

IMPERVIOUS COVER TRANSFER AGREEMENT REGARDING ACE SALVAGE

THIS IMPERVIOUS COVER TRANSFER AGREEMENT (“*Agreement*”) is made between **ROY AND CYNTHIA CAVANAUGH** (“*Owner*”), and the **CITY OF AUSTIN**, a Texas home-rule city and municipal corporation (the “*City*”).

RECITALS

WHEREAS, Owner owns the property located at 6308 Spicewood Springs Road, approximately 5.92 acres more particularly described in the attached and incorporated **EXHIBIT A** (the “*Property*”); and

WHEREAS, Owner currently use the Property as an auto salvage business, commonly known as Ace Salvage Yard and Ace Discount Glass and Door; and

WHEREAS, the Property is located in an environmentally sensitive area, making its use as an auto salvage yard undesirable; and

NOW, THEREFORE, in consideration of the foregoing recitals, the mutual covenants and agreements contained in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Owner and the City agree as follows:

AGREEMENT

I. PROPERTY RESTRICTIONS

- A. As consideration for the City entering into this Agreement, Owner has conveyed to the City and the City has accepted from the Owner, the rights and restrictions included in the Restrictive Covenant and Easement listed in Subsection B and C below over an approximately 2.6394 acre portion of the Property more particularly described in the attached and incorporated **EXHIBIT B** (the “*Easement Tract*”). The remainder of the Property is more particularly described in the attached and incorporated **EXHIBIT C** (the “*Retained Tract*”).
- B. A Restrictive Covenant Running with the Land restricting the Easement Tract from all development activity, with the exception of hike and bike trails constructed by the City, filed of record as Document Number 2015 _____ in the Official Public Records of Travis County, Texas.
- C. A Sidewalk, Trail, and Recreational Easement filed of record as Document Number 2015 _____ in the Official Public Records of Travis County, Texas.

II.
VOLUNTARY CLEAN UP PROGRAM

Not later than 60 days after the effective date of this Agreement, Owner shall apply for entry of the Property into the Texas Commission on Environmental Quality Voluntary Clean-Up Program (“VCP”). Owner shall complete the VCP and remediate the Easement Tract to residential remediation standards established under the VCP and shall remediate the Retained Tract and any off-site impacted areas to industrial remediation standards or other remediation standard as required by the State of Texas under the VCP.

III.
IMPERVIOUS COVER CREDITS

- A.** Upon execution of this Agreement, a total of 229,944 square feet of impervious cover credits are reserved for transfer by the Owner under the terms of this Agreement. The timing and location for use of the credits are specified in subsections B, C, and D below. The parties acknowledge that the monetary value of the impervious cover credits is speculative. The City makes no representations or guarantees regarding the value the Owner may receive for the impervious cover credits.
- B.** The City shall make half of the total impervious cover credits (114,972 square feet) available for transfer by the Owner under the terms of this Agreement only after:
1. the City receives satisfactory documentation from the Owner that the environmental assessment of the Property under the VCP has been approved by the Texas Commission on Environmental Quality; and
 2. all motor vehicles and associated parts and materials are removed from the Property, with the exclusion of automotive glass associated with salvage that may remain on the Retained Tract; and
 3. soil on the Property is permanently stabilized and re-vegetated using native vegetation to the satisfaction of the City under City Code and criteria.
- C.** The City shall make the remaining 114,972 square feet of impervious cover credits available for transfer by the Owner under the terms of this Agreement only after the City receives from the Owner a copy of the Certificate of Completion indicating the Property has completed the VCP and been remediated as required under Section II of this Agreement. However, the City may choose, in its sole discretion, to make all or a portion of the remaining 114,972 impervious cover credits available for transfer upon receipt of a Conditional Certificate of Completion under the VCP.

- D.** Impervious cover transferred under this Agreement is subject to the limitations in this subsection.

1. AREAS WITHIN WHICH TRANSFERS PROHIBITED:

- i. Credits may not be transferred to the Barton Springs Zone, as defined in City Code on the date of the transfer request. Attached and incorporated as **EXHIBIT D** ("**BSZ map**") is a map of the Barton Springs Zone as known by the City on the effective date of this Agreement.
- ii. Credits may not be transferred to areas with surface drainage to critical habitat for the Jollyville Plateau Salamander, as identified by the City of Austin Watershed Protection Department or the U.S. Fish and Wildlife Service on the date of the transfer request. Attached and incorporated as **EXHIBIT E** ("**JPS map**") is a map of the surface drainage for the Jollyville Plateau Salamander as known by the City on the effective date of this Agreement.
- iii. The BSZ map and JPS map are subject to change according to the terms above. Throughout the term of this Agreement, the City will update the maps of areas within which transfers are prohibited and make the maps available to the Owner upon request.

2. USE TO WHICH CREDITS MAY BE ASSIGNED:

- i. Credits may be transferred solely to increase impervious cover limits imposed under City Code Chapter 25-8, subchapter A (*Water Quality*) as defined on the date of the transfer request; this Agreement does not allow impervious cover limits imposed under zoning regulations or elsewhere in the City Code to be exceeded.
- ii. Credits may be transferred to exceed impervious cover by not more than an additional 10 percent over the limit in Chapter 25-8, subchapter A. For example, in a watershed with a 20% maximum impervious cover, credits may be used to allow a 30% maximum impervious cover.
- iii. Credits may not be used to resolve non-compliance with City Code.

3. DEVELOPMENTS TO WHICH TRANSFERS ARE ALLOWED:

- i. Credits may be transferred only to developments submitted, reviewed, and planned to be constructed under City Code in effect on the date of the transfer request.

- ii. Credits may be transferred only to developments in compliance with City Code in effect on the date of the transfer request; however, credits may be transferred to developments obtaining a variance from City Code in effect on the date of the transfer request if the variance is unrelated to impervious cover.

- 4. EXPIRATION. Unused credits expire fifteen years after the effective date of this Agreement.

IV. IMPERVIOUS COVER TRANSFER PROCESS

This Section establishes the process to be followed to transfer impervious cover credits under this Agreement.

- A. The process for impervious cover transfers in City Code does not apply to transfers under this Agreement.

- B. Transfer Request.

- 1. Owner must submit to the City a written request to transfer impervious cover credits under this Agreement (the “**transfer request**”). The transfer request shall be sent to:

City of Austin Development Services Department (or successor department)
J. Rodney Gonzales, Director (or successor)
P.O. Box 1088
Austin, Texas 78767-1088
rodney.gonzales@austintexas.gov

With copy to:

City of Austin Watershed Protection Department (or successor department)
Chuck Lesniak, Environmental Officer (or successor)
P.O. Box 1088
Austin, Texas 78767-1088
chuck.lesniak@austintexas.gov

- 2. The transfer request shall include the information listed in this section.
 - i. The name and City development application number of the proposed receiving development.
 - ii. The watershed(s) in which the proposed receiving development is located.
 - iii. The Owner’s impervious cover credit balance under this Agreement before and after the proposed transfer.

- iv. The amount of impervious cover allowed for the proposed receiving development before and after the proposed transfer under this Agreement.
 - v. Certification that the proposed receiving development complies with City Code in effect on the date of the transfer request; that the development was submitted, reviewed, and planned to be constructed under City Code in effect on the date of the transfer request; and a list of any variances to City Code sought for the proposed receiving development.
3. After receipt of a transfer request, the City shall review the request and respond to the Owner in writing not later than 21 calendar days after the transfer request is received. If the transfer request is denied, the City shall provide detailed reasons for the denial based on the terms of this Agreement.

C. Transfer Documentation

- 1. If Owner seeks to transfer impervious cover credits under this Agreement to a subdivision, the transfer must be noted on the plat of the receiving subdivision.
- 2. If Owner seeks to transfer impervious cover credits under this Agreement to a site plan, the transfer must be noted on the receiving site plan and must occur before the receiving site plan is released by the City.

V. SITE PLAN

- A. Site Plan expiration provisions in the City Code do not apply to the Site Plan currently on file with the City for the Property, City file number SP-2012-0238-D (the “**original site plan**”). The original site plan shall expire on June 26, 2023, ten years after the date of site plan approval.
- B. Subsequent revisions or replacement site plans for the Property or any portion of the Property (with the sole exception of site plan revisions necessary to connect to municipal water or sanitary sewer service) must comply with City Code at the time of submittal of the revised or replacement site plan and are not eligible to take advantage of the extended expiration date for the original site plan.
- C. The original site plan shall not include a structure with more than 3 stories in height.

VI.
MISCELLANEOUS

- A. **Entire Agreement.** This Agreement contains the entire agreement of the parties regarding the subject matter described herein. There are no other agreements, oral or written, between the parties regarding the subject matter described herein. This Agreement can be amended only by a written agreement signed by parties after approval by the City Council. The recitals, exhibits and attachments to this Agreement are incorporated for all purposes.
- B. **Binding.** This Agreement will inure to the benefit of and be binding upon the heirs, personal representatives, successors and assigns of each of the parties to this Agreement.
- C. **Effective Date.** The effective date of this Agreement will be the latest date that both parties have signed and executed this Agreement.
- D. **Applicable Law and Venue.** The construction and validity of this Agreement shall be governed by the laws of the State of Texas. This Agreement is performable in Travis County, Texas.
- E. **No Party To Be Deemed Drafter.** Owner and the City have both had the opportunity to have legal counsel examine this Agreement. Accordingly, this Agreement will not be interpreted for or against either party due solely to the fact that one party was the principal author of this Agreement.
- F. **Term.** This Agreement shall be effective as of the date signed by all parties and shall terminate upon transfer of all impervious credits available under this Agreement, or fifteen years after the effective date, whichever is sooner.
- G. **Filing.** This Agreement shall be filed of record.

IN WITNESS WHEREOF, the parties execute this Impervious Cover Transfer Agreement to be executed by their respective, duly authorized officers or representatives as of the date written beside their signatures, to be effective as of the date of the last party to sign.

{signatures on next page}

ROY CAVANAUGH

By: _____ Date: _____

ACKNOWLEDGEMENT

THE STATE OF TEXAS §
COUNTY OF TRAVIS §

This instrument was acknowledged before me on _____, 2015 by Roy Cavanaugh.

(SEAL)

Notary Public Signature

CYNTHIA CAVANAUGH

By: _____ Date: _____

ACKNOWLEDGEMENT

THE STATE OF TEXAS §
COUNTY OF TRAVIS §

This instrument was acknowledged before me on _____, 2015 by Cynthia Cavanaugh.

(SEAL)

Notary Public Signature

CITY OF AUSTIN

By: _____
Sue Edwards, Assistant City Manager

Date: _____

ACKNOWLEDGEMENT

THE STATE OF TEXAS §
COUNTY OF TRAVIS §

This instrument was acknowledged before me on _____, 2015 by Sue Edwards, Assistant City Manager, on behalf of the City of Austin, Texas, a municipal corporation.

(SEAL)

Notary Public Signature

APPROVED AS TO FORM:

By: _____
City of Austin Law Department

Attached:

EXHIBIT A -- the Entire Property, approximately 5.92 acres
EXHIBIT B -- the Easement tract, approximately 2.6394 acres
EXHIBIT C—the Retained tract, approximately 3.2906 acres
EXHIBIT D—the Barton Springs Zone map
EXHIBIT E—the Jollyville Plateau Salamander map

IMPERVIOUS COVER TRANSFER AGREEMENT

EXHIBIT A THE PROPERTY

IMPERVIOUS COVER TRANSFER AGREEMENT

EXHIBIT B THE EASEMENT TRACT

IMPERVIOUS COVER TRANSFER AGREEMENT

EXHIBIT C THE RETAINED TRACT

IMPERVIOUS COVER TRANSFER AGREEMENT

EXHIBIT D THE BARTON SPRINGS ZONE subject to change per Section III D 1

IMPERVIOUS COVER TRANSFER AGREEMENT

EXHIBIT D THE BARTON SPRINGS ZONE MAP subject to change per Section III D 1

IMPERVIOUS COVER TRANSFER AGREEMENT

EXHIBIT E
THE JOLLYVILLE PLATEAU SALAMANDER MAP
subject to change per Section III D 1

AFTER RECORDING RETURN TO:

City of Austin
Office of Real Estate Services
P.O. Box 1088
Austin, Texas 78767-8839

Attn: Junie Marie Plummer
File No: 4884.01

draft