



WATER WELL AGREEMENT

STATE OF TEXAS §
COUNTY OF SOMERVELL §

Date: MAY 8, 2008

Parties:

Grantor: Fossil Trails, L.L.C.
 PO Box 240
 Mansfield, Texas 76065

Grantee(s): The assigns of Fossil Trails, L.L.C., of the Lots Served by the
 Easement Property

Easement Property (also known herein as Water Well Site):

Well Lot 4 of FOSSIL TRAILS, a subdivision in Somervell County, Texas,
according to the plat thereof recorded at Plat Cabinet 1, Slide No. 158, Plat
Records of Somervell County, Texas.

Lots Served by the Easement Property:

Lots 18, 19, 20, 21 and 22 of FOSSIL TRAILS, a subdivision in Somervell
County, Texas, according to the plat thereof recorded at Plat Cabinet 1, Slide No.
158, Plat Records of Somervell County, Texas.

Easement Purpose:

For the furnishing of a continual water supply from the Water Well Site to the
Lots Served by the Easement Property for domestic uses, lawns, gardens, pools, and
livestock within the Lots Served by the Easement Property.

Consideration:

A one time tap fee of \$950.00 and a one time set up fee of \$50.00 per lot shall be
due and payable to Grantor on the date of the sale of each lot described within the Lots
Served by the Easement Property. No tap fees shall be earned or become due for
subsequent conveyances of such lots.

Exceptions:

The following exceptions to the grant of easement and exceptions to the warranty of easement title: Any and all right, title, or interest arising out of or caused by:

- (1) All presently valid and effective easements, rights-of-way and prescriptive rights whether of record or not, pertaining to any portion(s) of the Easement Property;
- (2) All presently recorded, valid, and effective instruments constituting mineral estate severances of any kind, such as oil, gas, and other mineral exceptions, rights of development or leases, and royalty reservations;
- (3) All presently recorded, valid, and effective restrictive covenants, terms, conditions, contracts, provisions and other items, and all ordinances, governmental regulations, and laws affecting the Easement Property;
- (4) Any conditions that would be revealed by a physical inspection and survey of the Easement Property, including (but not limited to) any discrepancy, conflicts, or shortages in area or boundary lines, or any encroachments, or any overlapping of improvements; and
- (5) The availability, existence, source, quality, condition, potability, chemistry, or other characteristics of water, if any, lying on, over, or under Easement Property.

Recitals:

First. The Grantor desires and intends to share the water well which will exist on the Water Well Site to allow Grantee(s) the use of the water from the well for the Easement Purpose.

Second. Grantor does hereby appoint the first Grantee for all or any of the Lots Served by the Easement Property to be the Agent ("Water Agent") to act on behalf of other Grantees of the Lots Served by the Easement Property for the purpose of carrying out all necessary acts which will promote the efficient and proper use of the Water Well Site to obtain water for the Lots Served by the Easement Property. The initial Water Agent may be removed and a successor appointed by a two-thirds (2/3rds) majority vote of the Owners of Lots Served by the Easement Property. For the purpose of accounting for the Maintenance Fee described herein, an account shall be established at Town & Country Bank, N.A., Glen Rose, Texas, by the Water Agent. The Water Agent shall have a fiduciary duty to account for all maintenance fees collected under this Agreement and the Grantor or one other Owner of the Lots Served by the Easement Property will act as the second signatory required in order to withdraw funds from the Maintenance Fee account.

Third. The Grantor intends by this Agreement to furnish an easement to allow the Grantee(s) to obtain water for the Lots Served by the Easement Property and to cause a sharing of the expenses in a fair and equitable manner for maintaining and repairing the water well. Each Grantee shall pay a Maintenance Fee for well maintenance in the sum of (i) Thirty-five Dollars (\$35.00) per month for each lot owned by that Grantee, plus (ii) an additional amount of Ten Dollars (\$10.00) per month for each lot on which Grantee has a swimming pool, plus (iii) an additional amount of Ten Dollars (\$10.00) per month for each lot on which Grantee maintains livestock. The Maintenance Fee shall be paid, at a prorated amount, directly to the Fossil Trails Well 1 Association and is due on the first day of tap activation. Each subsequent payment is due annually on January 1st. The initial Maintenance Fees set by this paragraph are estimates of the actual costs of maintaining and repairing the water well and may be adjusted by a two-thirds (2/3rds) majority vote of the Owners of Lots Served by the Easement Property to reflect the actual costs of maintaining the water well. A \$10.00 per month late fee will be added to the Maintenance Fee for each Maintenance Fee that is not paid by the end of the 15th of the month. The Water Agent shall have the right to disconnect water to a Grantee who is three (3) months delinquent in the payment of its Maintenance Fee. A reconnect fee of \$50.00 shall be due and payable from a Grantee who has had its water reconnected.

Disclaimer, Release and Indemnity:

1. Nonreliance by Grantee. Grantee has NOT relied upon any information, representations, statements or assertions concerning the Easement Property made or prepared by Grantor or Grantor's representative(s) (collectively called "Grantor's Statements"), and Grantee has NOT relied on Grantor to provide any information on the Easement Property which Grantee has not independently verified; further, Grantee has relied solely upon Grantee's independent verifications rather than Grantor's Statements. If the Grantor's Statements were or are incorrect, their insignificance to Grantee would not constitute misrepresentations of material fact.

2. Waiver of Warranties. Grantee waives all express and implied warranties, including without limitation, warranties of merchantability and fitness for a particular purpose, and Grantee accepts the Easement Property's condition and value AS IS AND WITH ALL FAULTS, including without limitation, latent and patent defects; further, Grantee understands that, other than the express warranty set forth in the grant, Grantor has given no express warranties, whether by affirmation, promise, description, sample or otherwise.

3. Release. Grantee releases Grantor from any liability to Grantee and waives any causes of action that Grantee could assert against Grantor, both known and unknown, present and future, arising under this Contract or by any law, for damages to Grantee or claims against Grantee arising out of (i) the physical condition of the Easement Property, (ii) the presence of any hazardous substance or material on Easement Property, and (iii) the release of any hazardous substance or material from the Easement Property that has

been transported to other lands. The term "hazardous substance or material" includes any material which is or may be classified as a hazardous substance under applicable laws and regulations.

4. **Indemnity.** Grantee agrees to indemnify, defend, protect, and hold Grantor harmless from any and all claims, demands, costs (including but not limited to attorney fees), expenses, damages, losses, and causes of action or suits for damages arising out of injury to persons (including death) and injury or damage to or loss of any property or improvements caused by Grantee, Grantee's agents, employees, servants, contractors, invitees, licensees, or any person acting under Grantee's direction or control on the Easement Property (collectively called "Grantee's Agents"). Insofar as the rights of Grantor are concerned, any independent contractor of Grantee entering upon the Easement Property for any purpose of Grantee's and any servant or employee or other person entering with the permission of such independent contractor is deemed to be an agent of Grantee. Grantee assumes full responsibility and liability for the acts and omissions of all of Grantee's Agents acting on behalf of Grantee in connection with the rights herein granted and the activities conducted by Grantee on the Easement Property.

Special Provisions:

The below special provisions apply to, govern, and control the grant of easement:

1. **Character.** The easement granted is appurtenant to, and runs with, the Lots Served by the Easement Property, and portions of it, whether or not such easement is referenced in any conveyance of the Lots Served by the Easement Property, or portions of it.

2. **Duration.** The easement is perpetual.

3. **Exclusivity.** The easement is exclusive, and Grantor is prohibited from granting a similar easement to anyone without Grantee's consent.

4. **Maintenance.**

A. **Water Well.** The expense of maintaining and repairing the Water Well ("Well Maintenance") shall be provided by the fund established by the Maintenance Fees and shall include the following: (i) repairing, maintaining, renovating, and reworking the Water Well; and (ii) repairing, maintaining, renovating, and replacing any Water Well equipment. If the Grantee is unable to agree on the work to be done, a professional water well maintenance service company will be hired to perform an inspection and provide a report of the work needed to be performed. If the Grantee cannot agree upon the work to be done following the provision of such professional report, then the professional water well service company will perform the work recommended

in its report. The cost of the professional water well service company will be paid borne equally by the Grantee. Each Grantee will each share equally expenses which may be in excess of the fund established by the Maintenance Fund.

B. Waterlines. Each Grantee will bear the sole cost of repairing, maintaining the waterlines serving such Grantee's lot. If a waterline is leaking or otherwise threatening the integrity of the water well, or wasting water, then the waterline may be cut off until it is repaired.

C. Expense Reimbursement for Expenses which are in Excess of the Fund by Maintenance Fees.

(i). Payment & Reimbursement. To obtain reimbursement for the cost of Well Maintenance, the Grantee who pays ("Paying Party") must give written notice ("Notice Requesting Reimbursement") to the other Grantees ("Reimbursing Party") from whom reimbursement is requested, including a specific description of the work performed, the parts replaced, and the costs itemized, within ninety (90) days of completion of the Well Maintenance work. The Reimbursing Party must fully reimburse the Paying Party the amount of the Reimbursement Request within thirty (30) days of the Notice Requesting Reimbursement. Unless so paid, the reimbursement is delinquent and the Paying Party may declare the Reimbursing Party in default under this Agreement.

(ii). Appeal of Reimbursement Request. The Reimbursing Party may appeal the Reimbursement Request by obtaining two estimates from professional water well servicing companies. If the average ("Average Cost") of the two estimates is not less than the Reimbursement Request by over ten percent (10%) of the Reimbursement Request, then the Reimbursing Party must reimburse the Paying Party the full amount of the Reimbursement Request. However, if the Average Cost of the two estimates is less than the Reimbursement Request by over ten percent (10%) of the Reimbursement Request, then the Reimbursing Party must reimburse the Paying Party only the Average Cost, which is deemed full reimbursement. In the event of an appeal, notice of the Average Cost and the reimbursement must be made to the Paying Party within thirty (30) days of the Notice Requesting Reimbursement.

5. Equitable Rights of Enforcement. Any interference or threatened interference with the easement provided by this Agreement may be enforced by restraining orders, injunctions, temporary or permanent, prohibiting interference and ordering compliance with the easement burdens and benefits. Such equitable relief will be obtainable upon proof of the existence of interference or threatened interference with the easements, and without the necessity of proof of inadequacy of legal remedies or irreparable harm. Such equitable relief will be obtainable only by the Parties hereto, any lienholders, or their

successors and assigns. However, the action of seeking an equitable remedy does not constitute an election of remedies or a waiver of other remedies.

General Provisions:

1. Alternative Dispute Resolution. The Parties agree to mediate in good faith to resolve any dispute under this instrument. Following mediation, all unresolved issues will be resolved by binding arbitration. Absent an agreement to use other rules, the arbitration will be controlled by the American Arbitration Association's Commercial Arbitration Rules. The arbitration award may be judicially enforced by filing it in a court of proper jurisdiction as a final judgment of that court.
2. Attorney's Fees. If either party retains an attorney to enforce this instrument, the prevailing party is entitled to recover reasonable attorney's fees, court costs, and related expenses.
3. Choice of Law. This instrument is subject to and governed by the laws of the State of Texas, excluding any conflicts-of-law rule or principle that might refer the construction or interpretation of this instrument to the laws of another state. Each party submits to the jurisdiction of the state and federal courts in the State of Texas and to venue in the County in which the Easement Property is situated.
4. Counterparts. This instrument may be separately executed in any number of counterparts with the same effect as if all signatory parties had signed the same instrument. All counterparts are to be construed together and constitute one and the same instrument, and the signature pages may be removed from the counterparts and combined on one instrument for convenience in recording.
5. Defined Terms. Defined terms provided at the beginning of this instrument and where referenced by quotes within parentheses, constitute the definitions of those same terms when used in the body of this instrument.
6. Effect of Waiver or Consent. No waiver or consent, express or implied, by any party to or of any breach or default by any party in the performance by such party of its obligations will be deemed or construed to be a consent or waiver to or of any other breach or default in the performance by such party of the same or any other obligations of such party. Failure on the part of a party to complain of any act or any party or to declare any party in default, irrespective of how long such failure continues, will not constitute a waiver by such party of its rights hereunder until the applicable statute of limitation period has run.
7. Further Assurances. In connection with this instrument as well as all transactions contemplated by it, each signatory party agrees to execute and deliver such additional documents and instruments and to perform such additional acts as may be necessary or appropriate to effectuate all of the terms of this instrument and all related transactions.

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

9. Integration. This instrument contains the complete agreement between the Parties regarding this subject matter and cannot be varied except by the written agreement signed by the Parties. The Parties agree there are no oral agreements, understandings, representations or warranties which are not expressly set forth in this instrument.

10. Notices. Any notice required or permitted under this Agreement must be in writing. Any notice required by this Agreement will be deemed to be delivered (whether actually received or not) when deposited with the U.S. Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the intended recipient at the address shown in this Agreement. Notice may also be given by regular mail, personal delivery, courier delivery, facsimile transmission, or other commercially reasonable means and will be effective when actually received. Any address for notice may be changed by written notice delivered as provided herein.

11. Recitals. Any recitals in this instrument are represented by the Parties to be accurate, and constitute a part of the substantive agreement.

12. Successors. This instrument binds, benefits, and may be enforced by the successors in interest of the Parties, except as otherwise provided. The Grantor reserves the right to transfer and assign all or any part of the rights of the Grantor described herein. The Association may enforce the provisions of this Agreement with the same remedies and privileges provided the Grantor herein.

13. Binding Effect. By the acceptance of a deed from the Grantor, the owners of Lots Served by the Easement Property agree to be bound as a Grantee to the terms and provisions of this Water Well Agreement.

Grant of Easement.

Grantor, for the Consideration and subject to the Reservations and Exceptions, and further subject to the Disclaimer, Release, and Indemnity, GRANTS, SELLS, AND CONVEYS to Grantee an easement over, upon, and across the Easement Property for the Easement Purpose and for the benefit of the Lots Served by the Easement Property, and portions thereof, together with all and singular the rights and appurtenances thereto in any wise belonging, to have and hold it to Grantee, Grantee's heirs, successors, or assigns according to the Special Provisions and the General Provisions. Grantor binds Grantor and Grantor's heirs and successors to warrant and forever defend all and singular the easement to Grantee and Grantee's heirs, successors, and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof, except as to the

Reservations and Exceptions, and further subject to the Disclaimer, Release, and Indemnity, when the claim is made by, through, or under Grantor but not otherwise.

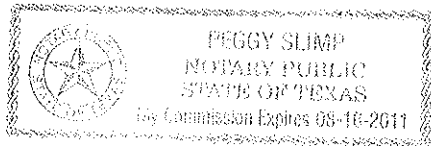
FOSSIL TRAILS, L.L.C.

By: Ann McCullough
Ann McCullough, Manager

STATE OF TEXAS
COUNTY OF SOMERVELL

This instrument was acknowledged before me on June 2, 2008,
By ANN MCCULLOUGH, Manager of FOSSIL TRAILS, L.L.C., a Texas limited
liability company. On behalf of said limited liability company.

[seal]



Peggy A. Slimp
NOTARY PUBLIC, STATE OF TEXAS

AFTER RECORDING RETURN TO :

Sam McCullough
PO BOX 240
Mansfield, TX 76063

FILED AND RECORDED

CLERK OF PUBLIC RECORDS

Pandee Garrett
JUN 26 2008 10 26 27 AM

FEE: \$44.00

20081401

Pandee Garrett County Clerk
Somervell County TEXAS