

RECREATION FACILITIES DEVELOPMENT AGREEMENT

THIS AGREEMENT ("Agreement") entered into on this the 1st day of August, 1996, between THE WOODLANDS CORPORATION ("TWC"), a Delaware corporation, and THE WOODLANDS ASSOCIATION, INC. ("TWA"), a Texas nonprofit corporation.

The purpose of this Agreement is to state the terms and conditions under which TWC and TWA will cooperate with respect to the planning, design, construction, operation and maintenance of Recreational Facilities in the TWA Area. "Recreational Facilities, as used herein, shall mean the parks, pathways and other recreational facilities TWC is required to construct in the TWA Area in accordance with Article VIII of the Mutual Benefit Agreement dated as of March 1, 1992, between and among The Woodlands Community Association, Inc., The Woodlands Association, Inc., The Woodlands Commercial Owners Association, The Woodlands Community Service Corporation, The Woodlands Fire Department, Inc., and The Woodlands Corporation, and such other recreational facilities as the parties may agree to from time to time. "TWA Area" as used herein shall mean all land encumbered by restrictive covenants designating TWA as the community association for property owners and/or residents owning and/or residing on the land.

AGREEMENT

For and in consideration of the covenants and agreements obligations herein contained and the mutual benefits to be derived therefrom the parties agree as follows:

A. FUNCTIONS, DUTIES AND OBLIGATIONS OF TWC

TWC agrees to perform the following services:

1. Oversee planning, design and construction of the Recreational Facilities in the TWA Area.
2. Hire and manage all contractors and consultants necessary to accomplish its services to be provided herein.
3. Handle all accounting and administrative matters associated with the design and development of the Recreational Facilities.
4. Apply to the appropriate agency for and administer federal and state grants for the Recreational Facilities to the extent that the grants are available and the proposed Recreational Facilities are eligible.
5. Review plans for the Recreational Facilities with TWA and its representatives at key milestones in the planning/design process.

6. Develop the Recreational Facilities in a timely manner consistent with the development of properties by TWC in the TWA Area, subject to the provisions of Section B.1 of this Agreement.
7. Provide, or cause to be provided by others, 50% of the Net Facility Costs. The term "Net Facility Costs", as used herein, shall mean all costs of planning, design, construction, land, and project management of the Recreational Facilities each year after deducting from the costs contributions to them from federal and state grants, if any.
8. Cause title to all lands and easements upon which the Recreational Facilities are constructed to be conveyed to TWA upon completion.

B. FUNCTIONS, DUTIES AND OBLIGATIONS OF TWA

For and in consideration of the foregoing services to be provided by TWC, TWA, agrees to the following:

1. Provide 50% of the Net Facility Costs each year. The Net Facility Costs shall be budgeted each year based on estimates and development schedules provided by TWC.
2. Upon the completion of construction of any Recreational Facility project constructed by TWC in accordance with this Agreement, accept title to the Recreational Facility, including an easement or fee ownership of the underlying land, and to provide or cause others to provide perpetual maintenance of such facility to the extent required to maintain same in its original condition, reasonable wear and tear excepted.

C. MISCELLANEOUS

1. Adoption of its annual budget by TWA shall constitute approval of all Recreational Facilities provided for therein, and TWC shall be authorized to proceed with the construction of the Recreational Facilities in accordance with the terms of this Agreement as long as such facilities and the construction thereof are consistent with the scope and budgets approved. Any Material Deviation from the scope of the project or budget approved by TWA must be approved by the board of directors of TWA. "Material Deviation" from the approved budget shall mean any increase of 15% or more.
2. With respect to each Recreational Facility not constructed with federal or state grant funds, TWC will submit to TWA monthly invoices and contractor's construction draw requests and TWA will reimburse TWC, or its designee, 50% of the costs thereof. TWA must make payment of its share of the invoices and construction draw requests within 30 days of receipt of a request for payment from TWC. Unpaid invoices shall bear interest at the lesser of 18% or the highest amount allowed by law. With respect to each Recreational Facility for which a federal or state grant has been obtained the procedures for contracting for construction and payment of contractors will follow the specific requirements of the granting agency.
3. This Agreement shall be in effect for an initial period of 5 years ("Initial Period") from the date hereof. At the end of this Initial Period, the parties hereto may by mutual agreement extend this Agreement for an additional period of 5 years and thereafter this Agreement shall at the end of each 5-year period automatically extend for an additional 5-year period unless either party notifies the other in writing not less than 15 days prior to the end of the applicable 5-year period that such party elects to terminate this Agreement. Notwithstanding anything contained herein to the contrary, should either party fail to substantially perform its obligations in accordance with the terms of this Agreement, through no fault of the other party, the nondefaulting party may terminate this Agreement if the default is not cured within 30 days after written notice from the nondefaulting party, said 30 day cure period subject to extension for

an additional period as shall be reasonable if the default is of a nonmonetary nature and the defaulting party commences to cure within the 30 day period and is diligently proceeding to cure the default.

4. TWC shall have authority to negotiate all disputes with contractors or other parties arising out of the construction of an approved community facility; and to settle such disputes if the cost of settlement is within the approved budget. TWC agrees to indemnify and hold harmless TWA from and against all losses, damages, or claims whatsoever, including court costs and attorney's fees, suffered by TWA arising out contract disputes with the contractors or other parties over the performance of their obligations under the terms of their contracts with TWC, but not any other type of losses, damages, or claims, including, but not limited to, claims for injury or death to any person or injury to any property. Any costs of settlement over and above the budget and scope approved for that project must be authorized by the board of directors of TWA. All costs incurred in settling such dispute, including bonds to cover mechanic's and materialman's liens shall be part of Net Facility Costs.
5. TWC will be responsible for obtaining all licenses and permits required for any project. The costs incurred in obtaining such licenses and permits, including attorney's fees and the costs of obtaining technical or expert assistance required to obtain such license or permit shall be part of Net Facility Costs.
6. It is understood and agreed that the duties to be performed by TWC hereunder in providing planning and engineering, plans and specifications, contract documents and construction management services may be performed through third party architects, engineers, contractors and other third parties. To the extent that third parties are used, TWC will use care and prudent judgment in the selection of competent parties to provide such services and/or to perform the work. It is agreed, however, that TWC does not underwrite, guarantee, warrant, or insure the work done by any such architect, engineer, contractor, or other third party, and TWC will not be responsible for the failure of any such third party to perform its services or work in accordance with their agreements. TWC will, on its own behalf or on behalf of TWA, exercise whatever rights TWC or TWA may have to cause each project to be completed as approved. It is understood and agreed that TWC "in house" personnel may be utilized in the performance of its obligations herein, the costs of the services performed to be included in "Net Facility Costs" so long as the costs are reasonable and not out of line with what third parties would charge.
7. Nothing contained in this Agreement shall constitute or be construed to be or create a partnership or joint venture between TWC and TWA.
8. Except for the failure to pay any sums required by this Agreement, neither party hereto shall be in default for failure to perform any of its obligations pursuant to this Agreement if, and to the extent that, it can be established that such failure was occasioned by any circumstances which were beyond its control and which, by the exercise of due diligence and foresight, it could have not prevented or overcome.
9. Nothing contained herein shall be construed to require TWC to construct any Recreational Facilities which, in its sole judgment, it considers to be inconsistent or inappropriate with its overall Development Plan for The Woodlands.
10. This Agreement may not be assigned by either party without the express, written approval of the other party, except that TWA agrees that TWC may assign its obligations under this Agreement to The Woodlands Community Facilities Development Corporation and/or a corporation which succeeds TWC as developer of The Woodlands.
11. This Agreement shall be binding upon the parties hereto and their successors and assigns.

12. This Agreement shall be deemed to have been made and shall be construed and interpreted in accordance with the laws of the State of Texas.

EXECUTED this the 15th day of August, 1996.

THE WOODLANDS CORPORATION

By: *Roger L. Galatas*
Name: ROGER L. GALATAS
Title: PRESIDENT

Originator	<input checked="" type="checkbox"/>
Legal	<input checked="" type="checkbox"/>
Financial	<input checked="" type="checkbox"/>

THE WOODLANDS ASSOCIATION, INC.

By: *Joel L. Deretchin*
Name: JOEL L. DERETCHIN
Title: PRESIDENT