinas Survey No. 17, Burnet County, Texas, known as "TRACT H ON PIPER LANE" was found to comply with the statutes and laws of the State of Texas and was approved for filing thereof in the Plat Records of Burnet County, Texas.

TO CERTIFY WHICH, the undersigned as County Judge of Burnet County, Texas, this ____ day of _____, 2016.

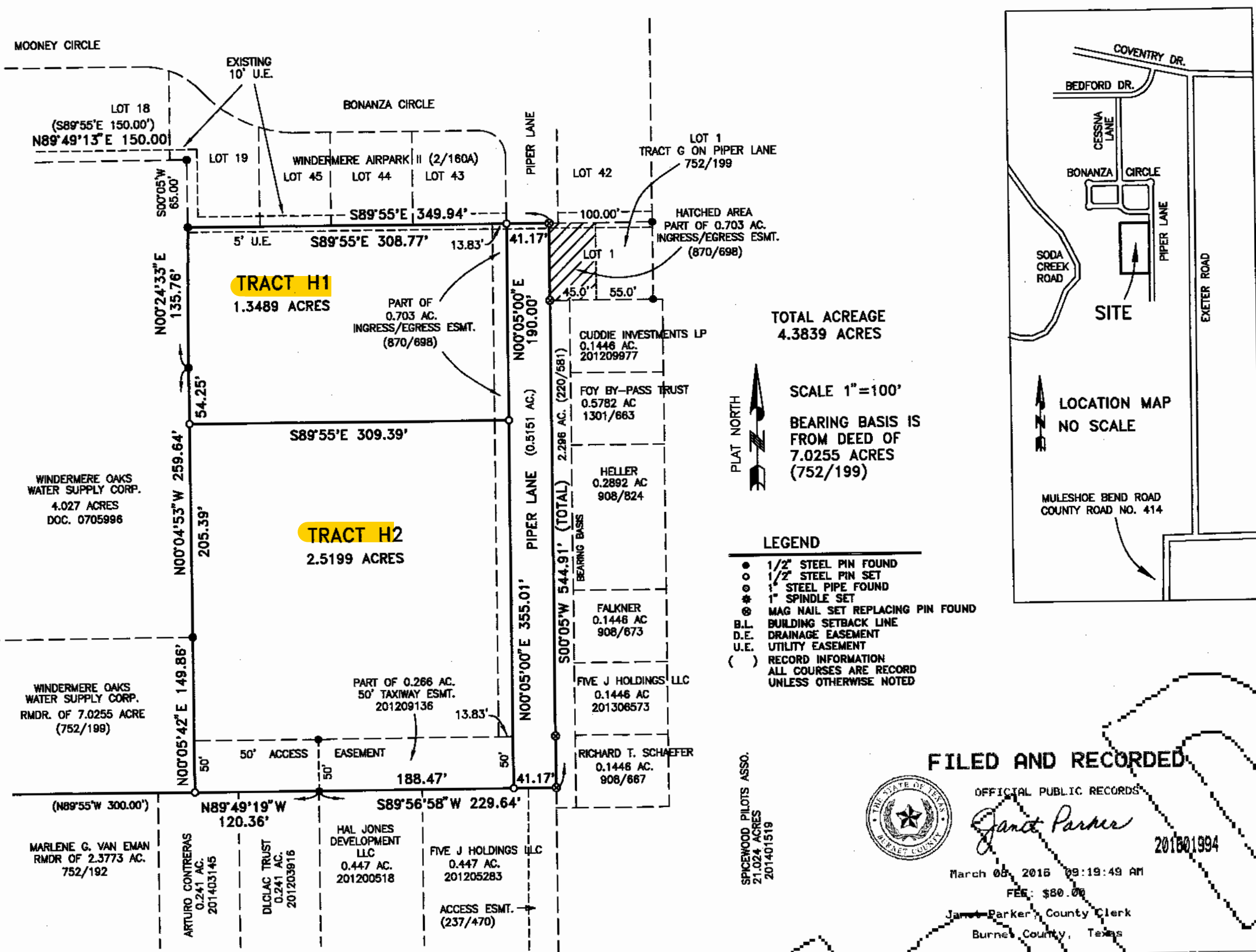
ATTEST: James Oakley, County Judge, Burnet County, Texas
Janet Parker, County Clerk, Burnet County, Texas

STATE OF TEXAS: COUNTY OF BURNET: I, Janet Parker, County Clerk of County Court of said County, do hereby certify that the foregoing instrument with Certificate of Authentication was filed for record on this ____ day of _____ 2016, at ____ o'clock ____ M. in Volume ____ Page ____ of the Burnet County Plat Records.

WITNESS MY HAND AND OFFICIAL SEAL this ____ day of _____ 2016:

Janet Parker, County Clerk, Burnet County, Texas

- NOTES:
1. EACH DWELLING CONSTRUCTED OR PLACED ON THIS SUBDIVISION SHALL BE CONNECTED TO A SEWAGE AND WASTEWATER DISPOSAL FACILITY MEETING THE SPECIFICATIONS AND REQUIREMENTS OF THE STATE HEALTH DEPARTMENT.
 2. CENTRAL WATER AND CENTRAL SEWER IS PROVIDED BY WINDERMERE OAKS WATER SUPPLY CORPORATION. THE COUNTY SHALL NOT BE RESPONSIBLE FOR THE QUANTITY OR QUALITY OF A RELIABLE WATER SOURCE.
 3. GARBAGE PICKUP IS AVAILABLE BY A COMMERCIAL FIRM.
 4. IN APPROVAL OF THIS PLAT BY THE COMMISSIONER'S COURT OF BURNET COUNTY, TEXAS, IT IS UNDERSTOOD THAT BUILDING AND MAINTENANCE OF ALL STREETS, ROADS AND OTHER PUBLIC THOROUGHFARES DELINEATED AND SHOWN ON THIS PLAT, AND BRIDGES AND CULVERTS NECESSARY TO BE CONSTRUCTED OR PLACED IN SUCH STREETS, ROADS AND OTHER THOROUGHFARES OR IN CONNECTION THEREWITH SHALL BE THE RESPONSIBILITY OF THE PROPERTY OWNERS OR DEVELOPERS OF THE TRACT OF LAND COVERED BY THIS PLAT ACCORDING TO THE PLANS AND SPECIFICATIONS PRESCRIBED BY THE COMMISSIONER'S COURT OF BURNET COUNTY, TEXAS. THE COUNTY SHALL NOT ACCEPT ALL OR A PORTION OF THE ROADS IN THIS SUBDIVISION FOR MAINTENANCE.
 5. THIS PLAT WAS PREPARED IN CONFORMANCE WITH THE BURNET COUNTY SUBDIVISION REGULATIONS DATED JANUARY 28, 2002.
 6. THIS TRACT IS NOT WITHIN THE 100-YEAR FLOODPLAIN AS SHOWN ON THE FEDERAL FLOOD INSURANCE RATE MAP NO. 48053C 0705 F, DATED 3-15-2012.
 7. LCRA DEVELOPMENT PLAT NOTE: ALL PROPERTY HEREIN IS SUBJECT TO THE LOWER COLORADO RIVER AUTHORITY'S HIGHLAND LAKES WATERSHED ORDINANCE. WRITTEN NOTIFICATION AND/OR PERMITS ARE REQUIRED PRIOR TO COMMENCING ANY DEVELOPMENT ACTIVITIES. CONTACT LCRA WATERSHED MANAGEMENT AT 1-800-776-5272, EXTENSION 2324 FOR MORE INFORMATION.
 8. BURNET COUNTY IS NOT OBLIGATED TO ISSUE BUILDING OR OTHER ON-SITE PERMITS FOR ANY RESIDENTIAL DWELLING CONSTRUCTED OR PLACED IN THIS SUBDIVISION UNTIL A T.E.C.Q. CERTIFIED POTABLE WATER TREATMENT PLANT WITH SUFFICIENT CAPACITY TO MEET THE DEMANDS OF THIS SUBDIVISION IS IN PLACE, OPERABLE AND APPROVED BY T.E.C.Q. FOR THE PROVISION OF POTABLE WATER DELIVERY.
 9. NO PORTION OF THIS SUBDIVISION LIES WITHIN THE EXTRATERRITORIAL JURISDICTION OF A MUNICIPALITY.
 10. ELECTRICAL SERVICE WILL BE PROVIDED BY PEDERNALES ELECTRIC COOP.
 11. TELEPHONE SERVICE WILL BE PROVIDED BY VERIZON.



FILED AND RECORDED
OFFICIAL PUBLIC RECORDS
March 08, 2016 09:19:49 AM
FEE: \$80.00
Janet Parker, County Clerk
Burnet County, Texas

STATE OF TEXAS: COUNTY OF BURNET: The attached plat to be known as "TRACT H ON PIPER LANE" was found to comply with the statutes and laws of the State of Texas and was approved for filing in the Plat Records of Burnet County, Texas.

TO CERTIFY WHICH, THE UNDERSIGNED AS COUNTY JUDGE OF BURNET COUNTY, TEXAS
THIS 8th DAY OF March 2016

APPROVED BY:
Joe Don Dockery, County Commissioner,
Precinct 4, Burnet County, Texas

James Oakley, County Judge
Burnet County, Texas

STATE OF TEXAS: COUNTY OF BURNET: I, Stuart Watson, a Registered Professional Land Surveyor in the State of Texas, do hereby certify that this plat of "TRACT H ON PIPER LANE" was prepared from an actual survey made on the ground under my supervision, and that said plat is a true and correct representation of same as I located its component parts on the ground.

WITNESS MY HAND AND OFFICIAL SEAL this 23 day of FEBRUARY 2016:

WATSON SURVEYING
9501 CAPITAL OF TEXAS HWY.
SUITE 303 AUSTIN TX 78759
346-8566 FAX 346-8568

Stuart Watson
Stuart Watson, R.P.L.S. No. 4550





NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

37112/STC

WARRANTY DEED

DATE: March 11, 2016

GRANTOR: WINDERMERE OAKS WATER SUPPLY CORPORATION,
A Texas Corporation,

GRANTOR'S MAILING ADDRESS: 424 COVENTRY RD., SPICEWOOD, TX, 78669

GRANTEE: FRIENDSHIP HOMES & HANGARS, LLC

GRANTEE'S MAILING ADDRESS: 424 COVENTRY ROAD, SPICEWOOD, TX,
78669

CONSIDERATION: TEN AND NO/100 (\$10.00) DOLLARS, and other valuable consideration paid to Grantor, and the receipt of which is hereby duly acknowledged and for which no lien either express or implied is herein retained, has granted sold and conveyed by these presents does hereby grant, sell and convey to the grantee all of the following tracts or parcels of land, to-wit:

PROPERTY (including any improvements): Being Tract H1, of Tract H on Piper Lane, a subdivision in Burnet County, Texas, according to the Plat recorded in Clerk's Document No. 201601994, Official Public Records of Burnet County, Texas.

RESERVATIONS FROM AND EXCEPTIONS TO CONVEYANCE AND WARRANTY:

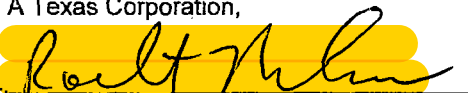
1. The property shall not be used for any type of helicopter use.
2. Any and all restrictions, covenants, conditions, assessments, reservations and easements, if any, relating to the hereinabove described property, but only to the extent they are still in effect, shown of record in the herein mentioned County and State, and to all zoning laws, regulations and ordinances of municipal and/or other governmental authorities, if any, but only to the extent that they are still in effect, relating to the herein

described property.

Grantor, for the consideration and subject to the reservations from and exceptions to conveyance and warranty, grants, sells, and conveys to Grantee the property, together with all and singular the rights and appurtenances thereto in any wise belonging, to have and hold it to Grantee, Grantee's heirs, executors, administrators, successors, or assigns forever. Grantor binds Grantor and Grantor's heirs, executors, administrators, and successors to warrant and forever defend all and singular the property to Grantee and Grantee's heirs, executors, administrators, successors and assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof, except as to the reservations from and exceptions to conveyance and warranty.

When the context requires, singular nouns and pronouns include the plural.

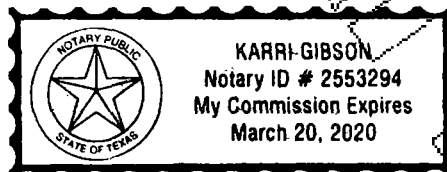
WINDERMERE OAKS WATER SUPPLY CORPORATION
A Texas Corporation,


By: Robert Mebane, President

STATE OF TEXAS

COUNTY OF BURNET

This instrument was acknowledged before me on the 13th day of March, 2016, by Robert Mebane, President of WINDERMERE OAKS WATER SUPPLY CORPORATION, a Texas Corporation.




Notary Public, State of Texas

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FILED AND RECORDED
OFFICIAL PUBLIC RECORDS


Janet Parker, County Clerk

Burnet County Texas

5/4/2016 4:08:36 PM

FEE: \$20.00

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201604126



NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS - YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

GF NO. 37112 STC

WARRANTY DEED WITH VENDOR'S LIEN
(Vendor's Lien Reserved and Assigned to Third Party Lender)

THE STATE OF TEXAS

COUNTY OF BURNET

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KNOW ALL MEN BY THESE PRESENTS:

THAT THE UNDERSIGNED, WINDERMERE OAKS WATER SUPPLY CORPORATION, a Texas Corporation, hereinafter called "Grantor", whether one or more, for and in consideration of the sum of TEN DOLLARS (\$10.00) and other valuable consideration to the undersigned in hand paid by the Grantee herein named, the receipt of which is hereby acknowledged, and the further consideration of the execution and delivery by the Grantee of that one certain promissory note of even date herewith in the principal sum of Two Hundred Thousand and 00/100 (\$200,000.00) Dollars, payable to the order of ANNE MCCLURE WHIDDEN TRUST, as therein specified, providing for acceleration of maturity and for attorney's fees, the payment of which note is secured by the vendor's lien herein retained, and is additionally secured by a deed of trust of even date herewith to MARK E. MCCLURE, TRUSTEE, has GRANTED, SOLD AND CONVEYED, and by these presents does GRANT, SELL AND CONVEY unto FRIENDSHIP HOMES & HANGARS, LLC, herein referred to as the "Grantee", whether one or more, the real property described as follows, to-wit:

Being **Tract H2**, of **Tract H on Piper Lane**, a subdivision in Burnet County, Texas, according to the **Plat** recorded in Clerk's **Document No. 201601994**, Official Public Records of Burnet County, Texas.

This conveyance, however, is made and accepted subject to:

1. The Property shall be not used for any type of helicopter use.
2. Grantor retains a **Fifty Foot (50') access easement** over and across the West Property Line of Tract H2 as shown by plat recorded in Clerk's Document No. 201601994, Official Public Records of Burnet County, Texas.
3. Any and all restrictions, encumbrances, easements, covenants and conditions, if any, relating to the hereinabove described property as the same are filed for record in the County Clerk's Office of Burnet County, Texas.

TO HAVE AND TO HOLD the above described premises, together with all and singular the rights and appurtenances thereto in anywise belonging, unto the said Grantee, Grantee's heirs, executors, administrators, successors and/or assigns forever; and Grantor does hereby bind Grantor and Grantor's heirs, executors, administrators, successors and/or assigns to **WARRANT AND FOREVER DEFEND** all and singular the said premises unto the said Grantee, Grantee's heirs, executors, administrators, successors and/or assigns, against every person whomsoever claiming or to claim the same or any part thereof.

But it is expressly agreed that the Vendor's Lien, as well as Superior Title in and to the above described premises, is retained against the above described property, premises and improvements until the above described note and all interest thereon are fully paid according to the face, tenor, effect and reading thereof, when this Deed shall become absolute. That ANNE MCCLURE WHIDDEN TRUST ("Lender"), at the instance and request of the Grantee herein, having advanced and paid in cash to the Grantor herein that portion of the purchase price of the herein described property as is evidenced by the hereinabove described Note, the Vendor's Lien, together with the Superior Title to said property, is retained herein for the benefit of said Lender and the same are hereby TRANSFERRED AND ASSIGNED to said Lender, its successors and assigns.

EXECUTED this 11th day of March, 2016.

WINDERMERE OAKS WATER SUPPLY CORPORATION
a Texas Corporation

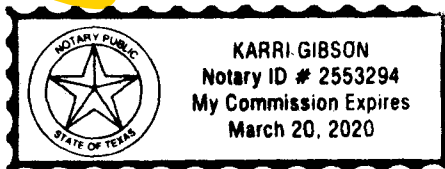

By: Robert Mebane, President

Grantee's Address:
424 COVENTRY ROAD
SPICEWOOD, TX 78669

STATE OF TEXAS

COUNTY OF BURNET

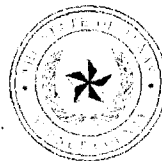
The foregoing instrument was acknowledged before me on the 13th day of March, 2016, by Robert Mebane, President of Windermere Oaks Water Supply Corporation, a Texas Corporation.




NOTARY PUBLIC, STATE OF TEXAS

FILED AND RECORDED

OFFICIAL PUBLIC RECORDS





201602256

March 14, 2016 03:49:01 PM

FEE: \$20.00

Janet Parker, County Clerk

Burnet County, Texas

OPTION AND RIGHT OF FIRST REFUSAL AGREEMENT

THE STATE OF TEXAS

COUNTY OF BURNET

KNOW ALL MEN BY THESE PRESENTS:

This agreement is entered, executed and made this 10th day of March, 2016, at Marble Falls, Burnet County, Texas by Windermere Oaks Water Supply Corporation, Grantor and Friendship Homes & Hangars, LLC, Grantee.

WHEREAS, Grantor is the owner of certain real property located in Burnet County, Texas, hereinafter referred to as "the property" and being described as follows:

Tract I: Being the remainder of the 7.0255 acres tract located in the Maria Salinas Survey No. 17, in Burnet County, Texas, currently owned by Windermere Oaks Water Supply Corporation.

Tract II: Being a 4.027 acres tract located in the Maria Salinas Survey No. 17, in Burnet County, Texas, currently owned by Windermere Oaks Water Supply Corporation.

WHEREAS, Grantor has agreed and wishes to grant to Grantee a exclusive right of first refusal in connection with the hereinabove described real property, without Grantee becoming obligated to purchase said property;

THEREFORE IT IS AGREED AS FOLLOWS:

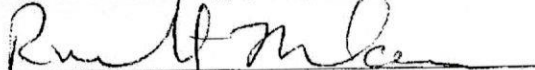
1. In consideration of Ten Dollars (\$10.00) and other valuable consideration, the receipt of which is hereby acknowledged, Grantor hereby grants to Grantee the exclusive right and option of first refusal in the event Grantor, his heirs or assigns ever sells the property described herein.
2. In the event Grantor, his heirs or assigns should enter into any agreement or contract to sell part or all of the property herein described, Grantor shall notify Grantee, his heirs or assigns in writing by certified mail, to the address shown for Grantee hereinafter, or to such address as Grantee may designate to Grantor in writing, the complete terms and conditions of the agreement or contract of sale. Grantee shall have 10 days from receipt of such notice of sale, to advise Grantor if Grantee elects to exercise this exclusive right of first refusal. In the event Grantee elects to exercise his rights herein, Grantee shall notify Grantor by certified mail within the said 10 day period, and shall then proceed to close the transaction under the terms and conditions of the existing agreement or contract of sale. Should the Grantee elect not to exercise his first right of refusal, he shall so notify Grantor, and Grantor shall thereafter be free to proceed under the terms and conditions of the original offer of purchase and have no further obligations under this agreement to Grantee. In the event Grantee fails to advise Grantor of his intentions within the 10 day period, Grantee shall be deemed to have waived all rights under this agreement, and Grantor shall have no further obligations to Grantee and may proceed to close the transaction without any further notice or obligation to Grantee.
3. Grantor and Grantee agree to record a memorandum of this agreement in the Official Public Records of Burnet County, Texas. The intent of this agreement is to grant Grantee

the right and option to purchase the property should Grantor ever decide to sell or transfer same.

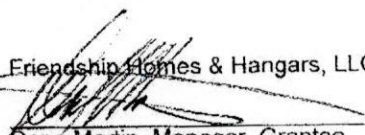
4. This right of first refusal shall remain in effect so long as Grantor, his successors or assigns shall hold title to the herein described real property, or at the end of 20 years from the date hereof, whichever shall first occur.

EXECUTED THIS 10th DAY OF MARCH, 2016.

Windermere Oaks Water Supply Corporation

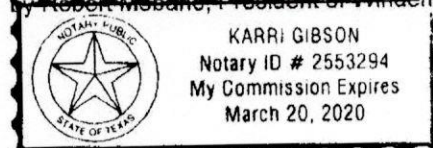

Robert Mebane, President, Grantor

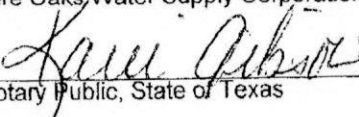
Friendship Homes & Hangars, LLC


Dana Martin, Manager, Grantee

STATE OF TEXAS
COUNTY OF BURNET

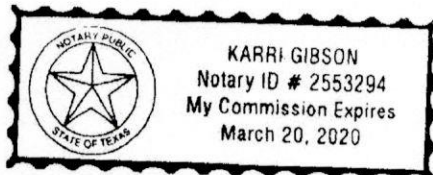
This instrument was acknowledged before me on the 13th day of March, 2016
by Robert Mebane, President of Windermere Oaks Water Supply Corporation.

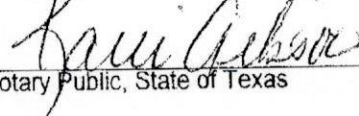



Notary Public, State of Texas

STATE OF TEXAS
COUNTY OF BURNET

This instrument was acknowledged before me on the 13th day of March, 2016
by Dana Martin, Manager of Friendship Homes & Hangars, LLC.




Notary Public, State of Texas



NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS - YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

GF NO. 38818 STC

WARRANTY DEED WITH VENDOR'S LIEN
(Vendor's Lien Reserved and Assigned to Third Party Lender)

THE STATE OF TEXAS
COUNTY OF BURNET

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KNOW ALL MEN BY THESE PRESENTS:

THAT THE UNDERSIGNED, **FRIENDSHIP HOMES & HANGARS, LLC**, a Texas limited liability company, hereinafter called "Grantor", whether one or more, for and in consideration of the sum of TEN DOLLARS (\$10.00) and other valuable consideration to the undersigned in hand paid by the Grantee herein named, the receipt of which is hereby acknowledged, and the further consideration of the execution and delivery by the Grantee of that one certain promissory note of even date herewith in the principal sum of One Hundred Thousand and 00/100 (\$100,000.00) Dollars, payable to the order of THE ANNE MCCLURE WHIDDEN TRUST, as therein specified, providing for acceleration of maturity and for attorney's fees, the payment of which note is secured by the vendor's lien herein retained, and is additionally secured by a deed of trust of even date herewith to MARK MCCLURE, TRUSTEE, has GRANTED, SOLD AND CONVEYED, and by these presents does GRANT, SELL AND CONVEY unto JOHANN **MAIR** and MICHAEL MAIR, herein referred to as the "Grantee", whether one or more, the real property described as follows, to-wit:

Being **Tract H2-A, Replat** of Tract H1 and H2, Tract H on Piper Lane, a subdivision in Burnet County, Texas, according to the Plat recorded in Clerk's Document No. 201700783, Official Public Records of Burnet County, Texas.

Grantor reserves unto itself, its successors and/or assigns the right to use the Non-exclusive road and taxiway easement over and across Tract H2-A.

Grantee, its successors and assigns are obligated to pay all Class "A" dues and Assessments in the Spicewood Pilot's Association, Inc., a Texas non-profit Corporation, including enforcement of Class "B" Membership on Grantee's tenants. Membership in the Spicewood Pilot's Association entitles members the easement of enjoyment as well as an easement of ingress and egress in, to and over Spicewood Pilot's Association Common Area and Facilities. Furthermore, no helicopters shall ever be allowed to be kept or used on said property being purchased.

This conveyance is made and accepted subject to any and all restrictions, encumbrances, easements, covenants and conditions, if any, relating to the hereinabove described property as the same are filed for record in the County Clerk's Office of Burnet County, Texas.

TO HAVE AND TO HOLD the above described premises, together with all and singular the rights and appurtenances thereto in anywise belonging, unto the said Grantee, Grantee's heirs, executors,

administrators, successors and/or assigns forever; and Grantor does hereby bind Grantor and Grantor's heirs, executors, administrators, successors and/or assigns to WARRANT AND FOREVER DEFEND all and singular the said premises unto the said Grantee, Grantee's heirs, executors, administrators, successors and/or assigns, against every person whomsoever claiming or to claim the same or any part thereof.

But it is expressly agreed that the Vendor's Lien, as well as Superior Title in and to the above described premises, is retained against the above described property, premises and improvements until the above described note and all interest thereon are fully paid according to the face, tenor, effect and reading thereof, when this Deed shall become absolute. That THE ANNE MCCLURE WHIDDEN TRUST ("Lender"), at the instance and request of the Grantee herein, having advanced and paid in cash to the Grantor herein that portion of the purchase price of the herein described property as is evidenced by the hereinabove described Note, the Vendor's Lien, together with the Superior Title to said property, is retained herein for the benefit of said Lender and the same are hereby TRANSFERRED AND ASSIGNED to said Lender, its successors and assigns.

EXECUTED this 3rd day of April, 2017

FRIENDSHIP HOMES & HANGARS, LLC
a Texas limited liability company,

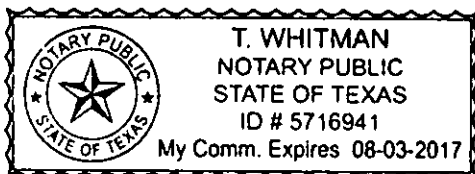

Dana Martin, Manager

Grantee's Address:
3710 MASTER COURT
LEAGUE CITY, TX 77573

STATE OF TEXAS

COUNTY OF BURKET

The foregoing instrument was acknowledged before me on the 3rd day of April, 2017, by Dana Martin, Manager of Friendship Homes & Hangars, LLC., a Texas limited liability company.




NOTARY PUBLIC, STATE OF TEXAS



FILED AND RECORDED
OFFICIAL PUBLIC RECORDS

Janet Parker

Janet Parker, County Clerk

Burnet County Texas

4/3/2017 3:53:01 PM

FEE: \$20.00

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