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## CONSERVATION EASEMENT AGREEMENT

This Conservation Easement Agreement ("**Conservation Easement**") is made this 29th day of December, 2004 (the "**Effective Date**") by Anne Schweppe Ashmun ("**Grantor**") and the City of Austin, a Texas municipal corporation (the "**City**").

### BACKGROUND

A. Grantor is the sole owner in fee simple of a certain tract of real property in Hays County, Texas, more particularly described on Exhibit "A" attached hereto and incorporated herein by reference (collectively, the "**Property**").

B. The Property is a significant natural area that qualifies as a "... relatively natural habitat of fish, wildlife, or plants, or similar ecosystem," as that phrase is used in Section 170 (h)(4)(A)(ii) of the Internal Revenue Code of 1986, as amended, and in regulations promulgated thereunder. In particular, the Property:

- (1) Contains significant historic and prehistoric archaeological sites, including evidence of human occupation at least 8,000 years old and low, domed "burned rock middens."
- (2) Contains significant open space, productive rangeland and outstanding scenic qualities of a natural hill country landscape that are visible to the public from Farm to Market Road 967.
- (3) Is located within the Little Bear Creek and Onion Creek watersheds within the recharge zone for Barton Springs and provides a significant quantity of high quality water run-off to the Barton Springs Segment of the Edwards Aquifer. The Barton Springs segment of the Edwards Aquifer provides water for thousands of central Texans and wildlife populations including the endangered Barton Springs Salamander (*Eurycea sosorum*).
- (4) Provides habitat for a wide variety of native wildlife and plant communities.

The above characteristics, features and qualities of the Property are collectively referred to herein as the "**Conservation Values**."

C. The specific Conservation Values of the Property are more fully documented and described in that certain Easement Documentation Report ("**EDR**") dated October, 2004, prepared by Loomis Austin, and signed, acknowledged and agreed upon by both parties, which establishes the baseline condition of the Property as of the Effective Date by documenting all significant features of the Property (including known man made structures and utilities) and includes reports, maps, photographs and other documentation. While the EDR will be used by Grantor and the City to assure that any future changes in the use of the Property will be consistent with the terms of this Conservation Easement, the EDR is not intended to preclude the use of other evidence to establish the condition of the Property as of the Effective Date if there is a controversy regarding its use.

D. The Farm and Ranch Lands Protection Program's (16 U.S.C. 3838h and 3838i) purpose is to purchase conservation easements to protect farm and ranch land containing prime, unique, and other productive soils or historical and archaeological resources from conversion to

nonagricultural uses. Under the authority of the Farm and Ranch Land Protection Program, the United States Department of Agriculture Natural Resources Conservation Service (hereinafter referred to as "*NRCS*" or "*the United States*") has contributed \$496,171.55 towards the purchase this Conservation Easement and thus entitled the United States to rights identified herein.

E. Grantor, the City and NRCS have the common goal of preserving and protecting the architectural and historic resources and viable agriculture for the benefit of the State of Texas and the United States.

F. The City and public policy in the region have also recognized the importance of a watershed-based approach to controlling non-point source water pollution and protecting and enhancing water quality and quantity, particularly in the recharge zone and contributing zone for Barton Springs. In connection therewith, the City has established a program of acquiring conservation easements within various hill country watersheds to protect open space and the Barton Springs segment of the Edwards Aquifer.

G. The City and NRCS have determined that the acquisition of this Conservation Easement will promote and advance such the preservation and maintenance of the Conservation Values of the Property.

H. Grantor and the City acknowledge that this Agreement is being executed and the Conservation Easement is being conveyed in perpetuity pursuant to the Texas Natural Resource Code Chapter 183 and the parties wish to avail themselves of the provisions of that law.

NOW, THEREFORE, for and in consideration of the facts recited above and the mutual covenants, terms, conditions and restrictions contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Grantor hereby voluntarily sells, grants and conveys unto the City a conservation easement in perpetuity over the Property, together with all development rights associated with the Property not expressly reserved by Grantor, of the nature and character and to the extent hereinafter set forth.

1. **Purpose.** The purposes of this Conservation Easement are to (a) **preserve and protect the archeological and historical resources located within the Property**; (b) maintain the natural hydrological processes and land health that currently exist on the Property; (c) provide for the conservation, maintenance and enhancement of the quality and quantity of the Barton Springs segment of the Edwards Aquifer and Little Bear Creek and Onion Creek watersheds, including without limitation, pollution avoidance, recharge and watershed protection and preservation and enhancement of base flow (this being the primary purpose); (d) ensure that the Property will be retained forever predominantly in its natural, scenic, agricultural and rangeland open space condition; (e) protect and manage native plants, animals and plant communities on the Property; (f) prevent any use of the Property that will significantly impair or interfere with the Conservation Values of the Property described above; and (g) otherwise implement the mutual intentions of the parties as expressed by the facts recited above, which are incorporated herein by reference. Grantor intends that this Conservation Easement will restrict the use of the Property as provided below, as provided in the Development Plan (defined in **Paragraph 5** below) and the Management Plan (defined in **Paragraph 6** below), and as consistent with the purposes of this Conservation Easement.

2. **Prohibited Uses.** Any activity on or use of the Property inconsistent with the purposes of this Conservation Easement is prohibited. Without limiting the generality of the foregoing, the following activities and uses are **expressly prohibited**:

- 2.1. **No Surface Alteration.** There must be no ditching, draining, diking, filling, excavating, dredging, mining, drilling or other alteration of the surface of the Property, no disturbance of the subsoils (including, but not limited to, the excavation or removal of soil, sand, gravel, rock, peat, or sod, or the placing of soil or other substances and materials such as land fill, silt or other dredging spoils), **and no other activities on the Property that could cause erosion thereof** or siltation thereon, except (a) as may be necessary to restore, maintain or enhance the natural hydrologic regime of the watershed, (b) in connection with or support of any activity otherwise allowed herein or allowed in the Development Plan or Management Plan, or (c) as the City may otherwise approve pursuant to **Paragraph 4.4** hereof. Any mining or extraction of rock soil, gravel or other minerals allowed herein must be conducted in a manner so as to minimize as reasonably practical any material adverse impact on the Conservation Values.
- 2.2. **Soil or Water Degradation.** There must be no change in the surface or subsurface hydrology of the Property in any manner, except as otherwise may be expressly allowed herein. Any use or activity that causes or is likely to cause soil degradation, erosion, depletion or pollution of, or siltation on, any surface or subsurface waters is prohibited; provided, however, this prohibition does not restrict ranching or wildlife management operations, low impact recreational uses of any creeks located on the Property (such as swimming and picnicking), activities performed strictly in accordance with the Management Plan or activities expressly allowed by the Development Plan or that may be otherwise expressly reserved by Grantor in this Conservation Easement.
- 2.3. **Cutting.** There must be no removal, harvesting, destruction or cutting of trees, shrubs, brush or other plants, **except** (a) incidental select cutting or removal of vegetation by hand held tools or a bobcat with hydraulic shears (or other similar type of sensitive equipment approved by the City in its reasonable discretion) as reasonably necessary for appropriate management of the Property (including, but not limited to, removal of exotic species of vegetation, cutting of firewood for on-site use, cutting and/or trimming of trees and shrubs for wildlife management, fire containment, and maintenance and enhancement of the rangeland consistent with the conservation purposes), (b) as expressly allowed or required in the Development Plan or Management Plan, or (c) as otherwise approved by the City, which approval will not be unreasonably withheld, conditioned or delayed. **Notwithstanding the above, any extensive removal or clear cutting of vegetation on the Property must be in accordance with a plan approved by the City (which approval will not be unreasonably withheld, conditioned or delayed), unless such extensive clearing is necessary for the emergency containment of wild fire and is made pursuant to the authorization of the Fire Marshal or other appropriate governmental official or authority. In any event, Grantor will use its reasonable efforts to restore and stabilize the cleared area as needed to prevent erosion and**

**sedimentation.** As used herein, "incidental" cutting or removal of vegetation refers to clearing less than two (2) acres of land and "extensive" cutting or removal of vegetation refers to clearing two (2) acres or more of land during any one cutting or removal of vegetation event.

- 2.4. **Biocides.** The use of pesticides or biocides, including but not limited to insecticides, fungicides, rodenticides, and herbicides is prohibited, except as expressly allowed in the Management Plan or otherwise approved by the City in its reasonable discretion pursuant to **Paragraph 4.4** hereof.
- 2.5. **Dumping.** There must be no storage or dumping of ashes, trash, garbage, Hazardous Materials (defined in **Paragraph 11** hereof) or any other materials that may negatively impact or be detrimental to surface or subsurface waters. Notwithstanding the preceding sentence, Grantor may temporarily deposit and store trash, garbage, ashes and other non-Hazardous Materials in appropriate receptacles as may be reasonably generated from Grantor's allowed activities on the Property and Grantor may store petroleum based products, which are ancillary to or in connection with permitted uses or activities on the Property, provided all such storage and subsequent transfer and disposal of such items is in compliance with all Applicable Laws (defined in **Paragraph 11** hereof) and any related requirements in the Development Plan or Management Plan, and does not otherwise negatively impact any of the Conservation Values.
- 2.6. **Storage Tanks.** The placement and use of storage tanks on the Property, is prohibited, except as may be expressly allowed in the Development Plan and Management Plan.
- 2.7. **Water Use.** There must be no pollution, alteration, manipulation, depletion or extraction of surface or subsurface water (including, but not limited to, ponds, creeks or other water courses) or any other water bodies, except in connection with the construction of dams as allowed in the Development Plan or other activities as may be otherwise permitted in the Development Plan or Management Plan. Grantor must not conduct or allow activities on the Property that would be detrimental to water purity or that could alter the natural water level or flow in or over the Property, **except** for activities expressly allowed under the Development Plan or **Paragraphs 2.10, 3.4 or 3.8** hereof. In addition, Grantor is prohibited from conveying, selling or otherwise transferring water or existing water rights derived on, under or from the Property to be used for any purpose off of the Property.
- 2.8. **Construction.** There shall be no placement or construction of structures or other Improvements (defined in the Development Plan) on the Property, **except** (a) in connection with the repair, maintenance, or replacement (but not expansion) of structures and other improvements existing as of the Effective Date in their current location or (b) as otherwise expressly allowed in the Development Plan.

- 2.9. **Commercial Activities.** Any commercial or industrial use of or activity on the Property is prohibited, **except** as otherwise expressly allowed in **Paragraph 3.5** hereof.
- 2.10. **Agricultural Activities.** With the exception of the cultivation of food plots, raising of livestock, wildlife management, and other ranching and hunting related activities allowed in accordance with the Conservation Plan (defined in **Paragraph 20.11** below) and the Management Plan, other agricultural activities are limited to those allowed with the consent of the City pursuant to **Paragraph 4.4** hereof.
- 2.11. **Exotic Plants and Animals.** Grantor must not introduce or allow exotic (non-native) vegetation or animals onto the Property, **except** (a) as expressly allowed in **Paragraph 2.10** and **Paragraph 3.7** hereof, (b) horses and cattle for commercial or domestic use and other domestic livestock for non-commercial use, but only to the extent such activities are conducted in a manner in compliance with the NRCS Field Office Technical Guide ("**FOTG**") then in effect allowed under the Management Plan and do not conflict with the purposes of this Conservation Easement and (c) as otherwise approved by the City in its reasonable discretion pursuant to **Paragraph 4.4** hereof.
- 2.12. **Development Rights.** Grantor covenants not to include the Property nor any portion of it as part of the gross area of other property not subject to this Conservation Easement to determine density, lot coverage, or open space requirements under otherwise Applicable Laws, regulations or ordinances controlling land use and building density. Grantor covenants not to transfer any development rights that have been encumbered or extinguished by this Conservation Easement to any other lands pursuant to a transferable development rights scheme, cluster development arrangement, for cash payment, or otherwise. For purposes of this Conservation Easement, the term "**development rights**" includes, but is not limited to, any and all rights, however designated, now or hereafter associated with the Property, that may be used, pursuant to applicable zoning laws or other governmental laws or regulations, to compute permitted size, height, bulk or number of structures, development density, lot yield, or any similar development variable on or pertaining to the Property or any other property.
- 2.13. **No Vehicles.** Grantor must not operate or allow the operation of any motorized vehicles (including, but not limited to, dune buggies, motorcycles and all-terrain vehicles), **except** on existing Driveways and Trails (such terms being defined in the Development Plan) and on Driveways and Trails constructed pursuant to the Development Plan or as reasonably necessary in connection with Grantor's residential use, agricultural, ranching and wildlife management operations, ecotourism, educational programs and maintenance of the Property in a manner consistent with protection of the Conservation Values. The use of any other types of vehicles is also prohibited to the extent such use violates **Paragraph 2.2** above.

- 2.14. **No Subdivision.** Except as otherwise allowed in the Development Plan, Grantor must not divide, partition, or subdivide the Property and must not convey the Property except in its current configuration in its entirety.
  - 2.15. **No Easements.** Grantor must not grant or convey any easements under or across the Property, including, but not limited to, access easements and utility easements, **except** such easements as exist on the Effective Date and as otherwise expressly allowed in the Development Plan for the Property uses.
  - 2.16. **Archeological and Historical Sites.** **Notwithstanding anything in this Conservative Easement to the contrary, Grantor will not engage in any activity that will in any way damage or negatively impair the archeological and historical resources located on the Property as identified in the EDR and/or the soil survey map as described in the Conservation Plan provision set forth herein.**
3. **Grantor's Reserved Rights.** Grantor reserves to itself, and to its heirs, successors, and assigns the right to engage in, or permit or invite others to engage in those uses of the Property that are provided below. The City acknowledges that such activities, if conducted as required herein, do not conflict with the purposes of this Conservation Easement:
- 3.1. **Existing Uses.** Grantor has the right to continue those activities and uses of the Property in effect as of the Effective Date and such activities in which the Property has been historically engaged as identified in the EDR, Management Plan or Development Plan, which activities and uses include residential use, low impact recreational uses (such as hunting, fishing, picnicking and swimming), ranching and native and existing exotic wildlife management operations, and cultivation of food plots for personal, livestock and wildlife consumption to the extent otherwise allowed in the Development Plan or Management Plan.
  - 3.2. **Transfer.** Grantor has the right to sell, gift, mortgage, lease, or otherwise convey the Property, provided such conveyance is subject to the terms of this Conservation Easement. Grantor agrees to provide to the City and the NRCS prior written notice of a conveyance of fee title to the Property or any portion thereof in accordance with **Paragraph 20.6** below.
  - 3.3. **Structures.** Grantor has the right to maintain or remove such structures and other Improvements that exist on the Property as of the Effective Date (including the right to replace on the same site, with like or similar structures used for the same or similar purposes, but not expand such structures except as allowed in the Development Plan). Grantor also retains the right to construct, maintain and replace such additional structures and Improvements as allowed in the Development Plan and retains the development rights necessary for the construction, maintenance and replacement of structures and Improvements permitted by this Conservation Easement subject to the requirements set forth herein..

- 3.4. **Water Wells.** Grantor has the right to construct and use water wells on each allowed partitioned or subdivided portion of the Property. Grantor covenants to limit such use of the water wells to no more than is reasonably necessary for Grantor's agricultural, ranching and wildlife management operations, educational programming, eco-tourism, recreational and residential use as allowed herein so as to not cause a materially adverse effect on the Conservation Values.
- 3.5. **Commercial Activities.** Grantor has the right to engage in a business that is conducted by, and in the home of, a person residing on the Property and to engage in wildlife management, agricultural, ranching and hunting and fishing, horse stables and riding facilities to the extent such activities do not conflict with the Management Plan or the purposes or provisions of this Conservation Easement. De minimus and undeveloped recreational, educational and ecotourism is permitted as long as such activity is consistent with the purposes of this Conservation Easement and does not adversely impact the soils, historical and archaeological resources, and/or agricultural operations on the Property. Such activities include hunting, horseback riding, bird watching, farm tours, agricultural and ecological classes, nature interpretation, and educational programs. Under no circumstances shall athletic fields, golf courses or ranges, commercial airstrips or helicopter pads, motocross biking, or any other improvement activity inconsistent with current or future agricultural production be permitted on the Property. In the event that Grantor hosts public agricultural or educational event(s) where more than 50 individuals attend, the event(s) shall not exceed seven (7) days per year, and parking shall be off-site, so as to minimize the adverse impact on the Property's Conservation Values.
- 3.6. **Mineral Rights.** Grantor has the right and retains its interests in all oil, gas and other minerals owned by Grantor in and under the Property; provided, however, it is understood and agreed by Grantor and the City and on behalf of their respective heirs, legal representatives, successors and assigns, that Grantor and Grantor's heirs, legal representatives, successors and assigns, in conducting operations with respect to the exploration for or production from, processing, transporting and marketing of oil, gas and other minerals from the Property, Grantor must not use or occupy any portion of the surface estate of the Property and must not place any fixtures, equipment, building, structures, pipelines, rights of way or personal property of any kind or nature whatsoever on the surface or within the depth of 1000 feet from the surface of the Property or any portion thereof. Grantor, for itself and on behalf of Grantor's heirs, legal representatives, successors and assigns, hereby waives any rights whatsoever to the use of the surface of the Property in connection with the ownership and exploitation of the oil, gas, and other minerals. Notwithstanding anything above to the contrary, Grantor is not prohibited from conducting exploratory activities that are non-invasive that do not materially disturb the soil surface of the Property and do not otherwise damage or negatively impact the watersheds or aquifer. To the extent Grantor elects to explore for or otherwise extract or exploit any oil, gas or other minerals under the Property from the surface of an adjoining property, Grantor will use its best efforts to minimize any damage or other negative impact on the watersheds or aquifer by such activity.

3.7. **Landscaping.** Grantor has the right to landscape around the allowed structures and Improvements. Grantor must use reasonable efforts to use native or adapted and drought-resistant vegetation to the extent reasonably practicable. No more than four and one-half (4.5) acres of managed turf for the entire easement area is allowed on the Property without the City's prior written consent. Grantor's use of chemical fertilizers in connection with such landscaping is subject to Grantor's prior written approval.

3.8. **Enhancement Activities.** Upon the City's prior consent (such consent not to be unreasonably withheld), Grantor may engage in activities which have the intended purpose of restoring, maintaining, or enhancing the Conservation Values, including the construction of two (2) ponds as provided in **Paragraph 15** of the Development Plan. The parties acknowledge that the Grantor will submit to the City for its approval (such approval not to be unreasonably withheld) a plan specifying the specific location, size, scope, and methods of construction for the ponds planned as enhancement activities prior to engaging in any such activities.

4. **The City's Right.** To accomplish the purposes of this Conservation Easement, the following rights are hereby conveyed to the City:

4.1. **Right to Protect.** The City has the right to preserve and protect the Conservation Values of the Property in accordance with the terms of this Conservation Easement and Applicable Law.

4.2. **Right of Entry.** With prior notice to Grantor, the City, NRCS and their respective staff, contractors and associated natural resource management professionals (collectively, the "**City Parties**") have the right to enter the Property two (2) times per calendar year: (a) to inspect the Property to determine if Grantor is complying with the terms, covenants and purposes of this Conservation Easement and (b) to monitor watershed characteristics and conditions and the condition of the surface and subsurface waters on or adjacent to the Property. The City, NRCS and Grantor agree to work together in good faith to select a mutually acceptable date and time for site visits by any of the City Parties. The City Parties may also enter the Property at such other times as allowed by Grantor to conduct research on watershed and range management techniques or such other purposes as agreed to by Grantor and the City, and as otherwise allowed in the Management Plan and Development Plan. Upon the City's request, Grantor agrees to cooperate with the City in establishing, at no expense to Grantor, a written plan to direct the monitoring of and research on water quality in natural habitats on the Property. The City agrees that any such monitoring or research activities, natural resource inventory and/or assessment work will be reported to Grantor. The City will provide Grantor, at no cost, a copy of all plans, reports or data collected. The right of entry is not transferable to a party that has no interest in this Conservation Easement without Grantor's prior written consent.

4.3. **Enforcement.** The City has the right to prevent any activity on or use of the Property that is in violation of this Conservation Easement and to require the restoration of such areas or features of the Property that may be damaged by any



activity or use in violation of this Conservation Easement, pursuant to **Paragraph 12** hereof.

- 4.4. **Discretionary Consent.** The City may consent to activities otherwise prohibited under **Paragraphs 2.1, 2.4, 2.10 and 2.11** above and activities not expressly allowed herein that do not conflict with the purposes of this Conservation Easement, under the following conditions and circumstances. If (a) due to unforeseen or changed circumstances, any of the prohibited activities listed in **Paragraph 2** are reasonably determined by both Grantor and the City to be desirable, or (b) Grantor requests to conduct any activities not expressly allowed under **Paragraph 3**, the City, in its sole discretion, may give permission for such activities, provided such activities (a) do not violate the purposes of this Conservation Easement and (b) either enhance or do not impair any Conservation Values associated with the Property. Except for a judicial determination as set forth in **Paragraph 17**, the City can not agree to any activities that would result in the termination or extinguishment of this Conservation Easement or to allow any additional partitions of the Property or any residential, commercial or industrial structures not otherwise expressly provided for in this Conservation Easement, including the Development Plan. In the event Grantor wishes to engage in any activity or use of the Property requiring the City's consent, Grantor shall send written notice to the City (c/o of its Environmental Conservation Land Manager or such other individual designated by the City in writing as provided in **Paragraph 20.6** below) and to NRCS describing in detail such request. The City will respond to the request within sixty (60) days. In the event the City fails to respond to the request within such sixty (60) day period, Grantor may send a second notice of its request to the City and NRCS. If the City or NRCS fails to respond to the request as required herein within thirty (30) days after delivery of such second notice, such request shall be deemed granted.
- 4.5. **Water Rights.** All surface and subsurface water rights associated with the Property, except as expressly reserved by Grantor in **Paragraph 3.4**, hereof are conveyed to the City. However, the City is prohibited from transferring, selling or otherwise utilizing such water rights.
- 4.6. **Development Rights.** All development rights, except those specifically retained by Grantor herein and in the Development Plan are conveyed to the City. The parties acknowledge and agree that the development rights so conveyed are hereby terminated and extinguished and cannot be used on or transferred to any portion of the Property or any other property.
- 4.7. **Management of Exotic and Invasive Species.** The City has the right (but no obligation) to control, manage and destroy exotic or non-native species or invasive species of plants and animals that violate the terms of this Conservation Easement. The City agrees to notify, consult and work cooperatively with Grantor prior to implementing any such activities pursuant to this **Paragraph 4.7**.
- 4.8. **No Interference.** In connection with the implementation of or exercise by the City of any of its rights hereunder, the City agrees to use its reasonable efforts to

minimize any interference with Grantor's permitted use and enjoyment of the Property that is consistent with the purposes of this Conservation Easement.

5. **Development Plan.** Any and all construction or expansion of any Improvements allowed herein must be performed in accordance with the Development Plan attached hereto as **Exhibit "B"** and incorporated herein by reference (the "***Development Plan***").

6. **Management Plan.** Any ranching or wildlife management operations conducted on the Property must be in accordance with the Management Plan attached hereto as **Exhibit "C"** and incorporated herein by reference (the "***Management Plan***") and the Conservation Plan.

7. **Public Access.** Nothing contained in this Conservation Easement gives or grants to the public a right to enter upon or use the Property or any portion thereof.

8. **Costs and Liabilities; Indemnity/Damages.** Grantor retains all responsibilities and bears all costs and liabilities of any kind related to the ownership, operation, upkeep and maintenance of the Property. Grantor must keep the City's interest in the Property free of any liens arising out of any work performed for, materials furnished to or obligations incurred by Grantor. **Grantor agrees to release, hold harmless, defend and indemnify the City and the United States from any and all liabilities, including, but not limited to, injury, losses, damages, judgments, costs, expenses, and fees, that the City or the United States may respectfully suffer or incur to the extent of or the negligent acts or omissions or willful misconduct of Grantor or Grantor's employees, agents, contractors, licensees or invitees on the Property. In addition, Grantor agrees to indemnify, defend and hold harmless the City and the United States from any liability resulting from Grantor's negligent acts, including but not limited to, the release, use or deposit of any Hazardous Materials (defined below) on the Property. The City agrees to pay or reimburse Grantor for any costs incurred by Grantor relating to any claims, liabilities or damages to the extent arising out of the negligent acts or omissions or willful misconduct by the City, its employees, contractors, licensees or agents in connection with the Property or this Conservation Easement. In the event the United States exercises its enforcement rights under, or takes title to, this Conservation Easement, the United States' liability, if any, under this provision shall be as provided for under the Federal Tort Claims Act or similar subsequent applicable federal law.**

9. **Taxes.** Grantor must pay any real estate taxes or other assessments levied on the Property. If Grantor becomes delinquent in payment of taxes or assessments, so that a lien is created against the Property, the City, at its option, after written notice to Grantor, may take such actions as the City determines to be necessary to protect the City's interest in the Property and to assure the continued enforceability of this Conservation Easement.

10. **Title.** Grantor covenants and represents and warrants to the City as follows: (a) Grantor is the sole owner of the Property in fee simple and has good right to grant and convey this Conservation Easement; (b) the Property is free and clear of any and all encumbrances, except those identified on **Exhibit "D"** attached hereto; (c) any and all liens encumbering the Property will be subordinate to this Conservation Easement; and (d) the City will have the use of and enjoyment of all the benefits derived from and arising out of this Conservation Easement.

11. **Hazardous Materials.** Grantor represents to the City that, to Grantor's actual knowledge (with no duty to investigate), no Hazardous Materials exist nor have been generated, treated, stored, used, disposed of, or deposited in or on the Property in such manner as to violate or create any liabilities pursuant to any Applicable Laws (defined below), and that there are not now any underground storage tanks located on the Property. Grantor further warrants that, as of the Effective Date, Grantor has no actual knowledge of any notices by any governmental authority of any violation or alleged violation of any Applicable Law relating to the operations or condition of the Property. As used herein, the term "***Hazardous Materials***" means (i) any hazardous waste as defined by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901 et seq.), as amended from time to time, and regulations promulgated thereunder; (ii) any hazardous substance as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. Section 9601 et seq.), as amended from time to time, and regulations promulgated thereunder (including petroleum-based products as described therein); (iii) other petroleum and petroleum-based products; (iv) asbestos in any quantity or form which would subject it to regulation under any Applicable Laws; (v) polychlorinated biphenyls; (vi) any substance, the presence of which on the Property is prohibited by any Applicable Laws; and (vii) any other substance which, by any Applicable Laws, requires special handling in its collection, storage, treatment or disposal. As used herein, "***Applicable Laws***" means all laws, statutes, ordinances, regulations, and judicial rulings now or hereafter adopted by any governmental authority with jurisdiction over the Property.

12. **The City's Remedies.** If the City becomes aware of a violation of the terms of this Conservation Easement, the City may notify Grantor of such violation and request corrective action sufficient to abate such violation and restore the Property to its previous condition prior to the violation. Grantor and the City agree that the EDR is deemed to provide objective information concerning the Property's condition as of the Effective Date. Failure by Grantor to abate the violation and take such other corrective action as may be requested by the City within fifteen (15) days after receipt of such notice by the City entitles the City to exercise any one or more of the following remedies: (a) bring an action at law or equity in a court of competent jurisdiction in Hays County, Texas to enforce the terms of this Conservation Easement; (b) require the restoration of the Property to its previous condition; (c) enjoin the non-compliance by temporary or permanent injunction in a court of competent jurisdiction; (d) enter the Property and take such action as is reasonably necessary to correct the violation, and/or recover any damages arising from the noncompliance. However, notwithstanding anything above to the contrary, if such violation can not reasonably be cured or such corrective action can not reasonably be completed within such 15-day period, Grantor shall be allowed additional time as is reasonably necessary to abate or correct the violation so long as (1) Grantor commences to abate or correct such violation within such 15-day period as reasonably determined by the City (which may include commencing development of a plan) and (2) Grantor diligently pursues a course of action that will abate or correct the violation. Such damages, when recovered, may be applied by the City, in its sole discretion, to corrective action on the Property. Provided Grantor was given prior notice and an opportunity to cure the subject violation as provided above, Grantor must reimburse the City for any reasonable costs of enforcement, including costs of restoration, court costs and reasonable legal expenses, in addition to any other payments ordered by such court. However, in the event a court of competent jurisdiction determines that Grantor was not in default under this Conservation Easement, the City must reimburse Grantor for its reasonable costs and expenses, including reasonable attorney's fees, incurred in connection with defending such action. In the event the United States exercises its right

under this Conservation Easement, the United States will not be liable under the terms of this provision for any such reimbursement to Grantor nor will Grantor be liable to the United States.

- 12.1. **Emergency Enforcement.** If the City, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values of the Property, the City may pursue its remedies under this Paragraph without prior notice to Grantor and without waiting for the period for cure to expire. However, the City agrees to use its best efforts to notify Grantor of such circumstances as soon as reasonably practicable.
- 12.2. **Failure to Act or Delay.** No covenant, term, condition or restriction of this Conservation Easement or the breach thereof by Grantor will be deemed waived, except by written consent of the City and any waiver of the breach of any such covenant, term, condition or restriction will not be deemed or construed to be a waiver of any preceding or succeeding breach of the same or any other covenant, term, condition or restriction. The City retains the right to take any action as may be necessary to ensure compliance with this Conservation Easement notwithstanding any prior failure to act.
- 12.3. **Violations Due to Causes Beyond Grantor's Control.** Nothing herein may be construed to entitle the City to institute any enforcement proceedings against Grantor for any changes to the Property due to causes beyond Grantor's control, such as changes caused by fire, flood, storm, drought, pestilence, disease, earthquake or the unauthorized wrongful acts of third persons. In the event of violations of this Conservation Easement caused by wrongful acts of third persons, Grantor agrees, upon request by the City, to assign its right to action to the City, or to join in any suit to pursue enforcement action, all at the election of the City.
13. **Parties Subject to Easement.** The covenants agreed to and the terms, conditions, and restrictions imposed by this Conservation Easement bind the parties hereto and, to the extent applicable, their respective lessees, licensees, mortgagees, invitees, employees, contractors, agents, personal representatives, heirs, successors and assigns, and all other successors in interest to the parties hereto and continues as a servitude running in perpetuity with the Property.
14. **Subsequent Transfers.** The terms, conditions, restrictions and purposes of this Conservation Easement or reference thereto must be inserted by Grantor in any subsequent deed or other legal instrument by which Grantor divests either the fee simple title or possessory interest in the Property; however, Grantor's failure to do so will not limit or impair any of the terms of this Conservation Easement as a servitude on the Property or any portion thereof. Grantor must also notify the City of any pending transfer of any interest in the Property at least thirty (30) days in advance of such transfer.
15. **Merger.** Grantor and the City agree that the terms of this Conservation Easement will survive any merger of the fee and easement interest in the Property. Prior to acquiring the underlying fee and easement interests in the Property, the City agrees to transfer this Conservation Easement in accordance with the terms set forth in **Section 16** below.

16. **Assignment.** The parties hereto recognize and agree that the benefits of this Conservation Easement are in gross and assignable. The City hereby covenants and agrees that if the City transfers or assigns its interest in this Conservation Easement, the organization receiving the interest will be a qualified organization as that term is defined in Section 170(h)(3) of the Internal Revenue Code of 1986 (or any successor section) and the regulations promulgated thereunder, or that is organized and operated primarily for one or more of the conservation purposes specified in Section 170(h)(4)(A) of the Internal Revenue Code, and the City further covenants and agrees that the terms of the transfer or assignment will be such that the transferee or assignee will be required to continue to carry out in perpetuity the conservation purposes that this Conservation Easement was originally intended to advance. Prior to any transfer of the City's interest in this Conservation Easement, the City must obtain the prior written consent of NRCS (which consent will not be unreasonably withheld, conditioned or delayed, provided the United States elects not to otherwise exercise its contingent right to cause this Conservation Easement to be assigned to the United States pursuant to **Paragraph 20.12** hereof).

17. **Extinguishment.** If circumstances arise in the future to render the purposes of this Conservation Easement impossible to accomplish or fulfill, this Conservation Easement can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction at the joint request of both Grantor and the City. The amount of the proceeds to which the City will then be entitled (after the satisfaction of prior claims) from the sale, exchange, or involuntary conversion of all or any part of the Property subsequent to such termination or extinguishment, will then be the stipulated fair market value of this Conservation Easement, or proportionate part thereof, as determined in accordance with **Paragraph 18** below. Grantor will pay such proceeds to the City at the time of such sale, exchange or conversion.

18. **Valuation.** Grantor hereby agrees that, at the time of the conveyance of the Conservation Easement to the City, the Conservation Easement gives rise and constitutes an interest in real property, immediately vested in the City. For purposes of **Paragraph 17** and **Paragraph 19** hereof, the parties stipulate that the Conservation Easement will have a fair market value (the "FMV") determined by multiplying (a) the FMV of the Property unencumbered by the Conservation Easement (minus any increase in value after the date of this grant attributable to improvements) at the time of termination or extinguishment by (b) the ratio of the FMV of the Conservation Easement at the time of this grant to the FMV of the Property, without deduction for the FMV of this Conservation Easement, at the time of this grant. For example, assume the current total FMV of the Property (unencumbered by the Conservation Easement) is \$3,000,000.00 and the FMV of the improvements added since the grant is \$1,000,000.00. For purposes of this **Paragraph 18**, the FMV of the Property is therefore \$2,000,000.00. Assume that at the time of the grant, the FMV of the Conservation Easement was \$500,000.00 and the FMV of the Property (unencumbered by the Conservation Easement) was \$1,000,000.00. Therefore, the ratio of the FMV of the Conservation Easement to that of the Property is 1/2. Accordingly, the current FMV of the Conservation Easement would be \$1,000,000.00. This is expressed by the formula below:

$$\text{Current FMV of CE} = \text{Current FMV of PP (less the value of post-grant improvements)} \times \frac{(\text{FMV of CE at time of grant})}{(\text{FMV of PP at time of grant})}$$

19. **Eminent Domain.** Whenever all or part of the Property is taken in exercise of eminent domain by public, corporate, or other authority so as to abrogate the restrictions imposed by this

Conservation Easement, Grantor and the City shall join in appropriate actions at the time of the taking to recover the full value of the taking and all incidental or direct damages resulting from it. In addition, the City shall notify NRCS of any such condemnation or eminent domain actions. The proceeds from such taking must be divided and paid in accordance with the proportionate value of the City's and Grantor's respective interests as provided in **Paragraph 18** above. All expenses incurred by Grantor in such action will be paid out of Grantor's portion of the recovered proceeds and all expenses incurred by the City in such action will be paid out of the City's portion of the recovered proceeds. The City's share of the proceeds must be divided between the City and the United States based on their proportional share. The proportional share of the City is 47% and the proportional share of the United States is 53%, representing the proportion each party contributed to the purchase price of the Conservation Easement and the amount received by the City from Grantor as a donation. Due to the federal interest in this Conservation Easement, the United States must consent to any condemnation action.

20. **Miscellaneous Provisions.**

- 20.1. **Severability.** If any provision of this Conservation Easement or the application thereof to any person or circumstance is found to be invalid, the remainder of the provisions of this Conservation Easement and the application of such provisions to persons or circumstances other than those as to which it is found to be invalid are not affected thereby.
- 20.2. **Successors and Assigns.** The term "**Grantor**" includes Grantor and Grantor's heirs, executors, administrators, successors and assigns and also means the masculine, feminine, corporate, singular or plural form of the word as needed in the context of its use. References to the "**City**" includes the City of Austin and its respective successors and assigns. References to the "**NRCS**" and the "**United States**" includes any successor agency or assign of NRCS, and always ultimately means the United States. Further, the terms NRCS and United States are used interchangeably in this Conservation Easement.
- 20.3. **Applicable Laws.** Notwithstanding anything herein to the contrary, Grantor and the City must comply with all Applicable Laws (including those laws regulating Hazardous Materials) in connection with any of their activities on the Property or in connection with this Conservation Easement.
- 20.4. **Recording.** The City is authorized to record or file any notices or instruments appropriate to assuring the perpetual enforceability of this Conservation Easement, and Grantor must promptly execute and deliver to the City any such instruments upon reasonable request.
- 20.5. **Captions.** The captions herein have been inserted solely for convenience or reference and are not part of this Conservation Easement and have no effect upon construction or interpretation.
- 20.6. **Notices.** Any notice, communication, request, reply or advice (severally and collectively referred to as "**Notice**") in this Conservation Easement provided or

allowed to be given, made or accepted by either party to the other must be in writing. Notice may, unless otherwise provided herein, be given or served (a) by depositing the same in the United States mail, postage paid, certified mail, with return receipt requested, and addressed to the party to be notified at the last address for which that the sender has at the time of mailing, with return receipt requested, (b) by delivering the same to such party, or an agent of such party, or (c) when appropriate, by sending a facsimile to the party to be notified at the fax number shown below, with electronic confirmation of receipt. Notice deposited in the mail in the manner hereinabove described is deemed effective from and after such deposit. Notice given in any other manner is deemed effective only if and when received by the party to be notified. For the purposes of notice, the addresses of the parties, until changed as provided below, are as follows:

Grantor: Anne Schweppe Ashmun  
2405 Woodmont Avenue  
Austin, Texas 78703  
Telephone: (512) 457-8981  
Fax: (512) 457-8989

With copy to: Jerry Webberman  
Jackson Walker L.L.P.  
100 Congress Avenue, Suite 1100  
Austin, Texas 78701  
Telephone: (512) 236-2270  
Fax: (512) 391-2155

The City: City of Austin  
Austin Water Utility  
P.O. Box 1088  
Austin, Texas 78767-8839  
Attn: William Conrad, Environmental Conservation  
Division Manager  
Telephone: (512) 263-6430  
Fax: (512) 263-1276

With copy to: City of Austin  
301 W. 2nd Street, 4th Floor  
Austin, Texas 78701  
Attention: Alison Gallaway, Assistant City Attorney  
Telephone: (512) 974-2671  
Fax: (512) 974-6490

NRCS: Natural Resources Conservation Service  
101 South Main Street  
Temple, Texas 76501-7602  
Attention: Claude W. Ross  
Telephone: (254) 742-9822  
Fax: (254) 742-9848

- 20.7. **Consent.** If any action by or on behalf of Grantor ("**Action**") requires the City's consent ("**Approval**"), the City must actually receive advance written notice of the Action, and Grantor must actually receive notice of the City's written approval of the requested Action, in order for the requested Action and Approval to be valid and binding on all parties. The City agrees to not unreasonably withheld, condition or delay its Approval provided the City determines in its reasonable discretion that the requested Action is consistent with the preservation of the Conservation Values and other terms of this Conservation Easement.
- 20.8. **Effective Date.** This Conservation Easement becomes effective and binding only when fully executed by both Grantor and the City.
- 20.9. **Arbitration.** If a dispute arises between the parties concerning the consistency of any proposed use or activity not previously approved by the City with any of the purposes of this Conservation Easement, and Grantor agrees not to proceed with the use or activity pending resolution of the dispute, either party may refer the dispute to arbitration by request made in writing to the other. Within thirty (30) days of the receipt of such a request, the parties must select a single trained and impartial arbitrator to hear the matter. If the parties are unable to agree on the selection of a single arbitrator, then each party must name one arbitrator and the two arbitrators thus selected must select a third arbitrator; provided, however, if either party fails to select an arbitrator, or if the two arbitrators selected by the parties fail to select the third arbitrator within fifteen (15) days after the appointment of the second arbitrator, then in each such instance a proper court, on petition of a party, must appoint the second or third arbitrator or both, as the case may be, in accordance with the rules of the American Arbitration Association then in effect or such other rules as agreed to by the parties. The matter must be settled in accordance with the rules of the American Arbitration Association then in effect or such other rules as agreed to by the parties, and a judgment on the arbitration award may be entered in any court having jurisdiction thereof. The prevailing party is entitled, in addition to such other relief as may be granted, to a reasonable sum as and for all its costs and expenses related to such arbitration, including, without limitation, the fees and expenses of the arbitrators and attorney's fees, which will be determined by the arbitrators and any court of competent jurisdiction that may be called upon to enforce or review the award. Nothing herein to the contrary limits or otherwise impairs the City's or Grantor's right to pursue any enforcement action, including without limitation, injunctive relief, from a court of competent jurisdiction. This provision shall not apply to the United States should it exercise its remedies under this Conservation Easement.
- 20.10. **Amendment.** Grantor and the City may amend this Conservation Easement provided such amendment (a) is not contrary to or does not conflict with the purposes of this Conservation Easement, (b) does not impair any significant Conservation Values associated with the Property, (c) does not result in a termination of this Conservation Easement, and (d) does not affect in any way the qualification of this Conservation Easement or the status of the City under any Applicable Laws,



including without limitation, Section 170(h) of the Internal Revenue Code. Such amendment must be in writing, signed by a duly authorized representative of Grantor and the City and recorded in the Official Public Records of Hays County, Texas. The City must notify NRCS of any proposed amendment to this Conservation Easement. NRCS or its successor must approve in advance such amendment (such approval not to be unreasonably withheld, conditioned or delayed). NRCS must notify Grantor and the City of its approval or rejection of the proposed amendment within sixty (60) days after its receipt of same. Any rejection by NRCS must specify the reasons for the rejection. If the NRCS fails to notify the City and Grantor of its approval or rejection within such sixty (60) day period as required above, Grantor or the City may send a second notice to NRCS requesting approval of such amendment. If NRCS fails to respond as required herein thirty (30) days after delivery of such second notice, the proposed amendment will be deemed denied.

- 20.11. **Conservation Plan.** Grantor agrees to prepare a conservation plan in connection with the agricultural activities to be conducted on the Property in consultation with NRCS and subject to approval by the Hays County Soil and Water Conservation District (the "**Conservation Plan**"). The Conservation Plan will be developed using the standards and specifications of the NRCS Field Office Technical Guide (FOTG) taking into consideration of the landowner's objective and protection of the historic or archeological sites and will be implemented and maintained by Grantor. The Conservation Plan may be modified upon request of Grantor when necessary to address changes in agricultural use, management or natural resource conditions. The minimum standard under the Conservation Plan for agricultural activities on the Property is to meet FOTG quality criteria for the soil, water, animal, plant and air resource concerns. Furthermore, any historic or archeological sites discovered during the planning or implementation of the Conservation Plan will be recorded in a dedicated soil survey or other suitable map and reported to the State Historic Preservation Officer. However, Grantor may develop and implement the Conservation Plan at a higher level of conservation that is consistent with NRCS FOTG standards and specifications to maintain the Conservation Values of this Conservation Easement. NRCS shall have the right to enter upon the Property, as otherwise provided under **Paragraph 4.2** above, in order to monitor the adequacy of the Conservation Plan and Grantor's implementation thereof. To the extent the requirements of the Conservation Plan conflict with the terms set forth in the Management Plan attached to this Conservation Easement, the plan providing the greatest level of protection to the natural resources and the historic or archeological sites will control.

The FRPP statutory requirement to be in compliance with section 1238I of the Food Security Act of 1985, as amended, does not currently apply to this land. However, if the Property is converted to cropland at some future date, NRCS will make a determination whether the Property is subject to compliance with section 1238I and the implementing regulations at 7 CFR part 12.

The parties recognize and acknowledge that the physical environmental conditions of the Property can change over time due to a variety of factors and that technological

advancements and other new information with regard to management practices may be available in the future. Accordingly, to ensure that the conservation purposes set out in the Conservation Easement and the Conservation Plan continue to be satisfied, the parties agree that such plan should be reviewed at least every five (5) years. In connection therewith, Grantor, the City and NRCS agree to work together in good faith to determine if such plan needs to be modified or updated. The Conservation Plan can be modified at any time provided such changes do not violate the purposes of this Conservation Easement and either enhance or do not impair such purposes. Any modification of such plan requires the mutual agreement of Grantor, the City and NRCS and must be in writing and executed by duly authorized representatives of each party.

20.12. **Contingent Right in the United States of America.** In the event that the City fails to enforce any of the terms of this Conservation Easement, as determined at the sole discretion of the Secretary of the United States Department of Agriculture, the said Secretary of Agriculture and his or her successors and assigns shall have the right to enforce the terms of this Conservation Easement through any and all authorities available under Federal or State law. In the event that the City attempts to terminate, transfer, or otherwise divest itself of any rights, title, or interests of this Conservation Easement or extinguish this Conservation Easement without the prior consent of the Secretary of the United States Department of Agriculture and payment of consideration to the United States, then, at the option of such Secretary, all right, title, and interest in this Conservation Easement shall become vested in the United States of America.

20.13. **Historical and Archeological Guidelines.** Grantor and the City agree to develop a management plan for the protection and preservation of the archeological and pre-historic sites located on the Property based on the Secretary of Interior's Standards and Guidelines for Historic Preservation as more particularly set forth in the Management Plan.

20.14. **Multiple Counterparts.** For convenience of the parties hereto, this Conservation Easement may be executed in multiple counterparts to the same effect as if all parties hereto had signed the same document. All such counterparts will be construed together and will constitute one instrument, but in making proof hereof it is only necessary to produce one such counterpart.

TO HAVE AND TO HOLD this Conservation Easement unto the City in perpetuity, together with all and singular the appurtenances and privileges belonging or any way pertaining thereto, either at law or in equity, either in possession or expectancy, for the proper use and benefit of the City, its successors and assigns, forever; and Grantor does hereby bind Grantor to WARRANT and DEFEND the interest in the Property granted and conveyed to the City under this Conservation Easement, unto the City and its successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof, by and through Grantor, but not otherwise.

[SIGNATURES ON FOLLOWING PAGES]

IN WITNESS WHEREOF, Grantor has executed this Conservation Easement on the date indicated below, to be effective as of the Effective Date, to acknowledge its agreement to the covenants, terms and conditions provided herein.

**GRANTOR:**

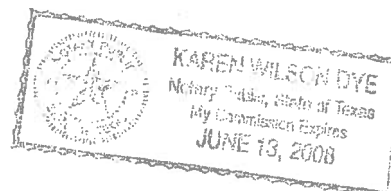
Date: 12/29/04

Anne Schweppe Ashmun  
Anne Schweppe Ashmun

THE STATE OF TEXAS   §  
                                  §  
COUNTY OF TRAVIS   §

This instrument was acknowledged before me on the 29<sup>th</sup> day of December, 2004, by Anne Schweppe Ashmun.

Karen Wilson Dye  
Notary Public, State of Texas



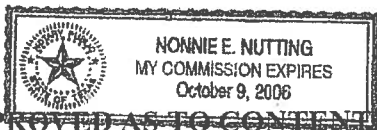
IN WITNESS WHEREOF, the City has executed this Conservation Easement on the date indicated below, to be effective as of the Effective Date, to acknowledge its agreement to the covenants, terms and conditions provided herein.

**GRANTEE:****CITY OF AUSTIN**Date: 12-28-04

By: Lauraine Rizer  
 Lauraine Rizer  
 Manager, Real Estate Services Division  
 Department of Public Works

THE STATE OF TEXAS §  
 §  
 COUNTY OF TRAVIS §

This instrument was acknowledged before me on the 28 day of December, 2004, by Lauraine Rizer, Manager of the Real Estate Services Division of the Department of Public Works for the City of Austin, a Texas municipal corporation.



Nonnie E. Nutting  
 Notary Public, State of Texas

**APPROVED AS TO CONTENT**

By: \_\_\_\_\_  
 William A. Conrad  
 Environmental Conservation Division Manager  
 Wildland Conservation Division  
 Austin Water Utility

**APPROVED AS TO FORM:**

By: Alison Gallaway  
 Alison Gallaway  
 Assistant City Attorney  
 File # \_\_\_\_\_ /JMP  
 TCAD Parcel # \_\_\_\_\_

IN WITNESS WHEREOF, the City has executed this Conservation Easement on the date indicated below, to be effective as of the Effective Date, to acknowledge its agreement to the covenants, terms and conditions provided herein.

**GRANTEE:**

**CITY OF AUSTIN**

Date: \_\_\_\_\_

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

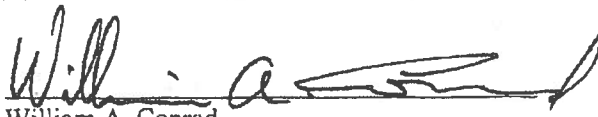
Lauraine Rizer  
Manager, Real Estate Services Division  
Department of Public Works

THE STATE OF TEXAS    §  
                                  §  
COUNTY OF TRAVIS    §

This instrument was acknowledged before me on the \_\_\_\_\_ day of December, 2004, by Lauraine Rizer, Manager of the Real Estate Services Division of the Department of Public Works for the City of Austin, a Texas municipal corporation.

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

**APPROVED AS TO CONTENT:**

By:   
William A. Conrad  
Environmental Conservation Division Manager  
Wildland Conservation Division  
Austin Water Utility

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Alison Gallaway  
Assistant City Attorney  
File # \_\_\_\_\_/JMP  
TCAD Parcel # \_\_\_\_\_

**APPROVED AND ACCEPTED AS TO CONTENT AND FORM:**

The Natural Resources Conservation Service, an agency of the United States Government, hereby accepts and approves the foregoing conservation easement deed, and the rights conveyed therein, on behalf of the United States of America.

Salvador Salinas

Authorized Signatory of the NRCS

Name: SALVADOR SALINAS

Title: DEPUTY STATE CONSERVATIONIST

State of Texas  
County of Bell

On this 28 day of December, 2004, before me, the undersigned, a Notary Public in and for the State, personally appeared SALVADOR SALINAS, known or proved to me to be the person whose signature appears above, and who being duly sworn by me, did say that he/she is the acting State Conservationist of the Natural Resources Conservation Service, United States Department of Agriculture, is authorized to sign on behalf of the agency, and acknowledged and accepted the rights conveyed by the Conservation Easement Agreement to be her/his voluntary act and deed.

I witness whereof, I have hereunto set my hand and official seal the day and year first above written.

Mary N. Wofford

Notary Public for the State of Texas

Residing at BELL COUNTY

My Commission Expires 8-15-2005

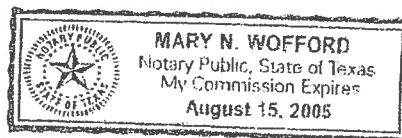


EXHIBIT "A"

PROPERTY

LEGAL DESCRIPTION: BEING 245.00 ACRES OF LAND OUT OF THE THOMAS F. GRAY SURVEY NO. 11, ABSTRACT NO. 187, SITUATED IN HAYS COUNTY, TEXAS. THE SAID 245.00 ACRE TRACT OF LAND BEING OUT OF AND A PORTION OF THAT CERTAIN 1273.08 ACRE TRACT CONVEYED TO L.S. RANCH, LTD, BY DEED RECORDED IN VOLUME 1468, PAGE 706, OFFICIAL PUBLIC RECORDS OF HAYS COUNTY, TEXAS. THE SAID 245.00 ACRE TRACT OF LAND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

Commencing at a 1/2 inch iron rod found on the southwest r.o.w. line of F.M. Highway 967, same being the north boundary line of said 1273.08 acre tract and being situated at the northeast corner of that certain 862.107 acre tract of land conveyed to Anne Schweppe Ashmun by deed recorded in Volume 2350, Page 809, Hays County Official Public Records.

THENCE, along the east boundary line of said 862.107 acre tract, S39°07'42"W a distance of 1425.72 feet to a 1/2 inch iron rod found for the northeast corner and POINT OF BEGINNING of the herein described tract.

THENCE, leaving the east boundary line of said 862.107 acre tract and proceeding through the interior of said 1273.08 acre tract the following two (2) courses:

- 1) S35°41'42"W a distance of 2037.28 feet to a 1/2 inch iron rod set.
- 2) S02°12'09"E a distance of 2627.89 feet to a spindle found on the south boundary line of said 1273.08 acre tract, same being the east boundary line of said 862.107 acre tract, and being situated at the southeast corner hereof.

THENCE, along the south boundary line of said 1273.08 acre tract, same being the north boundary line of said 862.107 acre tract, S87°32'41"W a distance of 2230.01 feet to a 1/2 inch iron rod found for the southwest corner hereof.

THENCE, along the east boundary line of said 862.107 acre tract the following three (3) courses:

- 1) N01°32'06"W a distance of 3703.93 feet to a 1/2 inch iron rod found.
- 2) N49°51'06"E a distance of 1475.55 feet to a spindle found.
- 3) S83°04'13"E a distance of 2303.83 feet to the POINT OF BEGINNING of the herein described tract containing 245.00 acres of land and as shown on map of survey prepared herewith.

This description was prepared from a survey made on the ground under my supervision in October, 2004.

*Jimmy F. Johnson*  
Jimmy F. Johnson

November 3, 2004

FIELD NOTES REVIEWED  
by *JOHN MORE* Date *11-9-2004*  
Engineering Support Section  
Department of Public Works  
and Transportation



**EXHIBIT "B"**

**DEVELOPMENT PLAN**

This Development Plan is attached to and made a part of the Conservation Easement.

1. **Definitions.** Capitalized terms not otherwise defined in the Conservation Easement shall have the meaning given to such terms below:

(a) **"Driveways"** shall mean any roadways that have been improved either with pavement, asphalt, gravel, rock, rock-base, clean soil consisting of clay, topsoil, rock saw or other materials placed on top of the natural surface of the land.

(b) **"Impervious Cover"** shall mean and include all Improvements or materials that are impermeable as to water which in any way cover or are placed above the natural surface of the land.

(c) **"Improvements"** shall mean and include any and all ponds, lakes, reservoirs, recreational and sports fields, site clearing and other significant disturbance of the land surface (except in connection with brush, ranching operations and wildlife management as permitted in the Management Plan), mass plantings, buildings, parking areas, fences, walls, poles, pipelines, wells, septic systems and other utility facilities, Driveways, roads, swimming pools, tennis courts and any other structures affixed to or located on the land.

(d) **"Development Zone"** shall mean that area within the Property that is more than 500 feet from the centerline of Little Bear Creek and more than 100 feet from significant archeological and historical sites identified in the EDR.

(e) **"Residential Complex"** shall mean and include, collectively, a single family main house, tennis courts, a swimming pool, a barn, a stable and other sheds or outbuildings to house, animals, materials and equipment necessary for the utilization of, or associated with, the above-described structures. One (1) guest structure, not to exceed 1,500 square feet, is permitted on one (1) Residential Complex for the entire Property and shall be located within the Building Envelope referenced in **Paragraph 14(e)**.

(f) **"Trails"** shall refer to roadways delineated on the natural surface of the land that have not been improved by any construction or the placement of any other materials thereon (except for the filling of holes or as otherwise may be minimally necessary to make passable). The term "Trails" shall not include paths created by livestock.

2. **Existing Improvements.** Grantor may maintain, repair and reconstruct Driveways, Trails, crossings, fences, rock walls and other Improvements located on the Property, provided such Improvements are in existence at the time of the grant of the Conservation Easement or are otherwise expressly permitted in the Agreement. Such maintenance, repair and reconstruction activities must be conducted so as to avoid or minimize any materially adverse impact on the Conservation Values. Existing Driveways and Trails shall not be increased in width without the City's consent, which consent shall not be unreasonably withheld. Any reconstructed Improvements



shall be of similar size, location and materials as the original, unless otherwise approved by the City pursuant to **Paragraph 20.7** of the Conservation Easement.

3. **New Improvements.** Except as otherwise expressly provided in this provision, the construction and placement of any new Improvements shall be restricted to that portion of the Property within the Development Zone and shall be conducted so as to avoid or minimize any materially adverse impact on the Conservation Values. Notwithstanding the preceding sentence, Grantor has the right to construct wire fences, including game fences, for use in its ranching and wildlife management operations and Trails outside of the Development Zone and may construct two (2) dams, including lining, to create two (2) ponds, provided such dams are pursuant to a plan approved by the City (such approval not to be unreasonably withheld, conditioned or delayed) and otherwise restore, maintain, or enhance the natural hydrologic regime of a watershed. Any such new Trails shall be located and constructed so as to minimize erosion and all other negative impacts on the creek and watershed. In addition, Grantor's rights to (i) partition, divide or subdivide the Property, (ii) conduct or permit commercial activities on the Property and (iii) construct or place any Improvements on the Property shall be subject to and restricted by the following additional provisions.

4. **Partitions.** Grantor shall not be entitled to subdivide or partition the Property into more than one (1) parcel owned in fee.

5. **Permitted Uses.** Each partitioned parcel may be utilized only for single family residential and related recreational (non-commercial) uses, and for ecotourism, educational programming, hunting, ranching, equine, canine and wildlife management operations and agricultural activities as permitted in the Management Plan.

6. **Density Limits.** Impervious Cover, other than ponds, within the Property shall not exceed a total of 95,535.104 square feet [approximately 1% of net site area]. This Impervious Cover limitation shall apply only to construction or placement of new Improvements or expansion of existing Improvements on the Property and not to existing Improvements.

7. **Development.** Grantor may not place or construct on the Property more than one (1) Residential Complex. In connection therewith, Grantor also has the right to construct improvements reasonably necessary for the parking, maintenance and storage for heavy construction equipment, farm equipment, and no more than two (2) recreational use travel trailers for use by Grantor and its personnel ("**Equipment Area**"). This Equipment Area is subject to the terms of the Conservation Easement, including the limits on impervious cover. The Equipment Area must meet the following conditions:

- a. No more than one (1) Equipment Area may be constructed or created.
- b. The Equipment Area will not exceed one and one-half (1.5) acres in total area, including parking areas, water or sediment controls, or any other related facilities specific to the Equipment Area.

- c. Plans for the Equipment Area will be submitted to the City for approval before construction begins.

8. **Driveways and Trails.** Any new Driveways and Trails permitted hereunder shall be designed so as to minimize their length as much as reasonably practical and shall be constructed and maintained so as to minimize erosion and all other negative impacts on the creeks, springs and watershed, as much as reasonably practicable, and so as not to adversely impact the historical resources. No coal tar sealants or other materials determined by the City in its reasonable discretion to be harmful to the watershed are allowed on such Driveways without the City's prior written consent.

9. **Easements.** Grantor shall have the right to bring electricity, water, phone and/or other utility lines necessary to serve the new permitted Improvements, if any, from the nearest available line, or other line approved by the City, and to grant necessary easements to accomplish same, and shall have the right to grant other easements as are reasonably necessary for Grantor's use and enjoyment of the Property, provided Grantor: (a) gives the City at least twenty (20) days prior written notice of its intent to grant such easement and a copy of the document(s) creating such easement(s) and (b) obtains the City's consent to such proposed easement(s), which consent shall not be unreasonably withheld. If the City does not approve or object to such proposed easement within thirty (30) days after the City's receipt of the above notice, such easement shall be deemed approved, except to the extent the proposed easement clearly and materially conflicts with the terms of the Conservation Easement. To the extent reasonably practical, Grantor agrees that all utility lines will be installed where existing utilities exist or along or adjacent to existing Driveways.

10. **Site clearing.** Except as otherwise provided in the Conservation Easement, the Management Plan and the Conservation Plan, Grantor may cut and/or remove only such vegetation as is reasonably necessary in connection with the maintenance, construction and use of the Improvements contemplated herein.

11. **Waste.** All facilities and plans for the disposal of wastes other than by public sewage methods (such as shredding, compaction, incineration, reclamation or chemical dissolution) must be submitted to the City in advance for its approval, which approval shall not be unreasonably withheld. If the City does not approve or object to such proposed facilities or plans within thirty (30) days after the City's receipt of the above notice, such facilities or plans shall be deemed approved. The City acknowledges that Grantor may install septic systems as reasonably necessary for the Improvements contemplated herein, provided that such septic systems comply with all Applicable Laws.

12. **Plans and Specifications.** Prior to the construction or reconstruction of any Improvements (other than fences and normal ranch livestock working pens) permitted hereunder or the construction or placement of any Trails outside of the Development Zone, Grantor shall submit to the City plans and specifications (the "**Plans**") for such Improvements and Trails. Such Plans shall include: (a) a map (similar to that attached as **Exhibit "B-1"**) showing the proposed location of the proposed Improvements, (b) identification and location of the vegetation to be cleared, (c) the total Impervious Cover of the new Improvements, (d) the amount and location of construction materials to be taken from the Property, (e) a construction schedule (f) certification from Grantor that the location of such Improvements are not within 100 feet from any documented and identified significant historical or

archaeological sites, and (g) any other information Grantor reasonably requests in order to determine whether such construction complies with the requirements of the Conservation Easement, including this Development Plan. The City shall notify Grantor of its approval of, or notify Grantor of any objections the City may have to, the Plans within twenty (20) days after receipt by the City. If the City fails to timely notify Grantor of such objections, the Plans shall be deemed approved, except to the extent they clearly and materially conflict with the terms of the Conservation Easement.

13. **Inspection.** During the construction of Improvements, the City may inspect upon reasonable prior notice to Grantor (which notice may be verbal or in writing) all work in progress as necessary to insure that such construction is in compliance with the terms of the Conservation Easement, including this Development Plan.

14. **Construction Standards.** In addition to those criteria set forth in **Paragraph 12** above, the placement and construction of any Improvements must comply with the following standards:

- a. The placement and construction of Improvements shall be conducted in such manner as to minimize any negative impact on surface and subsurface hydrology.
- b. The placement and construction of Improvements shall conform to any plans and specifications submitted to the City as required herein and shall be subject to and must comply with all applicable statutes, ordinances and regulations of any governmental entities with jurisdiction over the Property.
- c. No excavation of land shall be made except in conjunction with, and as necessary for, the construction of permitted Improvements. When such Improvements are completed, all exposed openings shall be backfilled and graded and such areas shall be revegetated.
- d. Once construction of Improvements commences, such construction shall be diligently pursued to the end and may not be left in a partially finished condition any longer than reasonably necessary.
- e. The Residential Complex shall be sited within the building envelope depicted on Exhibit "B-1" attached hereto (the "**Building Envelope**"). Grantor may relocate the Building Envelope subject to prior written approval of the City and NRCS.

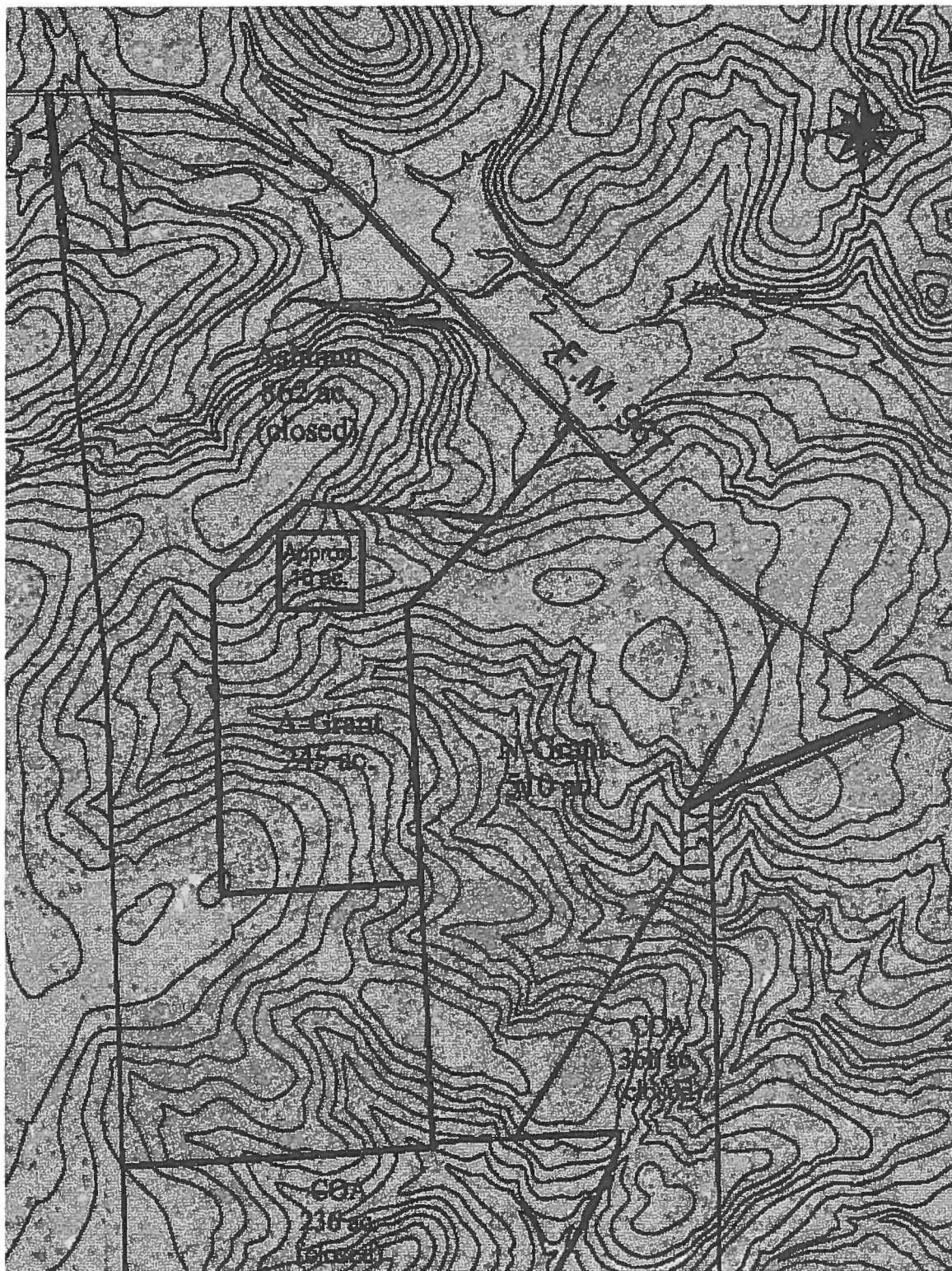
15. **Enhancement Activities.** The parties acknowledge that Grantor may engage in activities which have the intended purpose of restoring, maintaining, or enhancing the Conservation Values, including the construction of two (2) ponds. The two (2) ponds shall not be deemed Impervious Cover, will be considered to enhance the Conservation Values and be in compliance with the Conservation Easement if they are planned and constructed to meet the following conditions:

- a. No more than two (2) ponds may be constructed; however, the size and location of such ponds must meet NRCS standards and specifications solely for agricultural and livestock uses as set forth in the Conservation Plan.

- b. Plans for each pond will be submitted to the City and subject to approval by the City before construction begins (such approval not to be unreasonably withheld, conditioned or delayed).
- c. Prior to commencement of construction of any of the ponds, Grantor must investigate the location of any archaeological sites and provide the City with a written report evidencing that neither the construction or location of such ponds will have any material adverse negative effect or any archaeological sites.
- d. Total height of dams or embankments must not exceed twenty (20) vertical feet.
- e. All fill for construction of dams or embankments must be excavated from the planned impoundment area for the pond or hauled in from a location outside of the area protected by the Conservation Easement unless otherwise approved by the City (such approval not to be unreasonably withheld, conditioned or delayed).
- f. Each pond will include adequate principle and/or emergency spillways to convey discharges of runoff or channel flows resulting from a twenty-five (25) year, twenty-four (24) hour frequency storm event.
- g. Any areas of placed fill or disturbed soil that will not be inundated by impounded water will be re-vegetated with native vegetation or other vegetation approved by the City.

16. **Completion Affidavits.** Upon completion of the construction of any Improvements on the Property, Grantor will so notify Grantee. Grantee will file an affidavit in the Official Public Records of Hays County, Texas specifying the type and location of such Improvement(s) and the amount of impervious cover utilized by such Improvements.

EXHIBIT "B-1"



## EXHIBIT "C"

### MANAGEMENT PLAN

This Management Plan is attached to and made part of the Conservation Easement. Each capitalized term used but not otherwise defined herein has the meaning given to such terms in the Conservation Easement.

1. **Purpose of Management Plan.** The purpose of this Management Plan is to provide guidelines for conducting the allowed activities on the Property in order to promote the purposes of the Conservation Easement. To the extent there is any conflict in the other provisions of the Conservation Easement and this Management Plan, the provisions providing the greatest protection of the resources, as determined by the City in its reasonable discretion, shall govern. All activities allowed under the Conservation Easement, including residential uses, ranching, wildlife management operations and other allowed activities, must be conducted in accordance with the following provisions.

2. **Brush Management.** Except as expressly provided below, any vegetation clearing or removal otherwise permitted in **Paragraph 2.3** of the Conservation Easement must be accomplished by hand held tools, a backhoe, a bobcat or tractor utilizing hydraulic sheers or other similar type of sensitive equipment (excluding the use of bulldozers, root plowing or chaining, which methods are prohibited without the City's prior written consent). Burning or other chemical methods shall not be allowed without the prior written consent of the City, except for the use of herbicides in connection with fence lines as provided in **Paragraph 3** and expressly provided below. In addition, Grantor may use bulldozers to clear ash juniper or other brushy species provided such clearing activities (a) are not within 300 feet of any creek, spring or recharge feature, (b) occur on land with slopes of less than ten percent (10%) and (c) results in the clearing of no more than ten (10) contiguous acres within a 26 week period. Controlled burning of piles of cleared brush from such clearing activities is permitted provided Grantor otherwise complies with all Applicable Laws. In addition, Grantor shall manage the existing brushy species, including ash juniper, so that it is maintained at or below the baseline canopy cover level determined in the EDR. Except as otherwise expressly permitted above, management of ash juniper and other brushy species shall be pursuant to a plan submitted in advance and approved by the City, setting forth the area and method of clearing. Areas of brushy species which are cleared shall be revegetated with native vegetation, native grass mixes or other grasses or other vegetation approved by the City.

3. **Pesticides.** Only chemical pesticides that are biodegradable and approved by the City may be used on the Property and only if used for its intended purpose(s) and in accordance with the manufacturer's product label. A list of pesticides currently approved by the City and their intended use(s) is shown on **Schedule "C-1"** attached hereto. the City reserves the right to modify such list of approved pesticides as it determines is reasonable to protect or enhance the surface and subsurface hydrology. Notwithstanding anything herein to the contrary, the use of chemical pesticides within 500 feet of any waterways, waterwells, springs, wetlands, caves, recharge features, and other sensitive features is prohibited, unless the City determines in its reasonable discretion that a greater or lesser distance is appropriate. Also, broadcast (aerial) pesticide treatments are prohibited.

4. **Grazing.** Grantor must not overgraze or overstock the Property at any time and agrees not to graze more livestock thereon than would a reasonably prudent ranch operator, consistent with good husbandry practices and considering the then existing conditions of the Property. Without limiting the generality of the previous sentence, Grantor must not, without the City's prior written consent, graze more than one (1) animal unit (as defined in the Animal Unit Equivalency Table attached hereto as Schedule "C-2" per thirty (30) acres on the Property at any one time. Subject to and without limiting the general restriction on overgrazing and overstocking provided above, Grantor may graze up to one (1) animal unit per twenty (20) acres provided Grantor implements and uses a rotational grazing system to maintain and promote pasture vitality and provided Grantor supplementally feeds such livestock as necessary. Any confined feeding operation shall be (a) located at least 500 feet from any waterways, springs, caves, wetlands, recharge features and other sensitive features, (b) designed to contain and compost all animal waste and prevent degradation or other negative impact on surface and subsurface hydrology, and (c) limited to thirty (30) animal units at any one time. Notwithstanding the above restriction, Grantor may maintain a confined feeding operation on the Property with up to ten (10) animal units provided that it is maintained and operated in strict compliance with the Conservation Plan and provided that such operation does not negatively impact the creek or watershed as determined by the City in its reasonable discretion, such determination not to be unreasonably withheld or delayed if requested by Grantor.

5. **Aboveground storage tanks.** Aboveground storage tanks may be located on the Property for the containment of butane, propane, diesel, gasoline, water, animal feed, manure, and may be used solely in order to carry out any of the allowed activities pursuant to the Conservation Easement, including residential use, ranching, agriculture and wildlife management operations and educational programming. Any aboveground storage tank system (except water, propane and butane tanks) must be located a minimum horizontal distance of 500 feet from any waterways, water wells, springs, caves, wetlands, recharge features and other sensitive features. All aboveground storage tank systems must include a secondary containment with up to 150% of the volume of the subject tank, except water, butane or propane tanks for residential use.

6. **Archeological and Historical Sites.** Notwithstanding anything in this Conservation Easement to the contrary, Grantor will not engage in any activity that will in any way damage or negatively impair the archeological and historical resources located on the Property as identified in the EDR and/or the soils survey maps.

7. **Agricultural Activities.** Grantor is entitled to cultivate (including plowing, planting, raising, harvesting and producing) food plots for personal, livestock and wildlife consumption and commercial sale of crops off-site provided no hydroponic methods or chemical fertilizers are utilized provided that all such agricultural activities (other than food plots for personal consumption) are conducted in accordance with the Conservation Plan. Cultivated areas on the Property are limited to no more than five (5) acre sites and no more than an aggregate of fifteen (15) acres is allowed to be cultivated, unless otherwise approved by the City or recommended by NRCS. In addition, all cultivated sites must be located at least 100 feet from any waterways.

8. **Wildlife Control.** The population of native and exotic wildlife must be maintained and controlled as necessary in order to carry out and promote the purposes of the Conservation Easement. The hunting of wildlife is allowed on the Property provided such activities are conducted



in accordance with all Applicable Laws. Grantor also has the right to control, destroy or trap predatory and problem animals that pose a material threat to livestock and/or humans by means and methods approved by the City or by NRCS. The method employed must be selective and specific to individuals, rather than broadcast, non-selective techniques.

9. **Ranching and Wildlife Management Activities.** Ranching and wildlife management operations (including hunting) of native and exotic wildlife are allowed on the Property provided such activities are conducted in accordance with the Conservation Plan and do not violate or otherwise negatively impair the purposes of the Conservation Easement.

10. **Periodic Review.** The parties recognize and acknowledge that the physical environmental conditions of the Property can change over time due to a variety of factors and that technological advancements and other new information with regard to management practices may be available in the future. Accordingly, to ensure that the conservation purposes set out in the Conservation Easement and this Management Plan continue to be satisfied, the parties agree that this plan should be reviewed at least every five (5) years. In connection therewith, Grantor, the City and NRCS agree to work together in good faith to determine if the plan needs to be modified or updated. The plan can be modified at any time provided such changes do not violate the purposes of the Conservation Easement and either enhance or do not impair such purposes. Any modification of the plan requires the mutual agreement of Grantor, the City and NRCS and must be in writing and executed by duly authorized representatives of each party. Any such modified Management Plan must be recorded in the Official Records of Hays County, Texas.

11. **Compliance With Applicable Laws.** Grantor must comply with all Applicable Laws (as defined in **Paragraph 11** of the Conservation Easement).



**SCHEDULE "C-1"**

**APPROVED PESTICIDES**

Product	Common Name	Intended Use
Fenvalerate	Pydrin; Class: III	Termites
Cholecalciferol	Quintox; Class: III	Rodents
Warfarin, Sulfaquinoxaline	Prolin; Class: III	Rodents
Pyrethrins, Diatomaceous earth	D-20; Class: III	Fire Ants
Fenoxycarb	Logic Award; Class: III	Fire Ants
Amidohydrazone	Amdro; Class: III	Fire Ants
Silica aerogel, pyrethrins and piperonyl butoxide	Drione; Class: III	Fleas
Pyrethrins, piperonyl butoxide and diatomaceous earth	Permagard; Class: III	Fleas
Insecticidal soap	Safer's Soap	Fleas
Pyrethrins, piperonyl butoxide and rotenone	Organocide; Class: III	Fleas
Fenoxycarb	Torus; Class: III	Fleas
Bacillus thuringiensis israelensis	Mosquito Dunks; Class: III	Mosquitoes
Encapsulated pyrethrum	Tossits Class; III	Mosquitoes
Glyphosate	Roundup Weather Max, Accord	Fenceline Vegetation

**SCHEDULE "C-2"**

**ANIMAL UNIT EQUIVALENCY TABLE**

<b>Animal Unit Equivalency Table</b>	
<b>Kind and class of livestock</b>	<b>Approximate animal unit equivalent*</b>
Cow (1,000-lb.) with calf	1.0
Dry cow (1,000-lb)	0.77
Heifer (600 to 900 lb)	0.6 - 0.8
Steer (500-900 lb)	0.7-0.9
Bull (1,500 lb)	1.1
Horse (800-lb yearling)	0.75
Horse (1,000-lb 2 yr old)	1.0
Horse (1,100-lb 3 yr old and older)	1.25
Ewe (130-lb)	0.20
Weaned lamb (75-lb)	0.12
Ram (175-lb)	0.25
Nanny (70-lb)	0.17
Weaned kid (35-lb)	0.10
Billy (125-lb)	0.25
* Animal unit equivalents will vary significantly depending on the weight and physiological stage of the animal	

**EXHIBIT "D"**

**PERMITTED EXCEPTIONS**

1. Restrictive Covenants recorded under Volume 1468, Page 706, Official Public Records of Hays County, Texas.
2. Affidavit to Public of on-site sewage facility of record in Volume 1945, Page 525, Official Public Records of Hays County, Texas.
3. Overhead electric and telephone lines, as shown on survey dated November 3, 2004, prepared by Jimmy F. Johnson, RPLS #4018 for Wimberley Survey Company.
4. Easement granted to the Lower Colorado River Authority as described and located by instrument recorded in Volume 254, Page 238, Deed Records of Hays County, Texas.
5. Fence lines vary from property lines, as shown on survey dated November 3, 2004, prepared by Jimmy F. Johnson RPLS #4018 for Wimberley Survey Company.

Filed for Record in:  
Hays County  
On: Dec 30, 2004 at 03:01P  
Document Number: 04037154  
Amount: 80.00  
Receipt Number - 115889  
By:  
Lynn Curry, Deputy  
Lee Carlisle, County Clerk  
Hays County