

CAUSE NO. CV1611219

SHERRY LYNN JOHNSON,

Plaintiff

V.

DAVID DEXEL, ET AL

Defendants.

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IN THE DISTRICT COURT OF

LIBERTY COUNTY, TEXAS

253RD JUDICIAL DISTRICT

**DEFENDANT CLARINDA COMSTOCK'S MOTION TO TRANSFER VENUE AND ORIGINAL ANSWER TO PLAINTIFF'S ORIGINAL PETITION, SUBJECT TO MOTION TO TRANSFER VENUE**

TO THE HONORABLE JUDGE OF SAID COURT:

Defendant Clarinda Comstock files her Motion to Transfer Venue and Original Answer to Plaintiff's Original Petition, subject to Motion to Transfer Venue, and would respectfully show the Court as follows:

**I.**  
**MOTION TO TRANSFER VENUE**

1. This is a lawsuit brought against a Harris County, Texas lawyer for legal services provided in Harris County, Texas. Defendant objects to venue in Liberty County, because it is not a county of proper venue under Texas Civil Practice and Remedies Code § 15.17, or any other rule or law. Defendant denies any and all purported venue "facts" pleaded by Plaintiff.

2. Harris County, Texas is the proper county of venue for this case. See TEX. CIV. PRAC. & REM. CODE § 15.015 ("A]n action against a county shall be brought in that county."). Additionally, all or a substantial part of the events giving rise to Plaintiff's claims occurred in Harris County. Each of the alleged acts or omissions giving rise to those claims and the causes of action enumerated by Plaintiff against Defendants occurred in Harris County, Texas. None of the alleged acts or omissions giving rise to Plaintiff's claims or causes of action occurred in



Liberty County, much less a substantial part of such acts or omissions. Maintenance of the suit in Liberty County will work an injustice on Defendant considering the fact that none of the events giving rise to the claims against Defendant occurred in Liberty and none of the relevant evidence or witnesses are located in Liberty County. The balance of interests of all of the parties predominate in favor of the action being brought in Harris County. The transfer of the case to Harris County will not work an injustice to any other party. Accordingly, Harris County is clearly the county of proper venue under the general venue rule. *See* TEX. CIV. PRAC. & REM. CODE §15.002(a)(1). Therefore, Defendant requests that the Court transfer venue of this case to Harris County, Texas.

**II.**  
**GENERAL DENIAL**

3. Defendant denies generally the allegations in Plaintiff's Petition and requests that Plaintiff be required to prove them by a preponderance of the evidence in accordance with the laws of the State of Texas.

**III.**  
**ADDITIONAL DEFENSES**

4. Defendant will further show that this action is subject to the proportionate responsibility provisions of Chapter 33 of the Texas Civil Practice and Remedies Code, including (without limitation) the requirement of § 33.003 thereof that the trier of fact determine the relative responsibility of Plaintiff, Defendants, and each and every responsible third-party that may be joined in the suit. Defendant may not be held jointly and severally liable for any amount of damages claimed herein unless the percentage of responsibility of Defendant when compared with that of Plaintiff, and each and every responsible third party is greater than 50%.

5. Defendant will further show that Plaintiff's alleged damages may have resulted from new and independent, unforeseeable, superseding and intervening causes unrelated to any conduct of Defendant.

6. Defendant will further show that Plaintiff's alleged damages were not proximately caused by any act or omission of Defendant, but by the acts and/or omissions of a third party over whom Defendant had no control.

7. Defendant will further show that Defendant is not responsible for any expenses or damages allegedly incurred by Plaintiff due to Plaintiff own acts, conduct, negligence and/or failure to exercise reasonable care in mitigating her damages.

8. Defendant will further show that it is not responsible for any loss caused by Plaintiff's own negligence, intentional misconduct, or other act or omission.

9. Defendant will further show that Plaintiff's claims are barred in whole or in part by the doctrine of derived judicial immunity.

10. Defendant will further show that Plaintiff's claims are barred in whole or in part by the applicable statute of limitations.

11. Defendant will further show that Plaintiff's claims are barred by res judicata and/or collateral estoppel.

12. Defendant will further show that Plaintiff's claims are barred by waiver, estoppel, and/or quasi-estoppel.

13. Defendant will further show that Plaintiff does not have standing to sue Defendant for some or all of her purported causes of action.

14. Defendant will further show that she acted in good faith and with the reasonable belief that she was acting in the best interest of Willie Joe Mills.



15. Defendant will further show that in the unlikely event Plaintiff is adjudged to be entitled to any damages in this matter, which is denied, Plaintiff is not entitled to recover prejudgment interest on any future damages. Defendant would show that, as a matter of law, interest on damages yet to accrue is not compensatory and is, consequently, a penalty which would not be imposed even absent a finding of gross negligence, or rather, for a lesser level or degree of culpability for which a penalty is not authorized by law.

16. Defendant will further show that if prejudgment interest is recoverable in this case, it is limited in accordance with TEX. FIN. CODE ANN. §304.101 *et seq.*

17. Defendant will further show that if post-judgment interest is recoverable in this case, it is limited in accordance with TEX. FIN. CODE ANN. §304.003(c).

18. Defendant would further show that it is entitled to all caps and limitations on damages pursuant to the Texas Civil Practices & Remedies Code.

**III.**  
**JURY DEMAND**

19. Defendant requests a jury trial. The jury fee has previously been tendered to the District Clerk.

WHEREFORE, PREMISES CONSIDERED, Defendant Clarinda Comstock respectfully pray that Plaintiff take nothing of and from Defendant, and that Defendant receives all costs of Court and such other and further relief, both at law and in equity, to which Defendant may show herself to be justly entitled.



Respectfully submitted,

THOMPSON, COE, COUSINS & IRONS, L.L.P.

By: 

Zandra E. Foley  
State Bar No. 24032085  
Cory S. Reed  
State Bar No. 24076640  
One Riverway, Suite 1400  
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**ATTORNEYS FOR DEFENDANT  
CLARINDA COMSTOCK**

**CERTIFICATE OF SERVICE**

This is to certify that a true and correct copy of the foregoing document has been sent to all known counsel of record and/or parties of record pursuant to the Texas Rules of Civil Procedure on the 28th day of September, 2016.

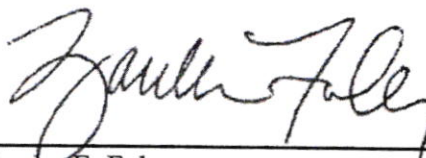
Billy Shepherd  
Allison Standish Miller  
Shepherd Prewett Miller, PLLC  
770 South Post Oak Lane, Suite 420  
Houston, Texas 77056

Susan C. Norman  
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Louis M. Ditta  
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Julie Countiss  
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LLP  
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Houston, Texas 77010

  
Zandra E. Foley

CAUSE NO. CV1611219

SHERRY LYNN JOHNSTON	§	IN THE DISTRICT COURT OF
	§	
	§	
VS.	§	LIBERTY COUNTY, TEXAS
	§	
DAVID DEXEL, ET AL	§	253RD JUDICIAL DISTRICT

**DEFENDANT HARRIS COUNTY'S MOTION TO TRANSFER VENUE**  
**ORIGINAL ANSWER AND JURY DEMAND**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Defendant Harris County, Texas and files this Motion to Transfer Venue and, subject to such motion, his Original Answer and Jury Demand in the above entitled and numbered cause, and would show unto the court the following:

I.

**Motion to Transfer Venue**

Defendant Harris County, Texas denies that venue is proper in Liberty County and files this Motion to Transfer Venue pursuant to Texas Civil Practice & Remedies Code Ann. § 15.015 (Vernon 2002) which states that “[a]n action against a county shall be brought in that county”. This statute is a mandatory venue provision and this suit must be transferred to Harris County, Texas.

II.

**General Denial**

Subject to such stipulations and admissions as may be hereinafter made, Defendant asserts a general denial as authorized by TEXAS RULES OF CIVIL PROCEDURE 92 and Defendant respectfully requests that the Plaintiff be required to prove the charges and allegations against

Defendant by a preponderance of the evidence as required by the constitution and laws of the State of Texas.

III.

**Affirmative Defense**

Plaintiff's claims are barred by the doctrines of governmental or sovereign immunity, judicial immunity, derived judicial immunity and official immunity.

IV.

**Jury Demand**

Defendant would show this Court that it desires the above entitled and numbered cause to be tried to a jury. Defendant would further show that pursuant to TEXAS CIVIL PRACTICE. & REMEDIES CODE § 6.001, it is exempt from the deposit of any jury fee.

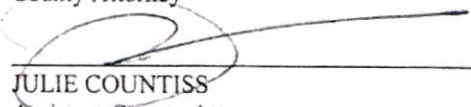
V.

**Relief**

WHEREFORE, PREMISES CONSIDERED Defendant Harris County, Texas prays that this case be transferred to Harris County, that the Plaintiff take nothing by reason of this suit, that Defendant be discharged and that it receive all relief, both general and special, at law and at equity, to which he may show it to be justly entitled.

Respectfully submitted,

VINCE RYAN, 99999939  
County Attorney



---

JULIE COUNTISS  
Assistant County Attorney  
State Bar No. 24036407  
1019 Congress, 15th Floor  
Houston, Texas 77002  
Telephone: 713-274-5115  
Facsimile: 713-755-8924  
[julie.countiss@cao.hctx.net](mailto:julie.countiss@cao.hctx.net)



CERTIFICATE OF SERVICE

I hereby certify that on the 19<sup>th</sup> day of October, 2016, a true and correct copy of the foregoing *Defendant Harris County's Motion to Transfer Venue Original Answer and Jury Demand* was served pursuant to Rule 21a of the Texas Rules of Civil Procedure to the attorney of record listed below:

Susan C. Norman  
P.O. Box 52518  
Houston, Texas 77052  
Fax: (281) 402-3682  
[suenorman@suenormanlaw.com](mailto:suenorman@suenormanlaw.com)  
Attorney for Sherry Johnston



JULIE COUNTISS

NO. CV1611219

SHERRY LYNN JOHNSTON

§

IN THE DISTRICT COURT OF

VS.

§

DAVID DEXEL, INDIVIDUALLY AND AS §  
GUARDIAN OF THE PERSON OF §  
WILLIE JO MILLS, DECEASED; GINGER §  
LOTT, INDIVIDUALLY AND AS §  
GUARDIAN OF THE PERSON OF WILLIE §  
JO MILLS, DECEASED, AND AS §  
MEMBER OF GSL CARE MANAGEMENT, §  
LLC; GSL CARE MANAGEMENT, LLC; §  
CLARINDA COMSTOCK, INDIVIDUALLY §  
AS GUARDIAN AD LITEM FOR WILLIE §  
JO MILLS, DECEASED; HOWARD §  
REINER, INDIVIDUALLY AND AS §  
ATTORNEY AD LITEM FOR WILLIE §  
JO MILLS, DECEASED; TAMORAH C. §  
BUTTS, A/K/A CHRISTINE BUTTS, IN §  
HER OFFICIAL CAPACITY AS §  
STATUTORY PROBATE JUDGE OF §  
PROBATE COURT NO. 4 OF HARRIS §  
COUNTY, TEXAS, AND IN HER §  
INDIVIDUAL CAPACITY, AND SHERRIE §  
FOX, IN HER INDIVIDUAL AND §  
EMPLOYEE CAPACITY FOR HARRIS §  
COUNTY, TEXAS, AND HARRIS §  
COUNTY, TEXAS §

LIBERTY COUNTY, TEXAS

253<sup>RD</sup> JUDICIAL DISTRICT

GINGER S. LOTT'S ORIGINAL ANSWER TO SHERRY LYNN JOHNSTON'S  
PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE DISTRICT COURT:

Ginger S. Lott, individually and as Former Guardian of the Person of Willie Jo Mills, Deceased ("Defendant"), files this her Original Answer to Sherry Lynn Johnston's ("Johnston") Plaintiff's Original Petition, and respectfully shows the following:

1.

General Denial

At this time, Defendant asserts a General Denial as authorized by Rule 92 of the Texas Rules of Civil Procedure, and respectfully requests that the Court and Jury require Johnston to prove her claims, charges and allegations by clear and convincing evidence or a preponderance of the evidence as required by the Constitution and laws of the State of Texas.

2.

Defendant respectfully reserves the right to file an amended Answer in this cause in the manner authorized by the Texas Rules of Civil Procedure.

WHEREFORE, PREMISES CONSIDERED, Ginger S. Lott, individually and as Former Guardian of the Person of Willie Jo Mills, Deceased, prays that (i) Johnston take nothing by her suit; (ii) that she be awarded her attorney's fees and expenses, and (iii) for such other and further relief, both general and special, at law and in equity, to which she may be justly entitled.

Respectfully submitted,

DITTA LAW, P.C.

By:

  
\_\_\_\_\_  
LOUIS M. DITTA  
(TBA #05898500)  
[louditta@dittalaw.com](mailto:louditta@dittalaw.com)  
2900 Wesleyan, Suite 150  
Houston, Texas 77027  
(713) 961-9977  
(713) 961-9917 Facsimile

Attorneys for Defendant



CERTIFICATE OF SERVICE

I, Louis M. Ditta, hereby certify that a true and correct copy of the foregoing instrument was forwarded to:

Ms. Susan C. Norman  
Law Offices of Susan C. Norman  
P.O. Box 52518  
Houston, Texas 77052  
[suenorman@suenormanlaw.com](mailto:suenorman@suenormanlaw.com)

electronically through the electronic filing manager and/or by hand delivery, mail, commercial delivery service, fax or e-mail on this 25<sup>th</sup> day of October, 2016.

  
\_\_\_\_\_  
LOUIS M. DITTA



1.

General Denial

At this time, Defendant asserts a General Denial as authorized by Rule 92 of the Texas Rules of Civil Procedure, and respectfully requests that the Court and Jury require Johnston to prove her claims, charges and allegations by clear and convincing evidence or a preponderance of the evidence as required by the Constitution and laws of the State of Texas.

2.

Defendant respectfully reserves the right to file an amended Answer in this cause in the manner authorized by the Texas Rules of Civil Procedure.

WHEREFORE, PREMISES CONSIDERED, GSL Care Management, LLC prays that (i) Johnston take nothing by her suit; (ii) that it be awarded its attorney's fees and expenses, and (iii) for such other and further relief, both general and special, at law and in equity, to which it may be justly entitled.

Respectfully submitted,

DITTA LAW, P.C.

By:



LOUIS M. DITTA  
(TBA #05898500)  
[louditta@dittalaw.com](mailto:louditta@dittalaw.com)  
2900 Wesleyan, Suite 150  
Houston, Texas 77027  
(713) 961-9977  
(713) 961-9917 Facsimile

Attorneys for Defendant



CERTIFICATE OF SERVICE

I, Louis M. Ditta, hereby certify that a true and correct copy of the foregoing instrument was forwarded to:

Ms. Susan C. Norman  
Law Offices of Susan C. Norman  
P.O. Box 52518  
Houston, Texas 77052  
[suenorman@suenormanlaw.com](mailto:suenorman@suenormanlaw.com)

electronically through the electronic filing manager and/or by hand delivery, mail, commercial delivery service, fax or e-mail on this 25<sup>th</sup> day of October, 2016.

  
\_\_\_\_\_  
LOUIS M. DITTA

FILED  
10/26/2016 4:53:04 PM  
Donna G. Brown  
District Clerk  
Liberty County, TX  
DESTINY HENRY

CAUSE NO. CV1611219

SHERRY LYNN JOHNSTON

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IN THE DISTRICT COURT OF

VS.

LIBERTY COUNTY, TEXAS

DAVID DEXEL, ET AL

253RD JUDICIAL DISTRICT

**DEFENDANTS CHRISTINE BUTTS AND SHERRIE FOX'S  
ORIGINAL ANSWER AND AFFIRMATIVE DEFENSES**

TO THE HONORABLE JUDGE OF SAID COURT:

COME NOW Defendants Judge Christine Butts and Sherrie Fox and file their Original Answer and Affirmative Defenses in the above entitled and numbered cause, and would show unto the court the following:

I.

**General Denial**

Subject to such stipulations and admissions as may be hereinafter made, Defendants assert a general denial as authorized by TEXAS RULES OF CIVIL PROCEDURE 92 and Defendants respectfully requests that the Plaintiff be required to prove the charges and allegations against Defendants by a preponderance of the evidence as required by the constitution and laws of the State of Texas.

II.

**Affirmative Defenses**

Plaintiff's claims are barred by the doctrines of governmental or sovereign immunity, judicial immunity, derived judicial immunity, official immunity, and statute of limitations.

**III.**

**Relief**

WHEREFORE, PREMISES CONSIDERED Defendants pray that the Plaintiff take nothing by reason of this suit, that Defendants be discharged and that they receive all relief, both general and special, at law and at equity, to which they may show themselves to be justly entitled.

Respectfully submitted,

VINCE RYAN, 99999939  
County Attorney

/s/ Julie Countiss  
JULIE COUNTISS  
Assistant County Attorney  
State Bar No. 24036407  
1019 Congress, 15th Floor  
Houston, Texas 77002  
Telephone: 713-274-5115  
Facsimile: 713-755-8924  
[julie.countiss@cao.hctx.net](mailto:julie.countiss@cao.hctx.net)



CERTIFICATE OF SERVICE

I hereby certify that on the 27<sup>th</sup> day of October, 2016, a true and correct copy of the foregoing *Defendants Original Answer* was served pursuant to Rule 21a of the Texas Rules of Civil Procedure to the attorney of record listed below:

Susan C. Norman  
P.O. Box 52518  
Houston, Texas 77052  
Fax: (281) 402-3682  
[suenorman@suenormanlaw.com](mailto:suenorman@suenormanlaw.com)  
Attorney for Sherry Johnston

Louis M. Ditta  
2900 Wesleyan, Suite 150  
Houston, Texas 77027  
Fax: (713) 961-9917  
[louditta@dittalaw.com](mailto:louditta@dittalaw.com)  
Attorney for Defendants,  
Ginger S. Lott and GSL Care Management, LLC

/s/ Julie Countiss  
JULIE COUNTISS

FILED  
10/28/2016 10:10:13 AM  
Donna G. Brown  
District Clerk  
Liberty County, TX  
DESTINY HENRY

NO. CV1611219

SHERRY LYNN JOHNSTON,

Plaintiff,

v.

DAVID DEXEL, Individually and as  
Guardian of the person of Willie Jo  
Mills, Deceased; GINGER LOTT,  
Individually and as Guardian of the  
Person of Willie Jo Mills, deceased, and  
as Member of GSL Care Management,  
LLC; GSL CARE MANAGEMENT, LLC,  
CLARINDA COMSTOCK, Individually  
and as Guardian Ad Litem for Willie  
Jo Mills, deceased; HOWARD REINER,  
Individually and as Attorney Ad Litem  
for Willie Jo Mills, deceased;  
TAMORAH C. BUTTS a/k/a  
CHRISTINE BUTTS, in her official  
Capacity as statutory probate judge  
Of Probate Court No. 4 of Harris  
County, Texas and in her individual  
capacity; and SHERRY FOX, in her  
individual and employee capacity  
for Harris County, Texas; and  
HARRIS COUNTY, TEXAS,

Defendants.

IN THE DISTRICT COURT OF

LIBERTY COUNTY, TEXAS

253RD JUDICIAL DISTRICT

**DEFENDANT DAVID DEXEL'S MOTION TO TRANSFER VENUE TO  
HARRIS COUNTY AND, SUBJECT THERETO, ORIGINAL ANSWER**

**A. Introduction.**

1. Defendant David Dixel, "individually and as [former] guardian of the person of Willie Jo Mills, deceased" ("Dixel"), submits this motion to transfer venue to Harris County and, subject thereto, original answer to Plaintiff Sherry Lynn Johnston's ("Johnston") pleadings.

**B. Motion To Transfer Venue.**

2. Dexel denies that venue is mandatory in Liberty County because, according to Johnston, this suit purportedly “involves libel, slander, invasion of privacy of [Johnston]” and Johnston resided in Liberty County when her claims accrued.<sup>1</sup> Dexel denies that venue is mandatory in Liberty County under Tex. Civ. Prac. & Rem. Code § 15.017, or any other rule or law. Dexel denies that venue is proper in Liberty County under any rule or law. Dexel denies any and all purported venue “facts” pleaded by Johnston. Dexel objects objects to venue in Liberty County.

3. Dexel requests the Court to transfer this case to Harris County, where venue is both mandatory and proper. Venue is mandatory in Harris County because Harris County is a defendant and, under Tex. Civ. Prac. & Rem Code § 15.015, “[a]n action against a county shall be brought in that county.” Separately, venue is proper in Harris County because: (a) under Tex. Civ. Prac. & Rem. Code § 15.002(a)(1), all or a substantial part of the events or omissions giving rise to this claim occurred, if at all, in Harris County; (b) under Tex. Civ. Prac. & Rem. Code § 15.002(a)(2), Harris County was the residence of Dexel and other natural person defendants at the time that Johnston’s purported causes of action accrued; and (c) under Tex. Civ. Prac. & Rem. Code § 15.002(a)(3), defendant Harris County’s principal office is, and has always been, in Harris County.

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<sup>1</sup> Johnston does not assert her purported defamation claim against Dexel. Moreover, the claim appears to be barred by limitations on the face of Johnston’s original petition and, upon information and/or belief, is wrongfully asserted for the purpose of improperly trying to set venue in Liberty County.

4. Liberty County is not a county of mandatory or proper venue, and Harris County is a county of both mandatory and proper venue. Dixel requests the Court to transfer this case, or alternatively the claims and causes of action asserted against Dixel in this case, to Harris County.

C. **Original Answer, Subject To Motion To Transfer Venue.**

5. Johnston has failed to state a claim upon which relief may be granted.
6. Dixel asserts a general denial.
7. Johnston's claims against Dixel are barred by the applicable statute(s) of limitations.
8. Alternatively, Johnston's claims against Dixel are barred by res judicata and/or collateral estoppel.
9. Alternatively, Johnston's claims against Dixel are barred by waiver, estoppel, and/or quasi-estoppel.
10. Alternatively, Dixel asserts sole proximate cause or sole cause as a defense.
11. Alternatively, the alleged damages that Johnston seeks from Dixel were caused by a new and independent cause and/or subsequent intervening cause.
12. Alternatively, Johnston's alleged damages, if any, were caused by persons and/or entities other than Dixel and for whom Dixel is not liable or responsible at law or in equity.
13. Alternatively, Dixel asserts the defense of proportionate responsibility. Dixel requests the trier of fact to apportion responsibility, if any, among each claimant, each defendant, each settling person, and each responsible third party.



Dexel reserves the right to submit questions and/or issues concerning the responsibility of parties to this case, as well as any third parties.

14. Alternatively, Johnston failed to reasonably mitigate the alleged damages that she seeks from Dexel.

15. Alternatively, Johnston lacks standing to sue Dexel for some or all of Johnston's purported causes of action.

16. Alternatively, Dexel asserts privilege, justification, and/or excuse as defenses.

17. Alternatively, Dexel acted in good faith and with the reasonable belief that he was acting in the best interests of the ward.

18. Alternatively, Dexel reserves the right to elect any available credit and/or reduction, including any dollar and/or percentage reduction, for any settlement.

19. Alternatively, Johnston is not entitled to recover attorney's fees from Dexel because she has failed to properly assert any cause of action against Dexel that would allow for their recovery.

20. Alternatively, Dexel asserts the one-satisfaction rule as a defense.

21. Alternatively, Johnston must elect between any alternative theories of recovery upon which she seeks relief, or any theories of recovery upon which she seeks relief that give rise to the same alleged damages.

22. Alternatively, any award of exemplary damages against Dexel in this case would violate the United States Constitution, the Texas Constitution, and public

policy. Still pleading alternatively, Dexel asserts his rights under Chapter 41 of the Texas Civil Practice and Remedies Code, including without limitation sections 41.003, 41.004, and 41.006–41.013.

23. Subject to Dexel's motion to transfer venue, Dexel requests that Johnston take nothing, that all costs be taxed against Johnston, and that Dexel have such other, further, or alternative relief to which Dexel may be legally or equitably entitled.

Respectfully submitted,

**SHEPHERD PREWETT MILLER PLLC**

By: \_\_\_\_\_



Billy Shepherd  
Texas Bar No. 18219700  
bshepherd@spmlegal.com  
Allison Standish Miller  
Texas Bar No. 24046440  
amiller@spmlegal.com  
770 South Post Oak Lane, Suite 420  
Houston, Texas 77056  
Telephone No. (713) 955-4440  
Facsimile No. +1 (713) 766-6542

**ATTORNEYS FOR DEFENDANT DAVID DEXEL,  
INDIVIDUALLY AND AS [FORMER] GUARDIAN OF  
THE PERSON OF WILLIE JO MILLS, DECEASED**

**CERTIFICATE OF SERVICE**

I hereby certify that on October 27, 2016, a true and correct copy of the foregoing instrument was forwarded to all known counsel of record in accordance with the Texas Rules of Civil Procedure, *to-wit*:

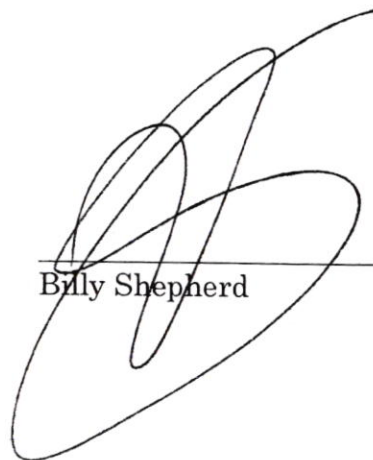
**Via E-File, Email, and/or Fax:**  
Susan C. Norman

**Via E-File, Email, and/or Fax:**  
Julie Countiss

**Via E-File, Email, and/or Fax:**  
John Shepperd/Garet Willig

**Via E-File, Email, and/or Fax:**  
Zandra Foley

**Via E-File, Email, and/or Fax:**  
Louis Ditta

  
Billy Shepherd

NO. CV1611219

SHERRY LYNN JOHNSTON

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IN THE DISTRICT COURT OF

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VS.

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DAVID DEXEL, INDIVIDUALLY AND AS

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GUARDIAN OF THE PERSON OF

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WILLIE JO MILLS, DECEASED; GINGER

§

LOTT, INDIVIDUALLY AND AS

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GUARDIAN OF THE PERSON OF WILLIE

§

JO MILLS, DECEASED, AND AS

§

MEMBER OF GSL CARE MANAGEMENT,

§

LLC; GSL CARE MANAGEMENT, LLC;

§

CLARINDA COMSTOCK, INDIVIDUALLY

§

AS GUARDIAN AD LITEM FOR WILLIE

§

JO MILLS, DECEASED; HOWARD

§

REINER, INDIVIDUALLY AND AS

§

ATTORNEY AD LITEM FOR WILLIE

§

JO MILLS, DECEASED; TAMORAH C.

§

BUTTS, A/K/A CHRISTINE BUTTS, IN

§

HER OFFICIAL CAPACITY AS

§

STATUTORY PROBATE JUDGE OF

§

PROBATE COURT NO. 4 OF HARRIS

§

COUNTY, TEXAS, AND IN HER

§

INDIVIDUAL CAPACITY, AND SHERRIE

§

FOX, IN HER INDIVIDUAL AND

§

EMPLOYEE CAPACITY FOR HARRIS

§

COUNTY, TEXAS, AND HARRIS

§

COUNTY, TEXAS

§

LIBERTY COUNTY, TEXAS

253<sup>RD</sup> JUDICIAL DISTRICT

GINGER S. LOTT'S MOTION TO TRANSFER VENUE AND FIRST AMENDED ANSWER TO SHERRY LYNN JOHNSTON'S PLAINTIFF'S ORIGINAL PETITION, SUBJECT TO MOTION TO TRANSFER VENUE

TO THE HONORABLE DISTRICT COURT:

Ginger S. Lott, individually, as [Former] Guardian of the Person of Willie Jo Mills, Deceased, and as Member of GSL Care Management, LLC ("Defendant"), files this her Motion to Transfer Venue and First Amended Answer to Sherry Lynn Johnston's ("Johnston") Plaintiff's Original Petition, Subject to Motion to Transfer Venue, and respectfully shows the following:



1.

Motion to Transfer Venue

Plaintiff asserts in her Original Petition that venue is mandatory in Liberty County, Texas based on (1) Texas Civil Practices and Remedies Code § 15.017 and (2) her asserted claims for defamation and invasion of privacy accrued while she was a resident of Liberty County, Texas. *See* Plaintiff's Original Petition, Section D, Para. 5. Defendant denies and objects that venue is proper in Liberty County, Texas.

Defendant denies that venue is mandatory in Liberty County, Texas under Texas Civil Practices and Remedies Code § 15.017, or any other rule or law. Defendant further denies the factual assertions contained within Plaintiff's Original Petition supporting her claim that venue is proper in Liberty County, Texas.

Harris County, Texas is the proper county of venue for this case. *See* Texas Civil Practices and Remedies Code § 15.015 ("A]n action against a county shall be brought in that county."). Additionally, all or a substantial part of the events giving rise to Plaintiff's claims occurred in Harris County, Texas. Each of the alleged acts or omissions giving rise to those claims and the causes of action enumerated by Plaintiff against Defendants occurred in Harris County, Texas. None of the alleged acts or omissions giving rise to Plaintiff's claims or causes of action occurred in Liberty County, Texas, much less a substantial part of such acts or omissions. Maintenance of the suit in Liberty County, Texas will work an injustice on Defendants considering the fact that none of the events giving rise to the claims against Defendant occurred in Liberty County, Texas and none of the relevant evidence or witnesses are located in Liberty County, Texas. The balance of interests of all of the parties predominate in favor of the action being brought in Harris County, Texas. The

transfer of the case to Harris County, Texas will not work an injustice to any other party. Accordingly Harris County, Texas is clearly the county of proper venue under the general venue rule. *See* Texas Civil Practices and Remedies Code § 15.002(a)(1). Therefore, Defendant requests that the Court transfer venue of this case to Harris County, Texas.

2.

General Denial

Subject to Defendant's Motion to Transfer Venue, Defendant asserts a General Denial as authorized by Rule 92 of the Texas Rules of Civil Procedure, and respectfully requests that the Court and Jury require Johnston to prove her claims, charges and allegations by clear and convincing evidence or a preponderance of the evidence as required by the Constitution and laws of the State of Texas.

3.

Additional Defenses

Defendant will further show that this action is subject to the proportionate responsibility provisions of Chapter 33 of the Texas Civil Practice and Remedies Code, including (without limitation) the requirement of § 33.003 thereof that the trier of fact determine the relative responsibility of Plaintiff, Defendants, and each and every responsible third-party that may be joined in the suit. Defendant may not be held jointly and severally liable for any amount of damages claimed herein unless the percentage of responsibility of Defendant when compared with that of Plaintiff, and each and every responsible third-party is greater than 50%.

Defendant will further show that Plaintiff's alleged damages may have resulted from new and independent, unforeseeable, superseding and intervening causes unrelated to any conduct of Defendant.

Defendant will further show that Plaintiff's alleged damages were not proximately caused by any act or omission of Defendant, but by the acts and/or omissions of a third-party over whom Defendant had no control.

Defendant will further show that the Defendant is not responsible for any expenses or damages allegedly incurred by Plaintiff due to Plaintiff's own acts, conduct, negligence and/or failure to exercise reasonable care in mitigating her damages.

Defendant will further show that she is not responsible for any loss caused by Plaintiff's own negligence, intentional misconduct, or other act or omission.

Defendant will further show that Plaintiff's claims are barred in whole or in part by the doctrine of derived judicial immunity.

Defendant will further show that Plaintiff's claims are barred in whole or in part by the applicable statute of limitations.

Defendant will further show that Plaintiff's claims are barred by res judicata and/or collateral estoppel.

Defendant will further show that Plaintiff does not have standing to sue Defendant for some or all of her purported causes of action.

Defendant will further show that she acted in good faith and with the reasonable belief that she was acting in the best interest of Willie Jo Mills.

Defendant will further show that in the unlikely event Plaintiff is adjudged to be entitled to any damages in this matter, which is denied, Plaintiff is not entitled to recover prejudgment interest on any future damages. Defendant would show that, as a matter of law, interest on damages yet to accrue is not compensatory and is, consequently, a penalty which would not be imposed even absent a finding of gross negligence, or rather, for a lesser level or degree of culpability for which a penalty is not authorized by law.

Defendant will further show that if prejudgment interest is recoverable in this case, it is limited in accordance with TEX. FIN. CODE ANN. § 304.101 *et seq.*

Defendant will further show that if post-judgment interest is recoverable in this case, it is limited in accordance with TEX. FIN. CODE ANN. §304.003(c).

Defendant would further show that she is entitled to all caps and limitations on damages pursuant to the Texas Civil Practices & Remedies Code.

4.

Jury Demand

Defendant requests a jury trial and will pay the appropriate fee as required by the Texas Rules of Civil Procedure, if not already paid.

5.

Defendant respectfully reserves the right to file an amended Answer in this cause in the manner authorized by the Texas Rules of Civil Procedure.

WHEREFORE, PREMISES CONSIDERED, Ginger S. Lott, individually, as [Former] Guardian of the Person of Willie Jo Mills, Deceased, and as Member of GSL Care Management, LLC, prays that (i) Johnston take nothing by her suit; (ii) that she be awarded her attorney's fees and



expenses, and (iii) for such other and further relief, both general and special, at law and in equity, to which she may be justly entitled.

Respectfully submitted,

DITTA LAW, P.C.

By:



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(713) 961-9917 Facsimile

Attorneys for Defendant

CERTIFICATE OF SERVICE

I, Louis M. Ditta, hereby certify that a true and correct copy of the foregoing instrument was forwarded to:

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electronically through the electronic filing manager and/or by hand delivery, mail, commercial delivery service, fax or e-mail on this 28<sup>th</sup> day of October, 2016.

  
\_\_\_\_\_  
LOUIS M. DITTA

NO. CV1611219

SHERRY LYNN JOHNSTON

§

IN THE DISTRICT COURT OF

§

VS.

§

§

DAVID DEXEL, INDIVIDUALLY AND AS  
GUARDIAN OF THE PERSON OF

§

§

WILLIE JO MILLS, DECEASED; GINGER  
LOTT, INDIVIDUALLY AND AS

§

§

GUARDIAN OF THE PERSON OF WILLIE  
JO MILLS, DECEASED, AND AS

§

§

MEMBER OF GSL CARE MANAGEMENT,  
LLC; GSL CARE MANAGEMENT, LLC;

§

§

CLARINDA COMSTOCK, INDIVIDUALLY  
AS GUARDIAN AD LITEM FOR WILLIE

§

§

JO MILLS, DECEASED; HOWARD  
REINER, INDIVIDUALLY AND AS

§

§

LIBERTY COUNTY, TEXAS

ATTORNEY AD LITEM FOR WILLIE  
JO MILLS, DECEASED; TAMORAH C.

§

§

BUTTS, A/K/A CHRISTINE BUTTS, IN  
HER OFFICIAL CAPACITY AS

§

§

STATUTORY PROBATE JUDGE OF  
PROBATE COURT NO. 4 OF HARRIS

§

§

COUNTY, TEXAS, AND IN HER  
INDIVIDUAL CAPACITY, AND SHERRIE

§

§

FOX, IN HER INDIVIDUAL AND  
EMPLOYEE CAPACITY FOR HARRIS

§

§

COUNTY, TEXAS, AND HARRIS  
COUNTY, TEXAS

§

§

253<sup>RD</sup> JUDICIAL DISTRICT

GSL CARE MANAGEMENT, LLC'S MOTION TO TRANSFER VENUE AND  
FIRST AMENDED ANSWER TO SHERRY LYNN JOHNSTON'S PLAINTIFF'S  
ORIGINAL PETITION, SUBJECT TO MOTION TO TRANSFER VENUE

TO THE HONORABLE DISTRICT COURT:

GSL Care Management, LLC ("Defendant"), files this its Motion to Transfer Venue and First Amended Answer to Sherry Lynn Johnston's ("Johnston") Plaintiff's Original Petition, Subject to Motion to Transfer Venue, and respectfully shows the following:

1.

Motion to Transfer Venue

Plaintiff asserts in her Original Petition that venue is mandatory in Liberty County, Texas based on (1) Texas Civil Practices and Remedies Code § 15.017 and (2) her asserted claims for defamation and invasion of privacy accrued while she was a resident of Liberty County, Texas. *See* Plaintiff's Original Petition, Section D, Para. 5. Defendant denies and objects that venue is proper in Liberty County, Texas.

Defendant denies that venue is mandatory in Liberty County, Texas under Texas Civil Practices and Remedies Code § 15.017, or any other rule or law. Defendant further denies the factual assertions contained within Plaintiff's Original Petition supporting her claim that venue is proper in Liberty County, Texas.

Harris County, Texas is the proper county of venue for this case. *See* Texas Civil Practices and Remedies Code § 15.015 ("A]n action against a county shall be brought in that county."). Additionally, all or a substantial part of the events giving rise to Plaintiff's claims occurred in Harris County, Texas. Each of the alleged acts or omissions giving rise to those claims and the causes of action enumerated by Plaintiff against Defendants occurred in Harris County, Texas. None of the alleged acts or omissions giving rise to Plaintiff's claims or causes of action occurred in Liberty County, Texas, much less a substantial part of such acts or omissions. Maintenance of the suit in Liberty County, Texas will work an injustice on Defendants considering the fact that none of the events giving rise to the claims against Defendants occurred in Liberty County, Texas and none of the relevant evidence or witnesses are located in Liberty County, Texas. The balance of interests of all of the parties predominate in favor of the action being brought in Harris County, Texas. The



transfer of the case to Harris County, Texas will not work an injustice to any other party. Accordingly Harris County, Texas is clearly the county of proper venue under the general venue rule. See Texas Civil Practices and Remedies Code § 15.002(a)(1). Therefore, Defendant requests that the Court transfer venue of this case to Harris County, Texas.

2.

General Denial

Subject to Defendant's Motion to Transfer Venue, Defendant asserts a General Denial as authorized by Rule 92 of the Texas Rules of Civil Procedure, and respectfully requests that the Court and Jury require Johnston to prove her claims, charges and allegations by clear and convincing evidence or a preponderance of the evidence as required by the Constitution and laws of the State of Texas.

3.

Additional Defenses

Defendant will further show that this action is subject to the proportionate responsibility provisions of Chapter 33 of the Texas Civil Practice and Remedies Code, including (without limitation) the requirement of § 33.003 thereof that the trier of fact determine the relative responsibility of Plaintiff, Defendants, and each and every responsible third-party that may be joined in the suit. Defendant may not be held jointly and severally liable for any amount of damages claimed herein unless the percentage of responsibility of Defendant when compared with that of Plaintiff, and each and every responsible third-party is greater than 50%.

Defendant will further show that Plaintiff's alleged damages may have resulted from new and independent, unforeseeable, superseding and intervening causes unrelated to any conduct of Defendant.

Defendant will further show that Plaintiff's alleged damages were not proximately caused by any act or omission of Defendant, but by the acts and/or omissions of a third-party over whom Defendant had no control.

Defendant will further show that the Defendant is not responsible for any expenses or damages allegedly incurred by Plaintiff due to Plaintiff's own acts, conduct, negligence and/or failure to exercise reasonable care in mitigating her damages.

Defendant will further show that it is not responsible for any loss caused by Plaintiff's own negligence, intentional misconduct, or other act or omission.

Defendant will further show that Plaintiff's claims are barred in whole or in part by the doctrine of derived judicial immunity.

Defendant will further show that Plaintiff's claims are barred in whole or in part by the applicable statute of limitations.

Defendant will further show that Plaintiff's claims are barred by res judicata and/or collateral estoppel.

Defendant will further show that Plaintiff does not have standing to sue Defendant for some or all of her purported causes of action.

Defendant will further show that it acted in good faith and with the reasonable belief that it was acting in the best interest of Willie Jo Mills.

Defendant will further show that in the unlikely event Plaintiff is adjudged to be entitled to any damages in this matter, which is denied, Plaintiff is not entitled to recover prejudgment interest on any future damages. Defendant would show that, as a matter of law, interest on damages yet to accrue is not compensatory and is, consequently, a penalty which would not be imposed even absent a finding of gross negligence, or rather, for a lesser level or degree of culpability for which a penalty is not authorized by law.

Defendant will further show that if prejudgment interest is recoverable in this case, it is limited in accordance with TEX. FIN. CODE ANN. § 304.101 *et seq.*

Defendant will further show that if post-judgment interest is recoverable in this case, it is limited in accordance with TEX. FIN. CODE ANN. §304.003(c).

Defendant would further show that it is entitled to all caps and limitations on damages pursuant to the Texas Civil Practices & Remedies Code.

4.

Jury Demand

Defendant requests a jury trial and will pay the appropriate fee as required by the Texas Rules of Civil Procedure, if not already paid.

5.

Defendant respectfully reserves the right to file an amended Answer in this cause in the manner authorized by the Texas Rules of Civil Procedure.


WHEREFORE, PREMISES CONSIDERED, GSL Care Management, LLC, prays that (i) Johnston take nothing by her suit; (ii) that it be awarded her attorney's fees and expenses, and (iii)

for such other and further relief, both general and special, at law and in equity, to which it may be justly entitled.

Respectfully submitted,

DITTA LAW, P.C.

By:

  
\_\_\_\_\_  
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(713) 961-9977  
(713) 961-9917 Facsimile

Attorneys for Defendant



CERTIFICATE OF SERVICE

I, Louis M. Ditta, hereby certify that a true and correct copy of the foregoing instrument was forwarded to:

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[garett.willig@wilsonelser.com](mailto:garett.willig@wilsonelser.com)

electronically through the electronic filing manager and/or by hand delivery, mail, commercial delivery service, fax or e-mail on this 28<sup>th</sup> day of October, 2016.

  
\_\_\_\_\_  
LOUIS M. DITTA



2016/10/28 12:53:49 4 /24

**I.**  
**MOTION TO TRANSFER VENUE**

1. Plaintiff asserts in her Original Petition that venue is mandatory in Liberty County, Texas based on (1) Texas Civil Practices and Remedies Code § 15.017 and (2) her asserted claims for defamation and invasion of privacy accrued while she was a resident of Liberty County, Texas. *See* Plaintiff's Original Petition, Section D, Para. 5. Defendant denies and objects that venue is proper in Liberty County, Texas.

2. Defendant denies that Texas Civil Practices and Remedies Code § 15.017—or any other statute, rule or operation of law—mandates that venue for this lawsuit must be in Liberty County, Texas. Defendant further denies the factual assertions contained within Plaintiff's Original Petition supporting her claim that this lawsuit must be venued in Liberty County, Texas. Instead, Defendant asserts that Harris County is the mandatory and proper venue for this lawsuit, based on the following:

- a. Plaintiff has sued Harris County directly as a defendant, and pursuant to Texas Civil Practices and Remedies Code § 15.015, “[a]n action against a county shall be brought in that county.” *See* TEX. CIV. PRAC. & REM. CODE § 15.015;
- b. “All or a substantial part of the events or omissions giving rise to this claim occurred.” if at all, in Harris County. *See* TEX. CIV. PRAC. & REM. CODE § 15.002(a)(1). Defendant's offices—where much of the work done on this case was primarily accomplished—are (and were at the time of which he served as attorney ad litem for Ms. Mills) located at 3410 Mercer Street, Houston, Harris County, Texas 77027;
- c. Harris County was the residence of other natural person defendants at the time the Plaintiff's causes of action allegedly accrued, including but not limited to

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Defendant David Dexel. *See* TEX. CIV. PRAC. & REM. CODE § 15.002(a)(2); *see also* Defendant David Dexel's Motion to Transfer Venue to Harris County, and Subject Thereto, Original Answer;

- d. Defendant Harris County's principal office is located in Harris County, Texas. *See* TEX. CIV. PRAC. & REM. CODE § 15.002(a)(3).
- e. Plaintiff has already consented to Harris County as the venue for this lawsuit. Defendant's initial retention as attorney ad litem of Willie Jo Mills culminated in culminated the Final Settlement Agreement of Cause No. 380,624, *In Re: Guardianship of Willie Jo Mills, Incapacitated*, In the Probate Court No. 4 of Harris County, Texas. Pursuant to the terms of this document, attached hereto as Exhibit A. Plaintiff Sherry Lynn Johnston has agreed that "Harris County, Texas shall be the appropriate and exclusive venue for any suit arising out of this Agreement." Final Settlement Agreement, Section 3.11(h).

3. Based on the foregoing, Defendant asserts that Liberty County, Texas is not a county of mandatory or proper venue, and that Harris County is a county of both mandatory and proper venue. Defendant requests that this Court transfer this case, or alternatively transfer the claims and causes of action asserted solely against Defendant, to Harris County, Texas.

## II. ORIGINAL ANSWER

### A. **General Denial**

4. Defendant asserts a general denial as is authorized by Rule 92 of the Texas Rules of Civil Procedure, and respectfully request that the Plaintiff be required to prove the charges and allegations against Defendant by a preponderance of the evidence as is required by the Constitution and the laws of the State of Texas.



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**B. Affirmative Defenses**

5. Defendant asserts that Plaintiff has failed to state a claim upon which relief may be granted. Defendant asserts this defense pursuant to, but not limited to, Texas Rule of Civil Procedure 91a.

6. Defendant asserts that the damages made the subject of this litigation, if any, may have been caused by the negligence and/or other conduct of Plaintiff, whose actions Defendant is not at law responsible.

7. Defendant asserts that the damages made the subject of this litigation, if any, may have been caused by the negligence and/or other conduct of individuals and/or entities that were not under the direction, control and/or supervision of Defendant and for whose actions Defendant is not at law responsible.

8. Defendant asserts that Plaintiff failed to mitigate her damages.

9. Defendant asserts that Plaintiff's claims are barred by the applicable statute(s) of limitations.

10. Defendant asserts that Plaintiff's claims are barred by res judicata, collateral estoppel, quasi-estoppel and/or waiver.

11. Defendant asserts that he is not the sole, proximate and/or contributing cause of Plaintiff's alleged damages.

12. Defendant asserts that Plaintiff's damages were caused by new, independent, intervening and/or subsequent causes.

13. Defendant asserts that Plaintiff's damages were caused by unavoidable accident and/or act of God, for which Defendant is not liable.

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14. Defendant asserts that Plaintiff is not entitled to recovery of attorney's fees, as she has failed to properly plead a cause of action legally entitling her to recovery of same.

15. Pursuant to Texas Civil Practices & Remedies Code §33.001, et seq., upon submission of this case to a fact-finder, Defendant is entitled to a submission of the percentage of responsibility, if any, of Plaintiffs, or other parties for the damages claimed.

16. In the event that Plaintiff settle with any alleged potential tortfeasor in this case, Defendant pleads all offsets and/or credits allowed under the statutory and common laws of the State of Texas.

17. Defendant asserts that the awarding of exemplary damages in this case is violative of the United States Constitution, the Texas Constitution, and the public policy of the State of Texas. Defendant further asserts that he is entitled to any and all protections afforded him by Texas Civil Practices and Remedies Code Chapter 41 regarding limitation of exemplary and/or punitive damages.

18. At all times during his representation of Willie Jo Mills as her attorney ad litem, Defendant was acting in good faith and in her best interests.

**C. Reservation of Right to Amend**

19. Defendant reserves the right to amend and/or supplement this Original Answer.

**D. Demand for Jury Trial**

20. Defendant requests a jury trial and will pay the appropriate fee as required by the Texas Rules of Civil Procedure, if not already paid.

**PRAYER**

WHEREFORE, Defendant Howard M. Reiner prays that Plaintiff take nothing by reason of her allegations being made against Defendant, and that Defendant be granted such other relief to which it demonstrates himself justly entitled.

2016/10/28 12:53:49 8 /24

Respectfully submitted,

**WILSON, ELSER, MOSKOWITZ,  
EDELMAN & DICKER, L.L.P.**

By: /s/ John R. Shepperd  
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Garett A. Willig  
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Telephone: 713-353-2000  
Facsimile: 713-785-7780

**COUNSEL FOR DEFENDANT  
HOWARD M. REINER,  
INDIVIDUALLY AND AS [FORMER]  
ATTORNEY AD LITEM FOR WILLIE  
JO MILLS, DECEASED**

2016/10/28 12:53:49 9 /24

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing instrument has been duly and properly served upon all counsel herein in accordance with the Texas Rules of Civil Procedure, on this the 28<sup>th</sup> day of October, 2016.

Susan Norman  
**LAW OFFICE OF SUSAN C. NORMAN**  
P.O. Box 52518  
Houston, Texas 77052

Billy Shepherd  
**SHEPHERD PREWETT MILLER, PLLC**  
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**OFFICE OF THE HARRIS COUNTY ATTORNEY**  
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Houston, Texas 77002

Zandra Foley  
**THOMPSON COE COUSINS & IRONS, LLC**  
One Riverway, Suite 1400  
Houston, Texas 77056

Louis Ditta  
**DITTA LAW, PC**  
2900 Wesleyan, Suite 150  
Houston, TX 77027

/s/ Garrett A. Willig  
Garrett A. Willig



2016/10/28 12:53:49 10 /24

Handwritten initials and a box containing the text "Set agr".

387756

PROBATE COURT #4

NO. 380,624

IN RE: GUARDIANSHIP OF  
WILLIE JO MILLS,  
INCAPACITATED

§  
§  
§  
§  
§

IN PROBATE COURT NO. 4  
OF  
HARRIS COUNTY, TEXAS

**FINAL SETTLEMENT AGREEMENT**

THIS FINAL SETTLEMENT AGREEMENT ("this Agreement") is made and entered into by and among the Parties as defined in this Agreement.

**ARTICLE I: DEFINITIONS**

- 1.1 The Parties to this Agreement are defined as follows:
  - a. The term "Cindy Sue Pierce" shall refer to Cindy Sue Pierce in her individual capacity and purported capacity as Attorney-In-Fact for Willie Jo Mills.
  - b. The term "Sherry Lynn Johnston" shall refer to Sherry Lynn Johnston in her individual capacity and purported capacity as Attorney-In-Fact for Willie Jo Mills. *Handwritten: SJ, i-llm*
  - c. The term "Larry Mills, Sr." shall refer to Larry Mills, Sr.
  - d. The term "Howard M. Reiner" shall refer to Howard M. Reiner, Attorney Ad Litem for Willie Jo Mills.
  - e. The term "David R. Dexel" shall refer to David R. Dexel, Temporary Guardian Pending Contest of the Person and Estate of Willie Jo Mills.
- 1.2 The terms "Affiliate" or "Affiliates" shall include such person's employees, assigns, trustees, agents, and heirs, as may be applicable.
- 1.3 The term "Agreement" shall refer to this Agreement, including all Exhibits attached hereto.
- 1.4 The term "Final Judgment" shall refer to the proposed Final Judgment to be entered in the Guardianship Lawsuit, a copy of which is attached as Exhibit A and incorporated by this reference.
- 1.5 The term "Guardianship Lawsuit" shall refer to the lawsuit pending under Cause Number 380,624; *In Re Guardianship of Willie Jo Mills*; In the Probate Court Number Four (4) of Harris County, Texas, including all petitions, answers and cross/counter claims.
- 1.6 The term "Claims" shall refer to and include any and all claims, causes of action, debts,

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demands, actions, costs, expenses, losses, damages, charges, challenges, contests, liabilities, promises and agreements relating to the claims asserted or that could have been asserted by any Party in the Guardianship Lawsuit or otherwise as of the Effective Date, save and except warranties and representations under this Agreement.

- 1.7 The term "Court" shall refer to the Probate Court Number Four (4) of Harris County, Texas, having jurisdiction of and presiding over the Power of Attorney Lawsuit.
- 1.8 The term "Willie Jo Mills" shall refer to Willie Jo Mills, Individually.
- 1.9 The term "Effective Date" shall refer to the date the last Party signs this Agreement.
- 1.10 The terms "the Parties" or "the Parties hereto" shall jointly refer to Cindy Sue Pierce, Sherry Lynn Johnston, Larry Mills, Sr., Howard M. Reiner, and David R. Dixel.
- 1.11 The term a "Party" shall refer to either of Cindy Sue Pierce, Sherry Lynn Johnston, Larry Mills, Sr., Howard M. Reiner, or David R. Dixel.
- 1.12 The terms "Successor" or "Successors" shall refer to the heirs, devisees, descendants, legatees, executors, agents, personal representatives, successor trustees, and any successors of a Successor or Successors.
- 1.13 The term "A.G. Edwards" shall refer to the A.G. Edwards Trust Company, a subsidiary of Wachovia Corporation and an affiliate of A.G. Edwards, a division of Wachovia Securities, LLC, N.A. AND ITS SUCCESSORS, ANY OR ASSIGNS

*A.O. New*  
*Bank*  
*Wm*  
*Cylin*

ARTICLE II: RECITALS

WHEREAS, Willie Jo Mills executed a power of attorney on October 12, 2007, naming Larry Mills, Sr., as her agent-in-fact;

WHEREAS, Willie Jo Mills executed a Last Will and Testament on October 17, 2007;

WHEREAS, Willie Jo Mills suffered a stroke on or about October 28, 2007;

WHEREAS, Larry Mills, Sr., filed the Guardianship Lawsuit;

WHEREAS, Howard M. Reiner was appointed Attorney Ad Litem for Willie Jo Mills;

WHEREAS, David R. Dixel was appointed Temporary Guardian Pending Contest of the Person and Estate of Willie Jo Mills;

WHEREAS, Willie Jo Mills has been found to be incapacitated by a physician;

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WHEREAS Willie Jo Mills is not able to make decisions regarding her finances or care;

WHEREAS, certain differences, controversies, and Claims have arisen by and between the Parties as set forth in the Guardianship Lawsuit.

WHEREAS, the Parties have determined that it is in their respective best interests to settle and terminate all Claims between the Parties (and their Affiliates and Successors) relating to the Guardianship Lawsuit;

WHEREAS, this Agreement is made to completely settle and compromise all differences, controversies, and Claims between the Parties (and their Affiliates and Successors) relating to the Guardianship Lawsuit; and

WHEREAS, by executing this Agreement, no Party hereto concedes any legal or factual contentions of the other Party, but specifically denies same and enters into this Agreement solely to terminate and settle the Claims between themselves in an effort to minimize costs, expenses, attorneys' fees, and, most of all, to buy peace.

**ARTICLE III: AGREEMENTS**

For and in consideration of the premises, the mutual covenants and the terms hereunder, the sufficiency of which consideration is hereby mutually acknowledged, the Parties to this Agreement hereby agree as follows:

3.1 867 Management Trust. Each Party represents and agrees as follows:

- a. A Management Trust will be created for the use and benefit of Willie Jo Mills pursuant to Texas Probate Code Section 867, and A.G. Edwards will be the sole Trustee of said Trust.
- b. The 867 Management Trust will be funded with all assets owned by Willie Jo Mills. Any real property and/or personal property owned by Willie Jo Mills shall be sold by the Trustee of the 867 Management Trust, and the proceeds from such sale added to the corpus of the Trust.

3.2 Willie Jo Mills' Assets. Each Party represents and agrees as follows:

- a. Such Party is not aware of any account owned by Willie Jo Mills or in which Willie Jo Mills has assets other than the following:
  - i. Humble Community Bank Account xxx7736
  - ii. Prosperity Bank CD xxx1284
  - iii. Wachovia Bank CD xxx4952
  - iv. Wells Fargo Bank CD xxx9771
  - v. Sterling Bank CD xxx3444

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 Travis County, Texas  
*Becky R. Thompson*

- vi. Compass Bank CD xxx4815
- vii. Washington Mutual IRA xxx9510
- viii. Washington Mutual CD xxx1613
- ix. First National Bank CD
- x. Prosperity Bank Account 31-6482-9
- xi. Royalty payments <sup>FN 1</sup> *7.0 New*
- xii. Assets in the Guardianship Estate Accounts

*SJ*  
*LMJ*  
*CB*  
*ML*

3.3 Willie Jo Mills' Estate. Cindy Sue Pierce and Sherry Lynn Johnston represent to Larry Mills as follows:

- a. They are not aware of any properties, real or personal, probate or non-probate, in which Willie Jo Mills has a interest as of the Effective Date of this Agreement, other than the assets listed on Exhibit B attached to this agreement;
- b. They have not received any property from Willie Jo Mills since October 28, 2007; and
- c. They have disclosed all of Willie Jo Mills' known assets, real and personal, to Larry Mills, Sr.

3.4 Willie Jo Mills' Estate. Larry Mills, Sr., represents to Cindy Sue Pierce and Sherry Lynn Johnston as follows:

- a. He is not aware of any properties, real or personal, probate or non-probate, in which Willie Jo Mills has a interest as of the Effective Date of this Agreement, other than the assets listed on Exhibit B attached to this agreement;
- b. He has not received any property from Willie Jo Mills since October 28, 2007; and
- c. He has disclosed all of Willie Jo Mills' known assets, real and personal, to Cindy Sue Pierce and Sherry Lynn Johnston.

3.5 Guardian of the Person of Willie Jo Mills. Each Party represents and agrees as follows:

- a. David R. Dixel shall serve as Guardian of the Person for Willie Jo Mills.
- b. David R. Dixel shall be released and discharged as Temporary Guardian Pending Contest of the Person and Estate of Willie Jo Mills.
- c. Howard M. Reiner shall be released and discharged as Attorney Ad Litem for Willie Jo Mills.
- d. The Permanent Guardian of the Person shall have all rights and abilities bestowed upon Guardians by the Texas Probate Code, and shall also be required to make

*CSP*  
*LMJ*  
*7.0 New*  
*SJ*  
*m*

*FN 1 - See attached handwritten addendum*

*m*

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information concerning Willie Jo Mills' health and medical conditions and whereabouts readily available to the Parties.

- 3.6 Willie Jo Mills' Testamentary Instruments. Each Party represents and agrees as follows:
- a. Such Party is not aware of any testamentary instruments executed by the Decedent, or alleged to have been executed by Decedent, other than the Last Will and Testament dated October 17, 2007.
- 3.7 Distribution of Willie Jo Mills' Assets At Death. The Parties agree that all of Willie Jo Mills' Estate shall be distributed upon her death as follows:
- a. All assets owned by Willie Jo Mills, wherever situated or however styled or held, shall be distributed equally to and between Larry Mills, Sr., Sherry Lynn Johnston, and Cindy Sue Pierce, subject to the payment of reasonable and necessary administration expenses and outstanding debts incurred by Willie Jo Mills or her Guardian.
  - b. Larry Mills, Sr., Sherry Lynn Johnston, and Cindy Sue Pierce each hereby disclaims any interest, current or future, that he or she may have in any of Willie Jo Mills' Assets, real or personal, probate or non-probate, except those he or she is to receive under Paragraph 3.7(a) of this Agreement.
  - c. Larry Mills, Sr., Sherry Lynn Johnston, and Cindy Sue Pierce each agrees that none of them, directly or indirectly, individually or through an agent, shall seek to probate a will of Willie Jo Mills other than the October 17, 2007 Will, in an effort to avoid the equal distribution described in Paragraph 3.7(a) of this Agreement.
- 3.8 Settlement of Lawsuit.
- a. Entry of Final Judgments. The Parties shall cooperate in jointly seeking the entry by the Court of the Final Judgment attached as Exhibit A, incorporated by this reference. If the Court declines to enter the Final Judgment, this Agreement shall be null and void.
- 3.9 Releases.
- a. The Parties hereby forever release and discharge each other, and each of their Successors and Affiliates of and from any and all Claims.
  - b. The Parties hereby forever release and discharge David R. Dixel, Temporary Guardian Pending Contest of the Person and Estate of Willie Jo Mills and all his agents and employees of and from any and all possible claims, demands, damages, costs and expenses of any kind whatsoever and causes of action(s), known or unknown, taken or not taken by him in collecting, preserving, or administering the

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Guardianship Estate of Willie Jo Mills, whether past or present or in the future, and from any and all searches and non-searches for assets of any kind of Willie Jo Mills, whether reported or unreported, collected or uncollected, traced or not traced, investigated or not investigated, known or lost, and any and all other claims the parties may have against David R. Dexel.

The Parties further acknowledge and agree that upon execution of this agreement by all parties, the Court's approval of this agreement, and the Court's approval of the final account by David R. Dexel as Temporary Guardian Pending Contest of the Estate: (i) any fiduciary duties and obligations of David R. Dexel shall be completely and fully performed and extinguished; (ii) to the extent any fiduciary duty might still remain, Cindy Sue Pierce, Sherry Lynn Johnston, and Larry Mills, Sr. specifically release David R. Dexel; (iii) to the extent David R. Dexel ever owed a fiduciary duty to Cindy Sue Pierce, Sherry Lynn Johnston, and Larry Mills, Sr., Cindy Sue Pierce, Sherry Lynn Johnston, and Larry Mills, Sr. hereby specifically release David R. Dexel and his successors, from any and all obligations relating to such duty. Cindy Sue Pierce, Sherry Lynn Johnston, and Larry Mills, Sr. hereby agree that they shall have no further right or standing to request or demand information of any type regarding the assets of Willie Jo Mills from David R. Dexel after the Court approves David R. Dexel's final account.

- c. The Parties hereby forever release and discharge Howard M. Reiner, Attorney Ad Litem for Willie Jo Mills, for and with respect to any action taken or not taken by him while serving as Attorney Ad Litem for Willie Jo Mills.

3.10 Representations And Warranties.

- a. Each Party hereby stipulates, represents and warrants to the other Party, as follows:
- i) That he or she is the current legal and beneficial owner of all of the Claims released hereby, as well as the Claims asserted by him or her orally or in written form with respect to any litigation he or she could have brought with respect to matters covered by this Agreement;
  - ii) That he or she has not assigned, pledged or contracted to assign or pledge to any other person or entity any interest he or she may have in the Power of Attorney Lawsuit, or the Claims;
  - iii) That the terms and provisions of this Agreement are valid, binding and enforceable as against himself or herself, any such Party's Successors and Affiliates;
  - iv) That he or she is adequately represented by competent counsel of his or her choosing in connection with the execution and delivery of this Agreement and in any and all matters relating thereto;



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- v) That he or she is not under any form of legal disability or incapacity at the time he or she executes this Agreement;
- vi) That Nicholas Westbrook and the Westbrook Firm, P.C., solely represent Cindy Sue Pierce and Sherry Lynn Johnston and do not and have never represented David R. Dexel, Howard M. Reiner or Larry Mills, Sr., and have not provided David R. Dexel, Howard M. Reiner or Larry Mills, Sr., legal advice or services, or made any representation to David R. Dexel, Howard M. Reiner or Larry Mills, Sr., or his counsel;
- vii) That Jason Ostrom and the law firm of OSTROM/*Sain*, solely represent Larry Mills, Sr., and do not and have never represented Cindy Sue Pierce, Sherry Lynn Johnston, David R. Dexel or Howard M. Reiner, and have not provided Cindy Sue Pierce, Sherry Lynn Johnston, David R. Dexel, or Howard Reiner legal advice or services or made any representations to Cindy Sue Pierce, Sherry Lynn Johnston, David R. Dexel or Howard M. Reiner;
- viii) That the law firm of Howard M. Reiner & Associates solely represents Howard M. Reiner, and does not and has never represented Cindy Sue Pierce, Sherry Lynn Johnston, David R. Dexel or Larry Mills, Sr., and has not provided Cindy Sue Pierce, Sherry Lynn Johnston, David R. Dexel or Larry Mills, Sr., legal advice or services or made any representations to Cindy Sue Pierce, Sherry Lynn Johnston, David R. Dexel or Larry Mills, Sr.;
- ix) That the law firm of David R. Dexel solely represents David R. Dexel, and does not and has never represented Cindy Sue Pierce, Sherry Lynn Johnston, Howard M. Reiner or Larry Mills, Sr., and has not provided Cindy Sue Pierce, Sherry Lynn Johnston, Howard M. Reiner, or Larry Mills, Sr., legal advice or services or made any representations to Cindy Sue Pierce, Sherry Lynn Johnston, Howard M. Reiner or Larry Mills, Sr.;
- x) That in executing this Agreement, each Party has relied upon his or her own judgment and the advice of his or her own attorneys, and further, that he or she has not been induced to sign or execute this Agreement by promises, agreements or representations not expressly stated herein, and he or she has freely and willingly executed this Agreement and expressly disclaims reliance upon any facts, promises, undertakings, or representations made by any other Party, or by such Party's Affiliates;
- xi) That the consent of such Party to this Agreement was not procured, obtained or induced by improper conduct, undue influence or duress;
- xii) That he or she is not in a significantly disparate bargaining position with regard to any other Party.

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- b. Each Party understands and agrees that the other Party has relied upon these representations and warranties made in this Agreement when in entering into this Agreement.

3.11 Miscellaneous Provisions.

- a. Parties Bound. This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective Affiliates and Successors.
- b. Party's Attorney's Fees and Expenses Incurred to Date. Each Party hereby agrees that each Party's respective attorney's fees, costs, and expenses relating to the Guardianship Lawsuit, through the date of this Agreement, including all attorney's fees, costs, and expenses necessary and/or incurred in the effectuation of this Agreement, shall be submitted to Harris County Probate Court Number Four for adjudication by that Court.
- c. Attorney's Fees and Expenses for Breach of Agreement. The Parties agree that if it becomes necessary to assert any claim to enforce or defend the provisions of this Agreement, the prevailing Party shall be entitled to recover reasonable attorney's fees and other related litigation expenses from the non-prevailing Party.
- d. Construction. The Parties acknowledge and agree that both Parties have participated in the drafting of this Agreement and one Party shall be considered the drafter of this Agreement and, therefore, no presumptions shall be made for or against one Party on the basis that such Party was the drafter of this Agreement.
- e. No Oral Modification. No amendment, modification, waiver, or consent with respect to, any provision of any of this Agreement shall be effective unless the same shall be in writing and signed by the Party or Parties hereto against whom enforcement of the amendment, modification, waiver or consent is sought.
- f. Counterparts. This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute a single instrument. This Agreement shall only be binding when one or more counterparts hereof, individually or taken together, shall bear all signatures of the Parties hereto reflected hereon as signatories.
- g. Choice of Law. This Agreement shall be governed pursuant to the laws of the State of Texas.
- h. Choice of Venue. Harris County, Texas shall be the appropriate and exclusive venue for any suit arising out of this Agreement.
- i. Assignment. This Agreement and the rights and obligations of the Parties hereto

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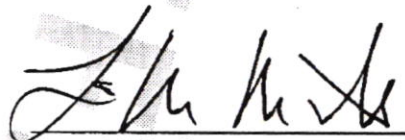


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shall not be assigned or delegated by any Party hereto without the prior written consent of the other Parties hereof.

- j. Incorporation. All Exhibits attached hereto are hereby incorporated by reference in this Agreement for the purposes set forth above.
- k. Headings. The paragraph headings and sub-headings used herein are for descriptive purposes only. The headings have no substantive meaning and the terms of this Agreement shall not be affected by such headings.

PARTIES:



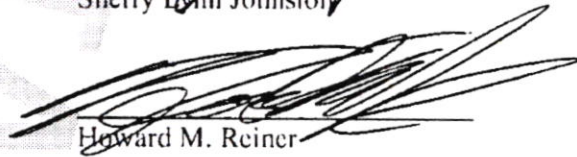
Larry Mills, Sr.



Cindy Sue Pierce



Sherry Lynn Johnston



Howard M. Reiner



David R. Dexel

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THE STATE OF TEXAS §  
  §  
COUNTY OF HARRIS §

BEFORE ME, the undersigned authority, on this day personally appeared Larry Mills, Sr... in all stated capacities, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed and in each of the capacities therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
Notary Public, State of Texas

My Commission Expires:

Notary's Printed Name:

\_\_\_\_\_

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THE STATE OF TEXAS §  
  §  
COUNTY OF HARRIS §

BEFORE ME, the undersigned authority, on this day personally appeared Cindy Sue Pierce, in all stated capacities, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that she executed the same for the purposes and consideration therein expressed and in each of the capacities therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

My Commission Expires:

\_\_\_\_\_

\_\_\_\_\_  
Notary Public, State of Texas  
Notary's Printed Name:

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THE STATE OF TEXAS            §  
  §  
COUNTY OF HARRIS           §

BEFORE ME, the undersigned authority, on this day personally Sherry Lynn Johnston , in all stated capacities, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that she executed the same for the purposes and consideration therein expressed and in each of the capacities therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
Notary Public, State of Texas

My Commission Expires:  
\_\_\_\_\_

Notary's Printed Name:

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THE STATE OF TEXAS §  
  §  
COUNTY OF HARRIS §

BEFORE ME, the undersigned authority, on this day personally appeared Howard M. Reiner, Attorney Ad Litem for Willie Jo Mills, in all stated capacities, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed and in each of the capacities therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
Notary Public, State of Texas

Notary's Printed Name:

My Commission Expires:

\_\_\_\_\_

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THE STATE OF TEXAS §  
  §  
COUNTY OF HARRIS §

BEFORE ME, the undersigned authority, on this day personally appeared David R. Dixel, Temporary Guardian Pending Contest of the Person and Estate of Willie Jo Mills, in all stated capacities, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed and in each of the capacities therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
Notary Public, State of Texas

My Commission Expires:

Notary's Printed Name:

\_\_\_\_\_

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Adendum

FN' - Sherry Lynn Johnston warrants and represents that during the lifetime of Willie Jo Mills and Morgan Mills, Jr., she conveyed her undivided  $\frac{1}{3}$  ~~interest~~ mineral interest in the "Buffalo Land" back to her parents Willie Jo Mills and Morgan Mills, Jr., and she is unaware of that undivided  $\frac{1}{3}$  mineral interest ~~is~~ in the "Buffalo Land" being conveyed back to her. The Parties agree that if the real property records reflect in Freestone County <sup>as of the date of this agreement</sup> reflect this conveyance, David Dexel as Temporary Guardian shall convey by Special Warranty Deed Sherry Lynn Johnston's undivided  $\frac{1}{3}$  mineral interest in the "Buffalo Land" back to her. David Dexel as Temporary Guardian shall reserve a life estate in this conveyance in favor of Willie Jo Mills.

961-41-0040

*[Signature]*

*[Signature]*

*[Signature]*

*[Signature]*  
*[Signature]*  
*[Signature]*

**RECORDER'S MEMORANDUM:**

At the time of recordation, this instrument was found to be inadequate for the best photographic reproduction because of illegibility, carbon or photocopy, discolored paper, etc. All blackouts, additions and changes were present at the time the instrument was filed and recorded.