

Cause No. D-1-GV-09-001140

| | | |
|-------------------------|---|-------------------------------------|
| STATE OF TEXAS, | § | IN THE DISTRICT COURT |
| | § | |
| Plaintiff, | § | |
| | § | |
| v. | § | TRAVIS COUNTY, TEXAS |
| | § | |
| GARTH D. HERRO, et al., | § | |
| | § | |
| Defendants. | § | 345 th JUDICIAL DISTRICT |

**STATE OF TEXAS’S MOTION FOR CONTEMPT
AGAINST GARTH D. HERRO AND JOSEPHINE HERRO**

TO THE HONORABLE JUDGE OF THE COURT:

The State of Texas (“State”), by and through its Attorney General, Greg Abbott, on behalf of the people of Texas, files this Motion for Contempt against Garth D. Herro, Sr., and Josephine Herro because of their failure and refusal to obey the Court’s Agreed Final Judgment, signed and entered in case on April 4, 2012. The State requests that the Defendants be incarcerated in the Travis County jail until they purge themselves of their contempt of court.

I.

The State of Texas filed this action to enforce the Texas Local Government Code, Chapter 232, Subchapter B (“Subchapter B”) and the Texas Water Code, Chapter 16, against Garth D. Herro, Sr. and Josephine Herro (“the Defendants”). The Defendants owned lots in an unrecorded subdivision called “Country Club Estates West” (“the Subdivision”). The Defendants sold Lots 24, 25, 26, and 27 in Block 2 of the Subdivision to Luis Demetrio DeLeon for residential use (the “DeLeon Lots”). These lots, when sold by the Defendants for residential use, lacked the water supply and sewage disposal facilities required by the above statutes. After investigation, the State filed suit against the Defendants on June 19, 2009 for violating the Texas Local Government Code by (a) selling lots in a subdivision that was not legally platted; (b)

failing to install or bond sewage services in the lots; and (c) failing to install or bond for water services in the lots. The Defendants resolved the State's claims by consenting to the judgment that is the subject of this contempt motion.

II.

On April 4, 2012, the Court signed and entered an Agreed Final Judgment containing mandatory and prohibitive injunctive relief directed to and binding on the Defendants. A true and correct copy of the Agreed Final Judgment is attached hereto and is incorporated herein as Attachment 1. The Agreed Final Judgment was signed by the counsel of record for the Defendants, and it was signed by Garth D. Herro and Josephine Herro individually. By signing the Agreed Final Judgment, the Defendants individually and expressly represented to the Court the following:

- They understood the terms of the injunction;
- They were aware of the duties imposed by the injunction;
- They were capable of carrying out the duties imposed by the injunction in full;
- Their agreement to the injunction was not a result of duress;
- The injunction was sufficiently detailed and specific to be enforceable by the Court.¹

III.

The Defendants are in contempt of court by their willful, continuing violation of paragraph 7.1 of the Agreed Final Judgment, which provides:

Defendants shall immediately forgive the remaining debt that Luis Demetrio DeLeon owes to Defendants for his purchase of the DeLeon Lots. Defendants shall immediately execute and deliver to DeLeon and file in the appropriate Nueces County records a release of vendors' lien for those lots.²

The State is prepared to show that, as of the filing of this Motion for Contempt, Defendants have failed to execute and deliver to Mr. DeLeon and file in the appropriate Nueces County records a release of vendors' lien for the DeLeon Lots, defined in the Agreed Final

¹ Attachment 1 (Agreed Final Judgment) at ¶ 1.

² *Id.* at ¶ 7.1.

Judgment as Lots 24, 25, 26, and 27 in Block 2 of the Subdivision.³ Moreover, after the Court signed and entered the Agreed Final Judgment on April 4, 2012, Luis DeLeon inadvertently made two additional payments to the Defendants for the purchase of the lots.⁴ Despite being ordered to immediately forgive the remaining debt of Mr. DeLeon, Defendants have failed to reimburse him for these inadvertent post-judgment payments. This willful and continuing violation shows the Defendants' contempt for the Court's Paragraph 7.1 injunction.

IV.

The Defendants are in contempt of court by their willful, continuing violation of paragraph 7.2 of the Agreed Final Judgment, which provides:

Defendants shall pay \$11,000 (Eleven Thousand Dollars) to Luis Demetrio DeLeon and Romelia DeLeon jointly for the purpose of installing proper water supply and/or sewage disposal facilities on Lots 24 and 25 of the DeLeon Lots. Defendants are jointly and severally liable for this amount. Defendants shall pay this amount in no more than 18 consecutive monthly payments. The first such payment shall be made no later than 30 days from the effective date of this judgment.⁵

Defendants were required to make the first of the 18 payments by May 4, 2012, with the remaining payments to follow in consecutive months thereafter. As of the filing of this Motion for Contempt, Defendants have made no payments to Mr. DeLeon for installment of water supply and wastewater treatment.⁶ This willful and continuing violation shows the Defendants' contempt for the Court's Paragraph 7.2 injunction.

V.

Texas Rule of Civil Procedure 692 sets forth the procedure for punishment for contempt of court. The rule states that a judge may issue a show-cause order requiring a person to appear

³ Attachment 2 (Affidavit of Luis DeLeon) at ¶ 6.

⁴ *Id.* at ¶¶ 4-5.

⁵ Attachment 1 (Agreed Final Judgment) at ¶ 7.2.

⁶ Attachment 2 (Affidavit of Luis DeLeon) at ¶ 7.

on such date as may be designated and show cause as to why he and/or she should not be adjudged in contempt of court. On return of such show-cause order, the judge shall proceed to hear proof, and, if satisfied that such person has disobeyed the injunction directly or indirectly, may commit such person to jail, without bail, until the contemnor purges him or herself of such contempt, in such a manner and form as the judge may direct.

Furthermore, Section 21.002(b) of the Texas Government Code provides that the punishment for contempt of an order of this Court is a fine of not more than \$500 or confinement in the county jail for not more than six months, or both a fine and confinement in jail.

PRAYER

Because Garth D. Herro and Josephine Herro continue to refuse to obey the orders of the Court contained in the Agreed Final Judgment, the State of Texas moves for contempt and seeks to have each Defendant held in contempt of court and sanctioned in accordance with Texas Rule of Civil Procedure 692.

ACCORDINGLY, the State requests the following:

1. That Garth D. Herro and Josephine Herro be ordered to appear before the Court at a designated date and time and show cause as to why they should not be held in contempt for violations of the court orders contained in the April 4, 2012 Agreed Final Judgment, as alleged in this Motion;

2. That, upon hearing, Garth D. Herro and Josephine Herro each be found in contempt of court and each be sanctioned in accordance with the requirements of Texas Rule of Civil Procedure 692. The State specifically requests that the Defendants be incarcerated in the Travis County jail until such time as they purge themselves of their contempt;

3. That, upon hearing, the Court issue such additional orders as may be appropriate and necessary to enforce the April 4, 2012 Agreed Final Judgment; and
4. That the State be granted such further relief to which it may be entitled.

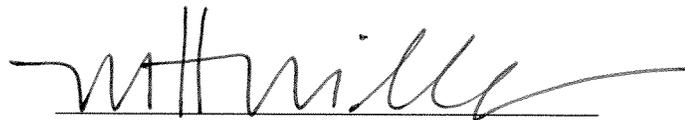
Respectfully submitted,

GREG ABBOTT
Attorney General of Texas

DANIEL T. HODGE
First Assistant Attorney General

JOHN B. SCOTT
Deputy Attorney General for Civil Litigation

JON NIERMANN
Chief, Environmental Protection Division



MATTHEW B. MILLER
Assistant Attorney General
State Bar No. 24074722
Office of the Attorney General
Environmental Protection Division
P.O. Box 12548, MC-018
Austin, Texas 78711-2548
Phone: (512) 463-2012
Fax: (512) 320-0911
Email: matt.miller@texasattorneygeneral.gov

ATTORNEYS FOR THE STATE OF TEXAS

ATTACHMENT 1

Agreed Final Judgment

No. D-1-GV-09-001140

STATE OF TEXAS,
Plaintiff

§
§
§
§
§
§

THE DISTRICT COURT OF
TRAVIS COUNTY, TEXAS
345th JUDICIAL DISTRICT

V.

GARTH D. HERRO, et al.,
Defendants

Filed in The District Court
of Travis County, Texas

JL APR 04 2012
At 8:50 AM.
Amalia Rodriguez-Mendoza, Clerk

AGREED FINAL JUDGMENT

On this date came plaintiff the State of Texas ("State") and defendants Garth D. Herro, Sr. and Josephine Herro ("Defendants"). The parties submitted this agreed final judgment to the Court for approval.

Stipulations

1. By the signatures below, the parties stipulated to the Court the following: that they understand the terms of this judgment; that they agree to the terms of this judgment; that the Defendants admit no liability; that the parties waive all rights of appeal from this judgment; that they actively participated in the negotiations leading up to this judgment and are well aware of the duties placed on them by it and are capable of carrying out those duties in full; that the terms of this judgment are sufficiently detailed and specific so as to be enforceable by the Court; that issuance and service of a writ of injunction as a prerequisite for the enforcement of the injunction contained in this judgment are waived; that no party agrees to this judgment as a result of duress; and that all parties waive any claims of duress that might be made.

2. Upon these stipulations and a review of this judgment, the Court has determined that this judgment is a proper resolution of the matters raised in the State's Original Petition and Request for Disclosure. The Court approves this judgment.

Jurisdiction

3. This Court has jurisdiction over the subject matter and parties to this action.

Definitions

4. The Court orders that the following definitions shall be used to implement and interpret this judgment.

"Country Club Estates West" means the unrecorded subdivision of land out of the "CASA BLANCA" Juan Jose De La Garza Montemayor et al Grant, A-221, and being out of a 219.5 acre tract as described in Volume 135, Page 572 of the Deed Records of Nueces County, Texas. An unofficial plat map of this subdivision is attached to this judgment as **Attachment A** and incorporated herein.

"Defendants" means Garth D. Herro, Sr. and Josephine Herro, individually or through agents authorized to perform acts necessary to comply with the terms of the injunction herein.

"DeLeon Lots" means the following lots in Country Club Estates West: Lots 24, 25, 26, and 27 in Block 2, as described in the January 15, 2007, Warranty Deed with Vendor's Lien between grantors Garth D. Herro, Sr. and Josephine Herro and grantee Luis Demetrio DeLeon, attached to this judgment as **Attachment B**.

"Effective date" means the date this agreed final judgment is signed by this Court.

“**Minimum state standards**” has the meaning assigned in Tex. Local Gov’t Code § 232.021, namely “the minimum standards for: (A) adequate drinking water by or under Section 16.343(b)(1), Water Code; or (B) adequate sewer facilities by or under Section 16.343(c)(1), Water Code.” In Nueces County, Texas, these minimum state standards for water supply and sewage disposal are in the county’s published Subdivision Regulations and Platting Requirements at Chapter II (“Model Subdivision Rules”), Division 2 (“Minimum Standards”), a copy of which is attached hereto as **Attachment C**.

Injunction

5. Pursuant to Tex. Local Gov’t Code § 232.037 and Tex. Water Code §§ 16.353, 16.354, Defendants are ORDERED as follows.

6. With regard to **Country Club Estates West**, Defendants shall not sell or offer to sell any land in Country Club Estates West that lacks minimum-state-standard water and sewage facilities, unless and until such facilities are either (a) actually installed on the land or (b) the installation of such facilities are provided in connection with a plat of the land approved by Nueces County pursuant to Tex. Local Gov’t Code Chapter 232, Subchapter B.

7. With regard to the **DeLeon Lots**, Defendants jointly shall do the following:

7.1. Defendants shall immediately forgive the remaining debt that Luis Demetrio DeLeon owes to Defendants for his purchase of the DeLeon Lots. Defendants shall immediately execute and deliver to DeLeon and file in the appropriate Nueces County records a release of vendors’ lien for these lots.

7.2. Defendants shall pay \$11,000 (Eleven Thousand Dollars) to Luis Demetrio DeLeon and Romelia DeLeon jointly for the purpose of installing proper water supply and/or sewage disposal facilities on Lots 24 and 25 of the DeLeon Lots. Defendants are jointly and severally liable for this amount. Defendants shall pay this amount in no more than 18 consecutive monthly payments. The first such payment shall be made no later than 30 days from the effective date of this judgment.

7.3. If Defendants determine that Luis Demetrio DeLeon and Romelia DeLeon have failed to install proper water supply and sewage disposal facilities on Lots 24 and 25 of the DeLeon Lots within a reasonable period of time after Defendants' last payment under this judgment, Defendants may request the Corpus Christi - Nueces County Public Health District to investigate for public health violations and request the Attorney General to investigate for fraud.

Attorney's Fees and Costs

8. Pursuant to Tex. Local Gov't Code § 232.037(a)(3) and Tex. Water Code § 16.354(6) the State shall recover from Defendants the amount of \$20,000 (Twenty Thousand Dollars) for the State's attorney's fees and investigation costs. However, the State waives recovery of this sum, conditioned on Defendants' timely compliance with the injunctive relief in Paragraphs 7.1 and 7.2.

9. Defendants shall reimburse the State for its costs of court in the amount of \$391.28. Defendants are jointly and severally liable for this amount. Payment shall be made by certified check, payable to The State of Texas and bearing the reference number: "AG#

09 3111672.” By no later than 10 days after the effective date of the judgment, Defendants shall deliver this check to: Division Chief, Environmental Protection Division, Office of the Texas Attorney General, P. O. Box 12548, Austin, TX 78711-2548.

10. If any payment due under this judgment is late by more than 30 days, Defendants shall pay post-judgment interest at 5.00% per annum on the entire remaining, unpaid balance due until it is fully paid.

Other Provisions

11. Since the Defendants stipulate above that they have full notice of this judgment and its contents, no writ of injunction need be issued and served on them unless so requested by the State. The State shall have such other writs and process as necessary to enforce the terms of this judgment.

12. All relief not expressly granted herein is denied. Accordingly, this judgment finally disposes of all parties and all claims.

SIGNED this 4th day of April, 2012.

Muel D. Main
DISTRICT JUDGE

AGREED AND APPROVED AS TO BOTH FORM AND SUBSTANCE:

GREG ABBOTT
Attorney General of Texas

DANIEL T. HODGE
First Assistant Attorney General

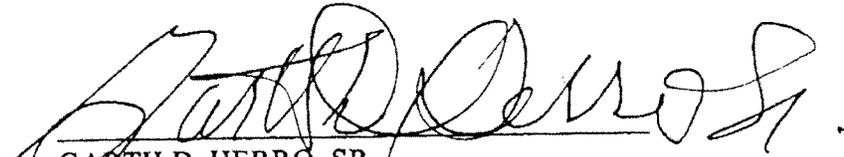
JOHN B. SCOTT
Deputy Attorney General for Civil Litigation

JON NIERMANN
Chief, Environmental Protection Division



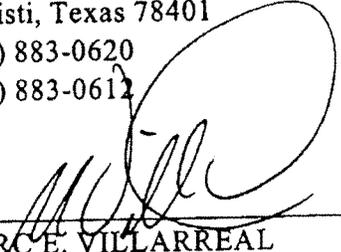
KEN CROSS
Assistant Attorney General
State Bar No. 05135800
Office of the Texas Attorney General
P.O. Box 12548
Austin, Texas 78711-2548
Tel: (512) 463-2012
Fax: (512) 320-0052
ATTORNEYS FOR PLAINTIFF,
THE STATE OF TEXAS

AGREED AND APPROVED AS TO BOTH FORM AND SUBSTANCE:


GARTH D. HERRO, SR.
Defendant


JOSEPHINE HERRO
Defendant

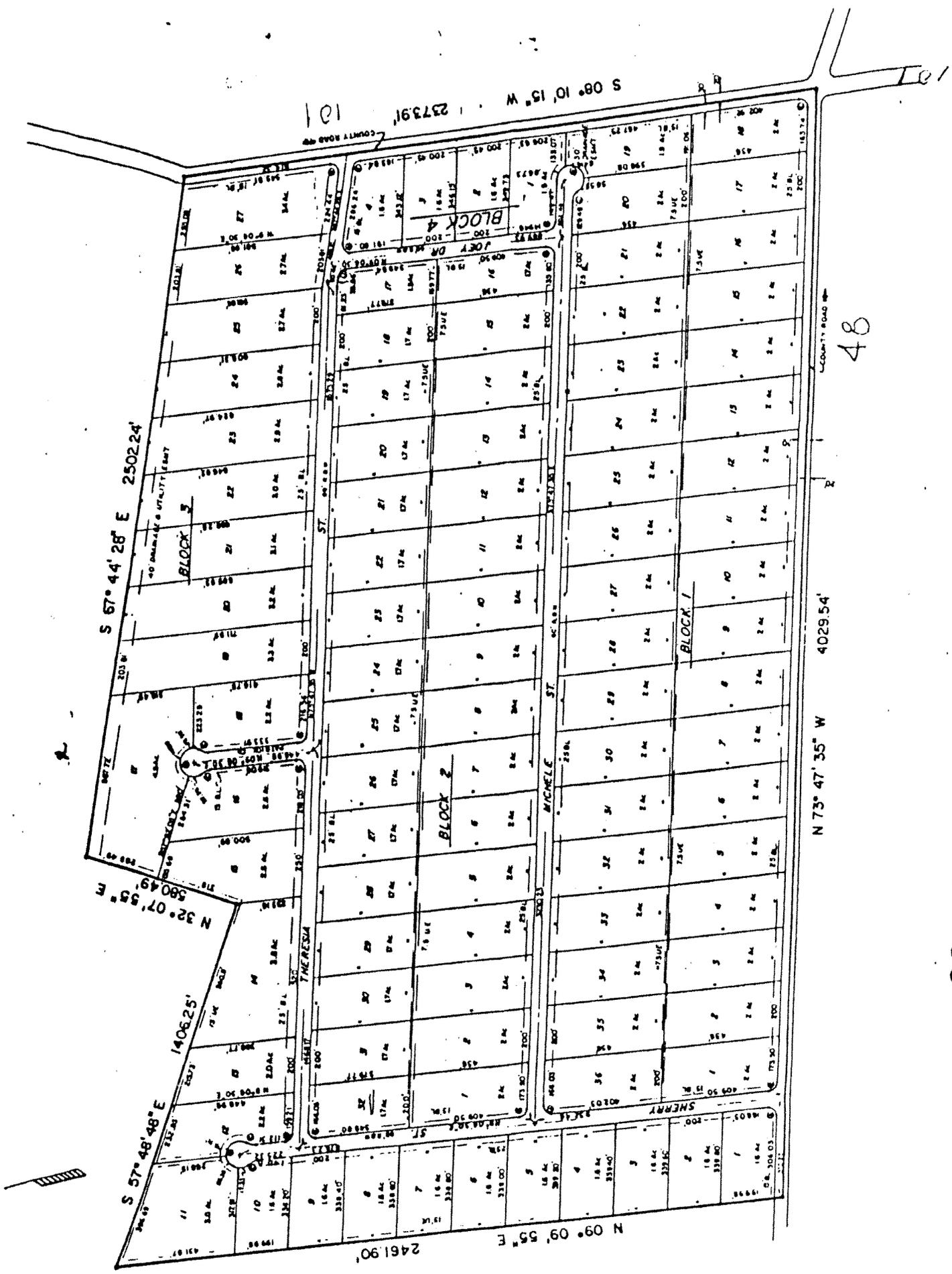
THE LAW OFFICE OF MARC E. VILLARREAL, P.C.
719 S. Shoreline Blvd., Suite 300
Corpus Christi, Texas 78401
Tel: (361) 883-0620
Fax: (361) 883-0612

By: 
MARC E. VILLARREAL
State Bar No. 00791856

ATTORNEYS FOR DEFENDANTS,
GARTH D. HERRO, SR. and JOSEPHINE HERRO

ATTACHMENT A

Country Club Estates West Unofficial Plat Map



S 67° 44' 28" E 2502.24'

N 32° 07' 55" E 580.49'

S 57° 48' 48" E 1405.25'

N 09° 09' 55" E 2461.90'

N 73° 47' 35" W 4029.54'

S 08° 10' 15" W 2373.91'

48

COUNTRY CLUB ESTATES WEST

ATTACHMENT B

Deed to DeLeon (1-15-07)

2019
6102

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OF THE FOLLOWING INFORMATION FROM THIS INSTRUMENT BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVERS LICENSE NUMBER

WARRANTY DEED WITH VENDOR'S LIEN

Date: January 15th, 2007

Grantor: Garth D. Herro Sr. and Josephine Herro
Grantors Mailing P O Box 3874
Address(including county) Corpus Christi, Tx 78463

Grantees: LUIS DEMETRIO DELEON

Grantee's Mailing Address
Including county: 13140 OGLETHORPE
CORPUS CHRISTI, TX 78410
NUECES COUNTY, TEXAS

Consideration: Ten and No/100 (\$10.00) DOLLARS, and other valuable consideration to the undersigned grantor, pad by the grantees herein named, the receipt of which is hereby acknowledged, and the further consideration of the execution and delivery by grantees of their Real Estate Lien Note of even date, in the principal sum of \$18,900.00 payable to the order of grantor and containing the usual clauses providing for acceleration of maturity and attorney's fees, the payment of which note is secured by a Deed of Trust of even date, naming Allan Lee as Trustee, with the restriction that grantees make no assignment without grantor's permission.

Property(including improvements) : Lot Twenty four(24) Block Two(2)
Lot Twenty Five(25) Block Two (2)
Lot Twenty Six (26) Block Two (2)
Lot Twenty Seven(27) Block Two (2)
COUNTRY CLUB ESTATES WEST
UNRECORDED SUBDIVISION, NUECES
COUNTY, TEXAS,described by metes and bounds
on the attached EXHIBIT A

All utility hook-ups an city and county permits are the responsibility of the Buyers. A certificated of elevation may be required and shall be the responsibility of the Buyers. Seller has made no explicit or implied representation that the property is free from flooding and that Buyers takes with the knowledge that property is subject to periodic flooding.

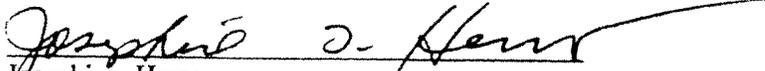
Reservations from Exception to Conveyance and warranty:

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 an singular the rights and appurtenances thereto in and wise belonging, to have and to hold it to Grantee, Grantee's heirs, executors, administrators, and successor 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 hard thereof, accept as to the reservations from and exceptions to warranty. Grantor reserves and retain to Grantor and Grantor's heirs, legal representatives, successors, and assigns and Grantee recognizes that the Property does not include, all of the oil, gas and other minerals in, on or under the tracts of land described on the attached Exhibit A.

The VENDOR'S lien against and superior title to the property are retained until each note described is fully paid according to its terms, at which time this deed shall become absolute. When the context requires, singular nouns and pronouns include the plural.

EXECUTED the 15th day of January, 2007.

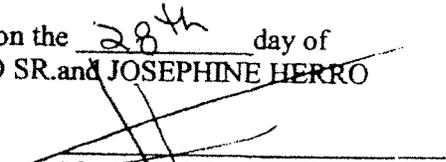

Garth D. Herro Sr.


Josephine Herro

ACKNOWLEDGMENT

State of Texas
County of Nueces

This instrument was acknowledged before me on the 28th day of March 2007 by GARTH D. HERRO SR. and JOSEPHINE HERRO


Notary Public State of Texas
My Commission expires: _____

After recording return to:
GARTH D. HERRO SR
P O BOX 3874
CORPUS CHRISTI, TX 78463

PARK TOWER • SUITE 307
710 BUFFALO ST. • BOX 16
CORPUS CHRISTI, TX 78401



OFFICE: 512 881-8044
HOME: 512 853-5554

FIELD NOTES DESCRIPTION

1.70 acres of land out of the "CASA BLANCA" Juan Jose De La Garza Montemayor et al Grant, A-221, being known as Lot 24, Block 2 of Country Club Estates West (unrecorded) Subdivision, and being out of a 219.5 acre tract as described in Volume 135, Page 572 of the Deed Records of Nueces County, Texas.

Being more fully described by metes and bounds as follows:

BEGINNING at a 5/8 inch iron rod for the common corner of Lots 9, 10, and 23 of Block 2 and for the southeast corner of this Lot 24, from which the southeast corner of said 219.5 acre tract bears S09 deg 06'30"W - 1398.69 feet and S73 deg 47'35"E - 1829.08 feet.

THENCE: N 73 deg 47' 35" W - 200.00 feet, with the north line of said Lot 9, to a 5/8 inch iron rod for the common corner of Lots 8, 9, and 25 of Block 2 and the southwest corner of this Lot 24.

THENCE: N 09 deg 06' 30" E - 379.77 feet, with the east line of said Lot 25, to a 5/8 inch iron rod in the south right-of-way line of Theresa Street, for the northeast corner of said Lot 25 and the northwest corner of this Lot 24.

THENCE: S 73 deg 47' 35" E - 200.00 feet, with the south line of said Theresa Street, to a 5/8 inch iron rod for the northwest corner of said Lot 23 and for the northeast corner of this Lot 24.

THENCE: S 09 deg 06' 30" W - 379.77 feet, with the west line of said Lot 23, to the PLACE OF BEGINNING and containing 1.70 acres of land.



August 30, 1985

J. Dale Moore

J. Dale Moore
Registered Public Surveyor
License Number 1555

Lot 24, Block 2

Exhibit A

[Signature]

PARK TOWER • SUITE 307
710 BUFFALO ST. • BOX 16
CORPUS CHRISTI, TX 78401



OFFICE: 512 861-8044
HOME: 512 853-5554

FIELD NOTES DESCRIPTION

1.70 acres of land out of the "CASA BLANCA" Juan Jose De La Garza Montemayor et al Grant, A-221, being known as Lot 25, Block 2 of Country Club Estates West (unrecorded) Subdivision, and being out of a 219.5 acre tract as described in Volume 135, Page 572 of the Deed Records of Nueces County, Texas.

Being more fully described by metes and bounds as follows;

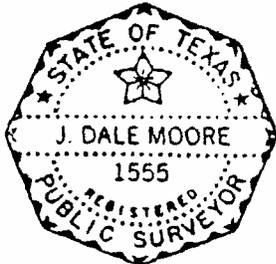
BEGINNING at a 5/8 inch iron rod for the common corner of Lots 8, 9, and 24 of Block 2 and for the southeast corner of this Lot 25, from which the southeast corner of said 219.5 acre tract bears S09 deg 06'30"W - 1398.69 feet and S73 deg 47'35"E - 2029.08 feet.

THENCE: N 73 deg 47' 35" W - 200.00 feet, with the north line of said Lot 8, to a 5/8 inch iron rod for the common corner of Lots 7, 8, and 26 of Block 2 and the southwest corner of this Lot 25.

THENCE: N 09 deg 06' 30" E - 379.77 feet, with the east line of said Lot 26, to a 5/8 inch iron rod in the south right-of-way line of Theresia Street, for the northeast corner of said Lot 26 and the northwest corner of this Lot 25.

THENCE: S 73 deg 47' 35" E - 200.00 feet, with the south line of said Theresia Street, to a 5/8 inch iron rod for the northwest corner of said Lot 24 and for the northeast corner of this Lot 25.

THENCE: S 09 deg 06' 30" W - 379.77 feet, with the west line of said Lot 24, to the PLACE OF BEGINNING and containing 1.70 acres of land.



August 30, 1985

J. Dale Moore

J. Dale Moore
Registered Public Surveyor
License Number 1555

Lot 25, Block 2

Exhibit A

FIELD NOTES DESCRIPTION

1.70 Acres of land, more or less, out of the 'CASA BLANCA' Juan Jose De La Garza Montemayor et al Grant, A-221, being known as **LOT 26, BLOCK 2 of COUNTRY CLUB ESTATES WEST (UNRECORDED) SUBDIVISION**, and being out of a 219.5 acre tract as described in Volume 135, Page 572 of the Deed Records of Nueces County, Texas.

Being more fully described by metes and bounds as follows:

BEGINNING at a 5/8 inch iron rod for the common corner of Lots 7,8, and 25 of Block 2 and for the southeast corner of this Lot 26, from which the southeast corner of said 219.5 acre tract bears S09 deg 06'30"W -1398.69 feet and S 73 deg 47'35" E-2229.08 feet.

THENCE: N 73 deg 47' 35"W-200 feet, with the north line of said Lot 7, to 5/8 inch iron rod for the common corner of Lots 6,7, 27 of Block 2 and the southwest corner of this Lot 26.

THENCE: N 09 deg 06' 30" E -379.77 feet, with the east line of said Lot 27, to a 5/8 inch iron rod in the south right-of-way line of Theresa Street, for the northeast corner of said Lot 27 and the northwest corner of this Lot 26.

THENCE: S 73 deg 47' 35" E-200 feet, with the south line of said Theresa Street, to a 5/8 inch iron rod for the northwest corner of said Lot 25 and for the northeast corner of this Lot 26.

THENCE: S 09 deg 06'30" W-379.77 feet, with the west line of said Lot 25, to the PLACE OF BEGINNING and containing 1.70 acres of land.

LOT 26, BLOCK 2

Exhibit A

PARK TOWER • SUITE 307
710 BUFFALO ST. • BOX 16
CORPUS CHRISTI, TX 78401

FRONTIER SURVEYING COMPANY

OFFICE: 512 881-8044
HOME: 512 853-5554

FIELD NOTES DESCRIPTION

1.70 acres of land out of the "CASA BLANCA" Juan Jose De La Garza Montemayor et al Grant, A-221, being known as Lot 27, Block 2 of Country Club Estates West (unrecorded) Subdivision, and being out of a 219.5 acre tract as described in Volume 135, Page 572 of the Deed Records of Nueces County, Texas.

Being more fully described by metes and bounds as follows:

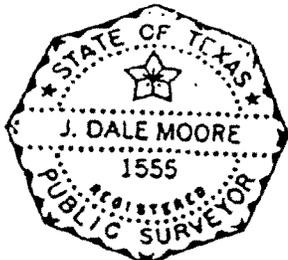
BEGINNING at a 5/8 inch iron rod for the common corner of Lots 6, 7, and 26 of Block 2 and for the southeast corner of this Lot 27, from which the southeast corner of said 219.5 acre tract bears S09 deg 06'30"W - 1398.69 feet and S73 deg 47'35"E - 2429.08 feet.

THENCE: N 73 deg 47' 35" W - 200.00 feet, with the north line of said Lot 6, to a 5/8 inch iron rod for the common corner of Lots 5, 6, and 28 of Block 2 and the southwest corner of this Lot 27.

THENCE: N 09 deg 06' 30" E - 379.77 feet, with the east line of said Lot 28, to a 5/8 inch iron rod in the south right-of-way line of Theresa Street, for the northeast corner of said Lot 28 and the northwest corner of this Lot 27.

THENCE: S 73 deg 47' 35" E - 200.00 feet, with the south line of said Theresa Street, to a 5/8 inch iron rod for the northwest corner of said Lot 26 and for the northeast corner of this Lot 27.

THENCE: S 09 deg 06' 30" W - 379.77 feet, with the west line of said Lot 26, to the PLACE OF BEGINNING and containing 1.70 acres of land.



August 30, 1985

J. Dale Moore

J. Dale Moore
Registered Public Surveyor
License Number 1555

Lot 27, Block 2

Exhibit A

Warranty Deed with Vendor's Lien

Yath D. Harris, Sr. et al

to

Jesus Demetrio De Leon

Doc# 2007028021
Pages 7
05/31/2007 3:55PM
Official Records of
NUECES COUNTY
DIANA T. BARRERA
COUNTY CLERK
Fees \$39.00

STATE OF TEXAS
COUNTY OF NUECES
I hereby certify that this instrument was FILED
in file number sequence on the date and at the
time stamped herein by me, and was duly RECORDED
in the Official Public Records of
Nueces County, Texas



Diana T. Barrera

DIANA T. BARRERA
NUECES COUNTY, TEXAS

| |
|--|
| CHARGE & RETURN TO: San Jacinto Title Services 2450 Five Points Rd Corpus Christi, Texas 78410 GF # <u>079706102</u> NUMBER OF PAGES: <u>7</u> FEE: _____ |
|--|

Any provision herein which restricts the Sale, Rental or use of the described REAL PROPERTY because of Race, Color, Religion, Sex, Handicap, Familial Status, or National Origin is invalid and unenforceable under FEDERAL LAW, 3/12/89.

ATTACHMENT C

Nueces County Model Subdivision Rules

CHAPTER II

MODEL SUBDIVISION RULES

DIVISION 1. GENERAL AND ADMINISTRATIVE PROVISIONS

II – 1.1 Authority and Scope of Model Rules. These rules are adopted by Nueces County, Texas under the authority of the Local Government Code, Chapter 232 and Water Code, §16.350. Notwithstanding any provision to the contrary, the rules under this chapter apply only to a subdivision which creates two (2) or more lots of five (5) acres or less intended for residential purposes. Lots of five (5) acres or less are presumed to be for residential purposes unless the land is restricted to nonresidential uses on the final plat and in all deeds and contracts for deeds.

II – 1.2 Purpose. It is the purpose of the rules under this chapter to promote the public health of the county residents, to ensure that adequate water and wastewater facilities are provided in subdivisions within the jurisdiction of Nueces County, and to apply the minimum state standards for water and wastewater facilities to these subdivisions.

II – 1.3 Plat Required.

1.3.1 The owner of a tract of land located outside the corporate limits of a municipality that divides the tract in any manner that creates two (2) or more lots of five (5) acres or less intended for residential purposes must have a plat of the subdivision prepared. Lots of five (5) acres or less are presumed to be for residential purposes unless the land is restricted to nonresidential uses on the final plat and all deeds and contracts for deeds.

1.3.2 No subdivided land in Nueces County shall be sold or conveyed until the subdivider:

(a) has received approval of a final plat of the tract of land; and,

(b) has filed and recorded a legally approved plat with the County Clerk of Nueces County

1.3.3 A division of a tract is defined as including a metes and bounds description, or any description of less than a whole parcel, in a deed of conveyance or in a contract for a deed, using a contract of sale or other executory contract, lease/purchase agreement, or using any other method to convey property.

II – 1.4 Definitions. Certain words and terms associated with the Rules are outlined and defined in **Appendix A**, and shall have said meaning, unless the context of the Rules clearly indicates otherwise.

DIVISION 2. MINIMUM STANDARDS

II – 2.1 Scope of Standards. The establishment of a residential development with two (2) or more lots of five (5) acres or less where the water supply and sewer services do not meet the minimum standards of this Chapter is prohibited. A subdivision with lots of five (5) acres or less is presumed to be a residential development unless the land is restricted to nonresidential use on the final plat and all deeds and contracts for deeds.

II – 2.2 Water Facilities Development. The following provides minimum standards for the development of water facilities.

2.2.1 Public Water Systems.

- (a) Subdividers who propose to supply drinking water by connecting to any existing public water system must provide a written agreement with the retail public utility in substantially the form attached in **Appendix D**. The agreement must provide that the retail public utility has or will have the ability to supply the total flow anticipated from the ultimate development and occupancy of the proposed subdivision for a minimum of thirty (30) years. The agreement must reflect that the Subdivider has paid the cost of water meters and other necessary connection equipment, membership fees, water rights acquisition costs, or other fees associated with connection to the public water system so that service is available to each lot upon completion of construction of the water facilities described on the final plat.
- (b) Where there is no existing retail public utility to construct and maintain the proposed water facilities, the Subdivider shall establish a retail public utility and obtain a Certificate of Convenience and Necessity (CCN) from the Texas Commission on Environmental Quality. The public water system, the water quality and system design, construction and operation shall meet the minimum criteria set forth in 30 TAC §§290.38-290.51 and §§290.101-290.120. If groundwater is to be the source of the water supply, the Subdivider shall have prepared and provide a copy of a groundwater availability study which shall include an analysis of the long term (30 years) quantity and quality of the available groundwater supplies relative to the ultimate needs of the subdivision. If surface water is the source of supply, the Subdivider shall provide evidence that sufficient water rights have been obtained and dedicated, either through acquisition or wholesale water supply agreement that will provide a sufficient supply to serve the needs of the subdivision for a term of not less than thirty (30) years.

2.2.2 Non-Public Water Systems. Where individual wells or other non-public water systems are proposed for the supply of drinking water to residential establishments, a test well or wells located so as to be representative of the quantity and quality of water generally available from the supplying aquifer shall be drilled by the Subdivider and the produced waters sampled and submitted to a private laboratory for a complete chemical and bacteriological analysis of the parameters on which there are drinking water standards. The Subdivider shall have prepared and provide a copy of a groundwater availability study which shall include an analysis of the long term (30 years) quantity of the available groundwater supplies relative to the ultimate needs of the subdivision. The water quality of the water produced from the test well must meet the standards of water quality required for community water systems as set forth in 30 TAC §290.103, 290.105, 290.106 and 290.110, either:

- (1) without any treatment to the water; or
- (2) with treatment by an identified and commercially available water treatment system.

2.2.3 Transportation of Potable Water. The conveyance of potable water by transport truck or other mobile device to supply the domestic needs of the subdivision is not an acceptable method, except on an emergency basis. Absence of a water system meeting the standards of these rules due to the negligence of the Subdivider does not constitute an emergency.

II – 2.3 Wastewater Disposal. The following provides minimum standards for the development of wastewater disposal.

2.3.1 Organized Sewerage Facilities.

- (a) Subdividers who propose the development of an organized wastewater collection and treatment system must obtain a permit to dispose of wastes from the Texas Commission on Environmental Quality in accordance with 30 TAC Chapter 305 and obtain approval of engineering planning materials for such systems under 30 TAC Chapter 317 from the Texas Commission on Environmental Quality.
- (b) Subdividers who propose to dispose of wastewater by connecting to an existing permitted facility must provide a written agreement in substantially the form attached in **Appendix D** with the retail public utility. The agreement must provide that the retail public utility has or will have the ability to treat the total flow anticipated from the ultimate development and occupancy of the proposed subdivision for a minimum of 30 years. The agreement must reflect that the Subdivider has paid the cost of all fees associated with connection to the wastewater collection and treatment system have been paid so that service is available to each lot upon completion of construction of the wastewater facilities described on the final plat. Engineering plans, signed and sealed by a professional engineer registered in the State of Texas, for the proposed wastewater collection lines must comply with 30 TAC Chapter 317.

2.3.2 On-site Sewerage Facilities.

- (a) On-site sewerage facilities, which serve single family or multi-family residential dwellings with anticipated wastewater generations of no greater than five thousand (5,000) gallons per day, must comply with 30 TAC Chapter 285.
- (b) Proposals for sewerage facilities for the disposal of sewage in the amount of five thousand (5,000) gallons per day or greater must comply with 30 TAC Chapter 317.
- (c) The Texas Commission on Environmental Quality or its authorized agent shall review proposals for on-site sewage disposal systems and make inspections of such systems as necessary to assure that the system is in compliance with the Texas Health and Safety Code, Chapter 366 and rules in 30 TAC Chapter 285, and in particular §§285.4, 285.5 and 285.30-285.39 and the County OSSF Order. In addition to the unsatisfactory on-site disposal systems listed in 30 TAC §285.3(b), pit privies and portable toilets are not acceptable waste disposal systems for lots platted under these rules.

2.3.3 Greywater Systems for Reuse of Treated Wastewater.

- (a) **Organized or municipal sewerage systems.** Any proposal for sewage collection, treatment and disposal, which includes greywater reuse, shall meet minimum criteria of 30 TAC Chapter 210 promulgated and administered by the Texas Commission on Environmental Quality.
- (b) **On-site sewerage facilities.** Any proposal for on-site sewage disposal, which includes provisions for greywater use, shall meet the minimum criteria of 30 TAC Chapter 285.

2.3.4 Sludge Disposal. The disposal of sludge from water treatment and sewerage facilities shall meet the criteria of 30 TAC Chapter 312 and Chapter 317.

II – 2.4 Other Standards.

- 2.4.1 **Setbacks.** In areas that lack a nationally recognized fire code as listed in Local Government Code, §235.00(b)(2) and lack water lines sized for fire protection, setbacks from roads and rights-of-way shall be a minimum of ten (10) feet, setbacks from adjacent property lines shall be a minimum of five (5) feet, and shall not conflict with separation or setback distances required by rules governing public utilities, on-site sewerage facilities, or drinking water supplies. Setback lines required elsewhere in the Order or Rules of the County shall control to the extent greater setbacks are therein required.
- 2.4.2 **Number of Dwellings Per Lot.** No more than one (1) single family detached dwelling shall be located on each lot. A notation of this restriction shall be placed on the face of the final plat. This restriction shall be placed in all deeds and contracts for deeds for real estate sold within the subdivision. Proposals, which include multi-family residential, shall include adequate, detailed planning materials as required for determination of proper water and wastewater utility type and design.

DIVISION 3. PLAT APPROVAL

II – 3.1 Applications for Plat Approval.

- (a) **Owner Representation.** An application for approval of a plat shall be filed with the County by the record owner of the property to be subdivided or the duly authorized agent of the record owner.
- (b) **Standards.** Every plat creating two (2) or more lots of five (5) acres or less for residential use shall comply with the standards of **Division 2** and the requirements of **Division 3** of this Chapter.

II – 3.2 Final Engineering Report. The final plat shall be accompanied by an engineering report bearing the signed and dated seal of a professional engineer registered in the State of Texas. The engineering report shall discuss the availability and methodology of providing water facilities and wastewater treatment to individual lots within the subdivision. A detailed cost estimate per lot acceptable to the County shall be provided for those unconstructed water supply and distribution facilities and wastewater collection and treatment facilities which are necessary to serve each lot of the subdivision. The plan shall include a construction schedule for each significant element needed to provide adequate water or wastewater facilities. If financial guarantees are to be provided under of this Chapter, the schedule shall include the start dates and completion dates.

3.2.1 Public Water Systems.

- (a) *Where water supplies are to be provided by an existing public water system,* the Subdivider shall furnish an executed contractual agreement between the Subdivider and the retail public utility in substantially the form attached in **Appendix D** and referenced in 30 TAC §364.32(a)(1). Before final plat approval, plans and specifications for the proposed water facilities shall have been approved by all entities having jurisdiction over the proposed subdivision which may include, in addition to the Nueces County Department of Public Works, the Texas Commission on Environmental Quality and the city or county health department. If groundwater is to be the source of the water supply, the final engineering report shall include a groundwater availability study which shall include comments regarding the long term (30 years) quantity and quality of the available groundwater supplies relative to the ultimate needs of the subdivision.

(b) Where there is no existing retail public utility to construct and maintain the proposed water facilities, the Subdivider shall establish a retail public utility and obtain a Certificate of Convenience and Necessity (CCN) from the TNRCC and include evidence of the CCN issuance with the plat. Before the final plat approval, plans and specifications for the proposed water facilities shall have been approved by all entities having jurisdiction over the proposed project. If groundwater is to be the source of the water supply, the final engineering report shall include a groundwater availability study which shall include an analysis of the long term (30 years) quantity and quality of the available groundwater supplies relative to the ultimate needs of the subdivision. If surface water is the source of supply then the final engineering report shall include evidence that sufficient water rights have been obtained and dedicated, either through acquisition or wholesale water supply agreement, that will provide a sufficient supply to serve the needs of the subdivision for a term of not less than thirty (30) years.

3.2.2 Non-Public Water Systems. Where individual wells are proposed for the supply of drinking water to residences, the final engineering report shall include the quantitative and qualitative results of sampling the test wells in accordance with 30 TAC §364.32. The results of such analyses shall be made available to the prospective property owners. If the water quality of the test well required pursuant to 30 TAC §364.32(b) does not meet the water quality standards as set forth in that section without treatment by an identified and commercially available water treatment system, then the final report must state the type of treatment system that will treat the water produced from the well to the specified water quality standards, the location of at least one (1) commercial establishment within the County at which the system is available for purchase, and the cost of such system, the cost of installation of the system, and the estimated monthly maintenance cost of the treatment system. The engineer shall issue a statement concerning the availability of groundwater supplies to serve the fully developed subdivision over the next thirty (30) years. Such statement may be based on information available from the Texas Water Development Board's Office of Planning. The description of the required sanitary control easement shall be included.

3.2.3 Organized Sewerage Facilities.

(a) *Where wastewater treatment is to be provided by an existing retail public utility*, the Subdivider shall furnish evidence of a contractual agreement between the Subdivider and the retail public utility in substantially the form attached in **Appendix D** and referenced in 30 TAC §§364.33(a)(2). Before final plat approval, an appropriate permit to dispose of wastes shall have been obtained from the Texas Commission on Environmental Quality and plans and specifications for the proposed wastewater collection and treatment facilities shall have been approved by all entities having jurisdiction over the subdivision.

(b) *Where there is no existing retail public utility to construct and maintain the proposed sewerage facilities*, the Subdivider shall establish a retail public utility and obtain a CCN from the Texas Commission on Environmental Quality. Before final plat approval, a wastewater treatment permit authorizing the treatment of the wastewater for the ultimate build-out population of the subdivision shall have been obtained from the Texas Commission on Environmental Quality and plans and specification for the proposed sewerage facilities shall have been approved by all entities having jurisdiction over the subdivision.

3.2.4 On-Site Sewerage Facilities (OSSF). Where private on-site sewerage facilities are proposed, the final engineering report shall include planning materials required by 30 TAC §§285.4(c), including the site evaluation described in 30 TAC §§285.30 and all other information required by the County's OSSF regulations.

3.2.5 Additional Information. Additional information to be included in the final engineering report, in order to determine the adequacy of proposed water and wastewater improvements as part of the plat approval process, shall include, but is not limited to:

- (1) layout of proposed street and drainage work;
- (2) legal description of the property;
- (3) existing area features;
- (4) topography;
- (5) floodplains;
- (6) description of existing easements;
- (7) layout of other utilities;
- (8) notation of deed restrictions
- (9) public use areas; and
- (10) proposed area features.

II – 3.3 Financial Guarantees for Improvements. If an adequate public or non-public water system or sewerage facility is not available from a retail public utility, or are not constructed by the Subdivider, to serve lots intended for residential purposes of five (5) acres or less at the time final plat approval is sought, then the Nueces County Department of Public Works shall require the owner of the subdivided tract to execute an agreement with Nueces County utilizing the form attached in **Appendix D** secured by a bond, irrevocable letter of credit or other alternative financial guarantee such as a cash deposit which meet the requirements set forth below.

3.3.1 Bonds. If a bond is submitted as a financial guarantee, it shall meet the following requirements:

- (a) The bond or financial guarantee shall be payable to the Nueces County Judge, in his official capacity, or the Judge's successor in office.
- (b) The bond or financial guarantee shall be in an amount determined by the Commissioners Court to be adequate to ensure proper construction or installation of the public or non-public water facilities, and wastewater facilities to service the subdivision, including reasonable contingencies, but in no event shall the amount of the bond be less than the total amount needed to serve the subdivision as established by the engineer who certifies the plat.
- (c) The bond shall be executed with sureties as may be approved by the Commissioners Court. The criteria for acceptability of the surety companies issuing bond includes the following:
 - (1) Registration with the Secretary of State and be authorized to do business in Texas;
 - (2) Authorization to issue bonds in the amount required by the Commissioners Court;
 - (3) Rating of at least B from Best's Key Rating Guide; or if the surety company does not have any such rating due to the length of time it has been a surety company, the surety company must demonstrate eligibility to participate in the surety bond guarantee program of the Small Business Administration and must be an approved surety company listed in the current United States Department of Treasury Circular 570. Such bonds shall meet the criteria contained in the rules and regulations promulgated by the United States Department of Treasury.

- (d) The bond shall be conditional upon construction or installation of water and wastewater facilities meeting the criteria established under this Chapter and upon construction of facilities within the time stated in the final engineering report, or within any extension of time granted by the Commissioners Court.

3.3.2 Letter of Credit. If a letter of credit is submitted as a financial guarantee, it shall meet the following requirements:

- (a) Any letter of credit submitted as a financial guarantee *for combined amounts greater than \$10,000 and less than \$250,000* must be from financial institutions that meets the following qualifications:

- (1) Bank Qualifications – Must be federally insured; Sheshunoff rating must be 10 or better and primary capital must be at least 6% of total assets; and, total assets must be at least \$25 million.
- (2) Savings and Loan Associations Qualifications – Must be federally insured; tangible capital must be at least 1.5% of total assets and total assets must be greater than \$25 million or tangible capital must be at least 3% of total assets if total assets are less than \$25 million; and, Sheshunoff rating must be 30 or better.
- (3) Other Financial Institutions Qualifications – The letter of credit must be 110% collateralized by an investment instrument that would meet the qualifications for a Nueces County investment; and, the investment instrument must be registered in Nueces County's name and Nueces County must receive safekeeping receipts for all collateral before the letter of credit is accepted.

- (b) Any letter of credit submitted as a financial guarantee *for combined amounts greater than \$250,000* must be from financial institutions which meet the following qualifications:

- (1) Bank Qualifications – Must be federally insured; Sheshunoff rating must be 30 or better and primary capital must be at least 7% of total assets; and, total assets must be at least \$75 million.
- (2) Savings and Loan Associations Qualifications – Must be federally insured; tangible capital must be at least 3% of total assets and total assets must be greater than \$75 million or tangible capital must be at least 5% of total assets if total assets are less than \$75 million; and, Sheshunoff rating must be 30 or better.
- (3) Other Financial Institutions Qualifications – The letter of credit must be 110% collateralized by an investment instrument that would meet the qualifications for a Nueces County investment; and, the investment instrument must be registered in Nueces County's name and Nueces County must receive safekeeping receipts for all collateral before the letter of credit is accepted.

- (c) The letter of credit shall list as sole beneficiary the Nueces County Judge, in his official capacity, or the Judge's successor in office, and must be approved by the Nueces County Judge. The form of the letter of credit shall be in the format found in **Appendix D**.

- (d) The letter of credit shall be conditioned upon installation or construction of water and wastewater facilities meeting the criteria established under the Rules within this Chapter and upon construction of facilities within

the time stated in the final engineering report or within any extension of time granted by the Commissioners Court.

3.3.3 Amount of Financial Guarantee. Nueces County will determine the amount of the bond, letter of credit, or cash deposit required to ensure proper construction of adequate water and wastewater facilities for the subdivision.

3.3.4 Alternative to Financial Guarantee. Nueces County may approve a final plat without receiving a financial guarantee in the name of the County if:

- (1) The property being subdivided lies wholly within the jurisdiction of the County;
- (2) The property being subdivided lies wholly within the extra-territorial jurisdiction of a municipality; and
- (3) The municipality has executed an interlocal agreement with the County that imposes the obligation on the municipality to accept the bonds, letters of credit, or other financial guarantees that meet the requirements as stated above; execute the construction agreement with the Subdivider; and, assume the obligations to enforce the terms of the financial guarantee under the conditions set forth therein and complete construction of the facilities identified in the construction agreement.

II – 3.4 Review and Approval of Final Plats. The review procedures for plats under this Chapter shall be in accordance with those submission and review procedures outlined in **Chapter I** of these Rules. Special review requirements, applicable to plats under the Model Subdivision Regulations, are as follows:

3.4.1 Final Plat Approval. Final plat approval shall not be granted unless the Subdivider has accomplished the following:

- (a) Dedicated the sites for the adequate water and sewerage facilities identified in the final plat to the appropriate retail public utility responsible for operation and maintenance of the facilities; and
- (b) Provided evidence that the water facilities and sewerage facilities have been constructed and installed in accordance with the criteria established within these Rules and the approvals from the Texas Commission on Environmental Quality of the plans and specifications for such construction, including any change orders filed with these agencies; or
- (c) Obtained all necessary permits for the proposed water facilities and sewerage facilities (other than for OSSF permits on individual lots within the proposed subdivision) and has entered into a financial agreement with Nueces County secured by a bond or other alternative financial guarantee such as a cash deposit or letter of credit for the provision of water and sewerage facilities with the bond or financial guarantee meeting the criteria established in this Chapter.

II – 3.5 Time Extension for Providing Facilities.

3.5.1 Reasonableness. The Commissioners Court may extend, beyond the date specified on the plat or on the document attached to the plat, the date by which the required water and sewer service facilities must be fully operable if:

- (1) any financial guarantees provided with the final plat as originally submitted are effective for the time of the requested extension or new financial guarantees that comply with §364.54 are submitted which will be effective for the period of the extension; and

(2) the Court finds the extension is reasonable and not contrary to the public interest.

3.5.2 Timeliness. If the facilities are fully operable before the expiration of the extension period, the facilities are considered to have been made fully operable in a timely manner.

3.5.3 Unreasonableness. An extension is not reasonable if it would allow a residence in the subdivision to be inhabited without water or sewer services that meet the standards of this Chapter.

II – 3.6 Criteria for Subdivisions that Occurred Prior to September 1, 1989

This section shall apply only to tracts of land that were divided into two or more parts to lay out a subdivision before September 1, 1989 and have not been platted or recorded. This section is in addition to the authority of the County to grant a delay or variance pursuant to Local Government Code §232.043 or a rule of the County adopted pursuant to such provision.

3.6.1 Purpose. It is the purpose of this section to promote the public health of the County residents, to ensure that adequate water and sewerage facilities are provided in subdivisions within the jurisdiction of this County, and to establish the minimum standards for pre-1989 subdivisions for which no plat has been filed or recorded in the records of the County.

3.6.2 Required Plat. In the event that the owner of tract of land located outside the limits of a municipality who subdivided the tract into two or more parts to lay out a subdivision of the tract prior to September 1, 1989, including an addition, or to lay out suburban lots or building lots, and to lay out streets, alleys, squares, parks or other parts of the tract intended to be dedicated to public use or for the use of purchasers or owners of lots fronting on or adjacent to the streets, alleys, squares, parks, or other parts, was legally obligated to, but has failed to have a plat of the subdivision prepared, approved by the Commissioners Court, and filed, the owner of a residential lot which was created by the subdivision may have a plat of the individual lot prepared and approved by the Commissioners Court as provided in this section in lieu of the filing of a plat of the subdivision.

3.6.3 Special Criteria. The Commissioners Court may approve the plat of a residential lot which does not comply with the provisions under this Chapter as applied to an individual subdivided lot if such approval is in harmony with the general purpose and intent of these Rules so that the public health, safety, and welfare may be secured and substantial justice done.

(a) Owners of individual lots in a single un-platted subdivision may file a joint request for approval of their respective individual residential lots.

(b) An application for approval of the plat of an individual lot shall be made in writing. The application shall state specifically the chapter, section, or subsection with which the plat does not comply and from which a waiver is being requested. The application shall contain available information and documentation, which supports the requested approval. The applicant shall also provide such additional documentation as the Commissioners Court may request to support the application, including:

- (1) a copy of a dated plat, sales contract, utility records, or other acceptable documentation that the subdivision occurred prior to September 1, 1989;
- (2) the name and address of the original Subdivider or the Subdivider's authorized agent, if known;
- (3) a survey and plat of the lot for which approval is requested, showing existing residences, roads, and utilities; and

- (4) a deed, an affidavit of ownership or other evidence of ownership of the lot for which approval is requested.
- (c) Approval of plats of individual lots shall be granted subject to the limitations of state law, and based on written findings by the Commissioners Court that:
- (1) the lot for which approval is requested is within a tract that was subdivided prior to September 1, 1989, and is not owned by the original Subdivider;
 - (2) a plat was required for the subdivision, but has not been filed with the County by the Subdivider legally obligated to file it;
 - (3) an existing, currently occupied residential dwelling is located on the lot;
 - (4) existing water and sewer services which comply with the minimum standards set forth herein are available to the lot; and
 - (5) the request is reasonable, compliance with specified sections of these rules is impractical, and a waiver is not contrary to the public health and safety.

3.6.4 Final Determination. The Commissioners Court shall make the final decision on an application for a waiver, following review and recommendation by the Nueces County Department of Public Works. The applicant may withdraw a request for a waiver at any point in the process. If the requested waiver application is approved by the Commissioners Court, the County shall issue a certificate stating that a plat of the residential lot has been reviewed and approved.

DIVISION 4. ENFORCEMENT

II – 4.1 Oversight. The Owner, by submitting a plat, acknowledges the authority of the County and state agencies to lawfully enter and inspect property for purposes of execution of their statutory duties. Such inspection will not release the Owner from any obligation to comply with the requirements of these Rules.

II – 4.2 General Enforcement Authority of County. The provisions of this Chapter are enforceable pursuant to the specific provisions hereof related to enforcement and state law including Water Code, Chapter 7 and §§16.352, 16.353, 16.3535, 16.354, and 16.3545, and Local Government Code, §232.037. Pursuant to Section 232.037 of the Local Government Code:

- (a) The Attorney General, the District Attorney, or County Attorney may take any action necessary in a court of competent jurisdiction on behalf of the state or on behalf of residents to:
 - (1) enjoin the violation or threatened violation of the Model Subdivision Rules adopted under Section 16.343, Water Code;
 - (2) enjoin the violation or threatened violation of a requirement of rules adopted by the Commissioners Court;
 - (3) recover civil or criminal penalties, attorney's fees, litigation costs, and investigation costs, and;
 - (4) require platting or replatting under Section 232.040 of the Local Government Code.
- (b) The Attorney General, at the request of the District or County Attorney with jurisdiction, may conduct a criminal prosecution under Section 232.033(h) or 232.036 of the Local Government Code.

- (c) Criminal penalties begin as Class A Misdemeanors. Civil penalties include fines of not less the \$500.00 or more than \$1000.00 for each violation for each day of a continuing violation.

ATTACHMENT 2

Affidavit of Luis DeLeon

Cause No. D-1-GV-09-001140

| | | |
|--------------------------------|---|---|
| STATE OF TEXAS, | § | IN THE DISTRICT COURT |
| | § | |
| Plaintiff, | § | |
| | § | |
| v. | § | TRAVIS COUNTY, TEXAS |
| | § | |
| GARTH D. HERRO, et al., | § | |
| | § | |
| Defendants. | § | 345th JUDICIAL DISTRICT |

AFFIDAVIT OF LUIS DELEON

Before me, the undersigned notary, on this day, personally appeared Luis Demetrio DeLeon, a person whose identity is known to me. After I administered an oath to him, upon his oath he said:

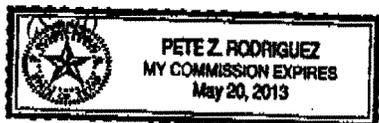
1. "My name is Luis Demetrio DeLeon. I speak and read English. I am over the age of 18 years, of sound mind, capable of making this affidavit, and personally acquainted with the facts stated herein.
2. I bought land in the Country Club Estates West subdivision in Nueces County, Texas, from Garth and Josephine Herro in 2007, specifically Lots 24, 25, 26, and 27 in Block 2 of the subdivision.
3. I have read the April 4, 2012 Agreed Final Judgment in *State of Texas v. Garth D. Herro, et al.*, Cause No. D-1-GV-09-001140. I am personally acquainted with the facts of the judgment, which ordered Garth and Josephine Herro to immediately forgive my remaining debt for the purchase of Lots 24, 25, 26, and 27, to immediately execute and deliver to me a release of vendor's lien for Lots 24, 25, 26, and 27, and to make payments to me and my wife jointly for the purpose of installing water supply and/or sewage disposal facilities on Lots 24 and 25.
4. On April 17, 2012, inadvertently through a bank account withdrawal, I made a payment of \$298.80 to Garth Herro in partial fulfillment of my debt for the purchase of Lots 24, 25, 26, and 27 in the Country Club Estates West subdivision. I have not received reimbursement for this payment.
5. On May 15, 2012, inadvertently through a bank account withdrawal, I made a payment of \$298.80 to Garth Herro in partial fulfillment of my debt for the purchase of Lots 24, 25, 26, and 27 in the Country Club Estates West subdivision. I have not received reimbursement for this payment.

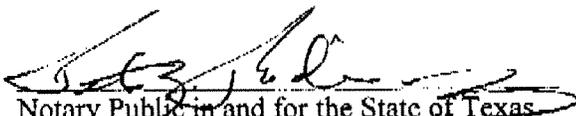
- 6. As of today, I have not received from Garth Herro, Josephine Herro, or anyone else, a release of vendor's lien for Lots 24, 25, 26, and 27 in the Country Club Estates West subdivision.
- 7. As of today, I have received no payments from Garth or Josephine Herro for the purpose of installing water supply and/or sewage disposal facilities on Lots 24 and 25 in the Country Club Estates West subdivision."



 LUIS DEMETRIO DELEON

SUBSCRIBED AND SWORN TO BEFORE ME on July 24, 2012,
 to certify which witness my hand and official seal.




 Notary Public in and for the State of Texas

My commission expires: May 20th, 2013