

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

WHEREAS, the City desires to phase-out the auto salvage yard in order to minimize environmental impacts and facilitate lower-intensity development that is more consistent with the surrounding neighborhood; and

WHEREAS, Owner is willing to undertake removal of the Ace Salvage Yard as well as dedicate easements and restrictions on portions of the Property, if the loss of those development rights is offset through transferrable development credits that may be used on other sites; 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. Subject to the terms and conditions set forth below,~~As consideration for the City entering into this Agreement,~~ Owner will convey to the City~~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

CHANGES MADE PURSUANT TO NEGOTIATIONS AFTER ADOPTION ON SECOND
READING~~AS ADOPTED ON SECOND READING MAY 14, 2015~~

more particularly described in the attached and incorporated **EXHIBIT C** (the “*Retained Tract*”).

- B.** A Restrictive Covenant Running with the Land, which restricts development activity within ~~restricting~~ the Easement Tract is attached and incorporated herein as **EXHIBIT D** (the “*Restrictive Covenant*”) ~~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 is attached and incorporated as **EXHIBIT E** (the “*Easement*”) ~~filed of record as Document Number 2015 _____ in the Official Public Records of Travis County, Texas.~~
- D.** Owner will execute and deliver the Restrictive Covenant and the Easement to _____ Title Company (the “*Title Company*”) concurrently with Owner’s execution of this Agreement. The Title Company will record the Restrictive Covenant and the Easement only upon receipt of a written notice from the City to the Owner that impervious cover credits have been released to Owner pursuant to Subsection III.B.

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 (“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:

CHANGES MADE PURSUANT TO NEGOTIATIONS AFTER ADOPTION ON SECOND
READING~~AS ADOPTED ON SECOND READING MAY 14, 2015~~

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 (this does not prohibit motor vehicle parking incident to a lawfully permitted commercial activity), 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. ~~The~~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. Credits ~~Impervious cover~~ transferred under this Agreement ~~are~~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 ~~FD~~** ("**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 ~~GE~~** ("**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.

CHANGES MADE PURSUANT TO NEGOTIATIONS AFTER ADOPTION ON SECOND
READING~~AS ADOPTED ON SECOND READING MAY 14, 2015~~

- ~~iii.~~iv. Any change to BSZ map or the JPS map that adds a tract of land to which credits have previously been transferred under this Agreement will not affect or nullify the previous transfer of credits or the right to utilize the credits previously transferred.

2. USE TO WHICH CREDITS MAY BE ASSIGNED:

- i. Credits may be transferred solely to increase uplands zone 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 uplands zone 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 upland zone impervious cover, credits may be used to allow a 30% maximum upland zone impervious cover.

~~iii. Credits may not be used to resolve non-compliance with City Code.~~

3. USE OF CREDITS TO RESOLVE NON-COMPLIANCE WITH CITY CODE:

- i. Credits may not be used to resolve non-compliance with City Code, except as specifically allowed in this Paragraph 3.
- ii. Credits of 500 square feet or more may be used to resolve non-compliance with City Code only after review and recommendation of the Environmental Commission and review and approval by the Land Use Commission, as designated under City Code § 25-1-46 (*Land Use Commission*), consistent with the criteria in Paragraph 3.iv of this Subsection D.
- iii. Credits of less than 500 square feet may be used to resolve non-compliance with City Code only after review and approval by the Director of the Watershed Protection Department consistent with the criteria in Paragraph 3.iv of this Subsection D.
- iv. Factors to be considered in determining whether credits may be used to resolve non-compliance with City Code shall include:
 1. the nature, cause, and extent of the non-compliance, including whether any violations were knowing or intentional;

CHANGES MADE PURSUANT TO NEGOTIATIONS AFTER ADOPTION ON SECOND
READING~~AS ADOPTED ON SECOND READING MAY 14, 2015~~

2. the feasibility of resolving the non-compliance without using credits; and
3. the environmental impact of resolving the non-compliance by use of credits as compared to the environmental impact of resolving the non-compliance without using credits.

4. USE OF CREDITS LIMITED TO DEVELOPMENT PROJECTS SUBMITTED
FOR REVIEW UNDER CURRENT REGULATIONS:

- i. Credits may not be used in connection with a development project for which vested rights have been formally recognized by the City or asserted by an applicant in connection with the development project for which credits are sought to be used.
- ii. For purposes of this paragraph, "vested rights" include any statutory or common law right to develop property under ordinances, rules, or regulations other than those in effect on the date the permit application is submitted to the City.

~~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.~~

~~4.5.~~EXPIRATION. Un-transferred~~Unused~~ credits expire fifteen years after the effective date of this Agreement.

E. The City shall not unreasonably delay, deny, or condition proposed transfers that comply with the terms of this Agreement. The City agrees to work reasonably with the Owner and with owners of proposed receiving tracts to effectuate the transfer of impervious cover credits under the terms 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. Notice of Proposed Transfer ~~Request~~.

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

City of Austin Development Services Department (or successor department)
J. Rodney Gonzales, Acting 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 notice~~transfer request shall include the information listed in this ~~Section~~ for each tract of land to which Owner seeks to transfer credits (the “receiving tract”).
 - i. The name and City development application number associated with each receiving tract. The City will not accept a transfer notice without a corresponding development application of the proposed receiving development.
 - ii. The watershed(s) in which each receiving tract~~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 ~~tract~~development before and after the proposed transfer under this Agreement.

CHANGES MADE PURSUANT TO NEGOTIATIONS AFTER ADOPTION ON SECOND
READING~~AS ADOPTED ON SECOND READING MAY 14, 2015~~

v. Certification that, except for impervious cover restrictions under City Code Chapter 25-8, subchapter A, the development proposed for the receiving tract~~development~~ complies with City Code in effect on the date of the transfer notice~~transfer request~~; A development application associated with a transfer notice may include requests for variances from any City regulation for which variances are authorized, except for impervious cover under City Code Chapter 25-8 subchapter A.~~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 notice~~transfer request~~, the City shall review the proposed transfer request and respond to the Owner in writing not later than 21 calendar days after the City receives the transfer notice. ~~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. Before using credits for which the City has approved a transfer notice under this Agreement, the transfer must be memorialized and documented consistent with the requirements of this Subsection C. ~~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. The terms of the transfer, including the square footage of impervious cover to be transferred, must be documented on a form approved by the Director of the Watershed Protection Department (the “transfer form”). Each transfer form used in connection with a development project shall be included as an exhibit to a restrictive covenant executed by the Owner and the owners of the receiving tract. The restrictive covenant shall run with the receiving tract and must be in a form approved by the City Attorney and filed in the official public records of the county in which the receiving tract is located.

3. If credits are transferred under this Agreement to a property with a pending subdivision application, the transfer must be noted on the approved receiving subdivision plat.

CHANGES MADE PURSUANT TO NEGOTIATIONS AFTER ADOPTION ON SECOND READING
AS ADOPTED ON SECOND READING MAY 14, 2015

2.4. If ~~Owner seeks to transfer impervious cover~~ credits are transferred under this Agreement to a property with a pending site plan application, the transfer must be noted on the receiving site plan and must occur before the receiving site plan is released by the City.

V.

ORIGINAL SITE PLAN FOR THE PROPERTY

A. Site Plan expiration provisions in the City Code, as codified in Chapter 25-5 (Site Plans), 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, 2018. Minor modifications to the original site plan are allowed only if the use, scale, and intensity of the project described in the original site plan is not materially changed and the minor revisions are limited as follows:

1. Modifications may include revisions necessary to connect to municipal water or sanitary sewer service.
2. Modifications required to comply with Section V C of this Agreement are allowed.
3. Modifications may not change the uses shown on the approved site plan, except as required to comply with Section V C of this Agreement.

A.B. Subsequent ~~revisions or~~ replacement site plans or modifications to SP-2012-0238-D that exceed the allowable modifications in Section V A and V C of this Agreement 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 be modified not later than 90 days after execution of this Agreement to provide:

1. ~~no not include a~~ structure with more than 3 stories in height; ~~[and shall not allow access onto Yaupon Drive]~~ and shall not allow access onto Yaupon Drive
2. access onto Yaupon Drive limited to exit from the Property-- provided that emergency vehicles may enter or exit-- with a gate or barrier to enforce the access limitations; and
3. no kennel use--provided that the area previously designated as kennel use may be used for convenience storage facility.

CHANGES MADE PURSUANT TO NEGOTIATIONS AFTER ADOPTION ON SECOND
READING~~AS ADOPTED ON SECOND READING MAY 14, 2015~~

D. The City agrees that no zoning change is necessary to pave, construct, maintain, or repair the existing gravel driveway on the Property as needed to connect the buildings in the original site plan to Spicewood Springs Road. Other City permitting requirements apply.

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. **Designation of Department or Official.** Designation by this Agreement of a particular City department, director, official, or commission includes any other City department, director, official, or commission to which the City's duties or responsibilities may be assigned under this Agreement.

C. **Designation of City Codes.** Designation of a city code chapter or section includes any successor or replacement code section or chapter. For purposes of this Agreement, City Code Chapter 25-8, subchapter A (*Water Quality*) includes any subsequently adopted City regulation of impervious cover adopted under the City's statutory or home rule authority to protect water quality or the natural environment, but does not include any regulations adopted under the City's zoning authority.

~~DB.~~ **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.

~~EC.~~ **Effective Date.** The effective date of this Agreement will be the latest date that both parties have signed and executed this Agreement.

~~FD.~~ **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.

~~GE.~~ **No Party To Be Deemed Drafter.** Owner and the City have both had the opportunity to have legal counsel examine this Agreement. Accordingly, this

CHANGES MADE PURSUANT TO NEGOTIATIONS AFTER ADOPTION ON SECOND
READING~~AS ADOPTED ON SECOND READING MAY 14, 2015~~

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.

HF. Term; Termination. 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.

IG. Filing. This Agreement shall be filed of record.

J. Authority. The parties warrant that they have authority to execute this Agreement.

K. Assignment of Owner Rights. Owner may assign in whole or part its rights and obligations under this Agreement to persons purchasing all or part of the Property.

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

CHANGES MADE PURSUANT TO NEGOTIATIONS AFTER ADOPTION ON SECOND
READING~~AS ADOPTED ON SECOND READING MAY 14, 2015~~

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

CHANGES MADE PURSUANT TO NEGOTIATIONS AFTER ADOPTION ON SECOND
READING~~AS ADOPTED ON SECOND READING MAY 14, 2015~~

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 Restrictive Covenant

EXHIBIT E—the Easement

EXHIBIT ~~F~~D—the Barton Springs Zone map

EXHIBIT ~~G~~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 RESTRICTIVE COVENANT**

RESTRICTIVE COVENANT RUNNING WITH THE LAND

Date: _____

Owner: ROY AND CYNTHIA CAVANAUGH, their heirs, successors, and assigns

Owner Address: _____

City: CITY OF AUSTIN, a Texas home-rule city and municipal corporation organized and operated under Chapter 9, Texas Local Government Code

City Address: 301 West 2nd Street
P.O. Box 1088
Austin, Texas 78767

Transfer Agreement: The Impervious Cover Transfer Agreement Regarding Ace Salvage, filed of record as Document Number 2015 in the Official Public Records of Travis County, Texas.

Consideration: TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable consideration advanced by the City to the Owner pursuant to the Transfer Agreement, the receipt and sufficiency of which is acknowledged.

Restricted Period: Perpetual.

Property: The approximately 2.6394 acre parcel of land more particularly described on **Exhibit "A"** attached to this Restrictive Covenant and by this reference incorporated in it, all fixtures and improvements situated thereon, and all rights, titles, and interests appurtenant thereto.

WHEREAS, the Owner of the Property has entered into the Transfer Agreement; and

WHEREAS, the Owner of the Property agrees that the Property should be impressed with certain covenants and restrictions as a result of entering into the Transfer Agreement with City;

NOW, THEREFORE, it is declared that the Owner of the Property, for the Consideration, shall hold, sell and convey the Property, subject to the following covenants and restrictions impressed upon the Property by this Restrictive Covenant Running with the Land (the "Restrictive Covenant"). These covenants and restrictions shall run with the land in perpetuity, and shall be binding on the Owner of the Property, its heirs, successors, and assigns.

1. Except as provided in Section 2 of this Restrictive Covenant, Owner agrees not to construct any improvements nor allow any development on the Property.
2. The only development allowed on the Property shall be constructed by the City under the Sidewalk, Trail, and Recreational Easement entered into between the City and Owner.
3. If any person or entity shall violate or attempt to violate this Restrictive Covenant, it shall be lawful for the Owner or City to prosecute proceedings at law or in equity against such person or entity violating or attempting to violate such Restrictive Covenant, to prevent the person or entity from such actions, and to collect damages for such actions.
4. If at any time the Owner or City fails to enforce this Restrictive Covenant, whether or not any violations of it are known, such failure shall not constitute a waiver or estoppel of the right to enforce it.
5. This Restrictive Covenant may be modified, amended, or terminated only by joint action of both (a) City Council, and (b) the Owner(s) of the Property at the time of such modification, amendment or termination.
6. When the context requires, singular nouns and pronouns include the plural.

EXECUTED, DELIVERED, AND EFFECTIVE as of the date first above written.

{signatures on next page}

ROY CAVANAUGH

By: _____

STATE OF TEXAS §
COUNTY OF TRAVIS §

Before me, the undersigned notary, on this day personally appeared Roy Cavanaugh, known to me through valid identification to be the person whose name is subscribed to the preceding instrument and acknowledged to me that the person executed the instrument in the person's official capacity for the purposes and consideration expressed in the instrument.

Given under my hand and seal of office on _____.

_____[Seal]

Notary Public, State of Texas

CYNTHIA CAVANAUGH

By: _____

STATE OF TEXAS §
COUNTY OF TRAVIS §

Before me, the undersigned notary, on this day personally appeared Cynthia Cavanaugh, known to me through valid identification to be the person whose name is subscribed to the preceding instrument and acknowledged to me that the person executed the instrument in the person's official capacity for the purposes and consideration expressed in the instrument.

Given under my hand and seal of office on _____.

_____[Seal]

Notary Public, State of Texas

ATTACHMENT: EXHIBIT A - Legal Description of the Property

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

PREPARED IN THE LAW OFFICE OF:

City of Austin
Law Department

APPROVED AS TO FORM:

James M. Williams, Sr.
Assistant City Attorney
Texas State Bar No. 21549

IMPERVIOUS COVER TRANSFER AGREEMENT

EXHIBIT E **THE EASEMENT**

SIDEWALK, TRAIL, AND RECREATIONAL EASEMENT

Date: _____

Grantor: **Roy and Cynthia Cavanaugh**

Grantor's Address: _____
_____, _____ County, _____

City: **CITY OF AUSTIN, TEXAS, a Texas home-rule municipal corporation situated in the counties of Hays, Travis, and Williamson**

City's Address: **P.O. Box 1088**
Austin, Travis County, Texas 78767-1088

Easement Tract: **The approximately 2.6394 acre parcel of land situated in Travis County, Texas, described in the attached **Exhibit A****

Easement Duration: **Perpetual**

Easement Purpose: **To install, construct, operate, use, maintain, repair, modify, upgrade, monitor, inspect, replace, make connections with, and remove the Facilities**

Facilities: **Walkways, sidewalks, multi-use trails, and promenade structures with all associated steps, stairs, ramps, tunnels, walls, and other appurtenances which provide public connectivity and an area for other recreational activities as determined by the City in its reasonable discretion.**

Permitted Encumbrances: **Any easements, liens, encumbrances, and other matters not subordinated to the Easement Tract and of record in the Real Property Records the Texas county in which the Easement Tract is located that are valid, existing, and affect the Easement Tract as of the Date**

Non-Permitted Activity: **Installation, construction, operation, use, maintenance, repair, modification, upgrade, and replacement of any structure, building, retaining wall, fence which is installed other than parallel to the Facilities, detention or water quality control, rainwater harvesting system, or other similar improvement in the Easement Tract**

TM#60866

Repairable Improvements: Irrigation systems which are installed perpendicular to the Facilities, barbed-wire, chain-link or wooden fences which are installed parallel to the Facilities, and asphalt or concrete walkways, driveways, parking areas, or access roads at grade level that do not interfere in any material way or are not inconsistent with the rights granted the City under this Easement for the Easement Purpose as determined by the City in its reasonable discretion

Grantor, in consideration of the terms of that certain Impervious Cover Transfer Agreement Regarding Ace Salvage filed of record as Document Number 2015 _____ in the Official Public Records of Travis County, Texas and other good and valuable consideration, the receipt and sufficiency of which is acknowledged by Grantor, GRANTS, SELLS, AND CONVEYS to the City a non-exclusive easement in, over, under, on, and across the Easement Tract for the Easement Purpose as may be necessary or desirable subject to the Permitted Encumbrances, together with (i) the right of ingress and egress at all times over, on, and across the Easement Tract for use of the Easement Tract for the Easement Purpose by the Grantee and the general public, (ii) the right to eliminate any encroachments in the Easement Tract that interfere in any material way or are inconsistent with the rights granted the City under this instrument for the Easement Purpose as determined by the City in its reasonable discretion, and (iii) any and all rights and appurtenances pertaining to use of the Easement Tract (collectively, the "Easement").

TO HAVE AND TO HOLD the Easement to the City and City's successors and assigns for the Easement Duration and Easement Purpose; provided, however, Grantor reserves the right to enter upon and use any portion of the Easement Tract, but in no event shall Grantor enter upon or use any portion of the Easement Tract for any Non-Permitted Activity or in any other manner that interferes in any material way or is inconsistent with the rights granted the City under this Easement for the Easement Purpose as determined by City in its reasonable discretion. City shall be obligated to restore or replace to a good and functioning condition as determined by the City in its reasonable discretion only the Repairable Improvements which have been removed, relocated, altered, damaged, or destroyed as a result of City's use of the Easement Tract.

Grantor binds Grantor and Grantor's heirs, successors, and assigns to WARRANT AND FOREVER DEFEND the title to the Easement, subject to the Permitted Encumbrances, to the City against every person whomsoever lawfully claiming or to claim the Easement Tract or any part of the Easement Tract when the claim is by, through, or under Grantor, but not otherwise.

Except where the context otherwise requires, Grantor includes Grantor's heirs, successors, and assigns and City includes City's employees, agents, consultants, contractors, successors, and assigns; and where the context requires, singular nouns and pronouns include the plural.

Executed effective the Date first above stated.

{Signatures on next page}

TM#60866

ROY CAVANAUGH

By: _____

STATE OF TEXAS §
COUNTY OF TRAVIS §

Before me, the undersigned notary, on this day personally appeared Roy Cavanaugh, known to me through valid identification to be the person whose name is subscribed to the preceding instrument and acknowledged to me that the person executed the instrument in the person's official capacity for the purposes and consideration expressed in the instrument.

Given under my hand and seal of office on _____.

_____[Seal]

Notary Public, State of Texas

CYNTHIA CAVANAUGH

By: _____

STATE OF TEXAS §
COUNTY OF TRAVIS §

Before me, the undersigned notary, on this day personally appeared Cynthia Cavanaugh, known to me through valid identification to be the person whose name is subscribed to the preceding instrument and acknowledged to me that the person executed the instrument in the person's official capacity for the purposes and consideration expressed in the instrument.

Given under my hand and seal of office on _____.

_____[Seal]

Notary Public, State of Texas

TM#60866

APPROVED AS TO FORM:

CITY OF AUSTIN, TEXAS

LAW DEPARTMENT

REVIEWED:

CITY OF AUSTIN, TEXAS

DEVELOPMENT REVIEW DEPARTMENT

By: _____ By: _____

Name: _____ Name: _____

Title: Assistant City Attorney Title: _____

draft

TM#60866

AFTER ATTACHING THE REQUIRED EXHIBITS TO THIS INSTRUMENT,
THE FOLLOWING APPROPRIATE DOCUMENTS (USE AFFIDAVITS FORM A-01.0)
ALSO NEED TO BE ATTACHED:

A. Determine whether the instrument is executed by an individual or a legal entity

IF AN INDIVIDUAL, ATTACH:

**COA Form A-01.1 - Affidavit as to Debts, Liens, and Occupancies [Ownership Type –
Individuals]**

IF A LEGAL ENTITY, ATTACH:

**COA Form A-01.2 - Affidavit as to Debts, Liens, and Occupancies [Ownership Type –
Entity]**

**B. Determine whether there is a lien holder by providing to the City an ownership and lien
search certificate from a Title Company that shows:**

- 1. All owners of record**
- 2. All lienholders of record, which hold current liens**
- 3. A property legal description**

IF LIEN HOLDER, ATTACH FOR EACH LIEN HOLDER:

COA Form A-02.1 – Consent and Subordination by Lien Holder

TM#60866

draft

TM#60866

M:\GC\General Legal Advice\2015 CITY COUNCIL AGENDA ITEMS\Drafts\11-19-15\51513 ACE Salvage draft agreement 11-18-15 redlined from adopted on second reading.docx L:\Construction Land Water\CS\General Agreements\Ace Salvage TDR Agreement\ACE Salvage draft agreement 11-16-15 redlined from adopted on second reading.3.docx

AFFIDAVIT AS TO DEBTS, LIENS, AND OCCUPANCIES

[OWNERSHIP TYPE - INDIVIDUAL]

Date: _____

Affiant: Roy and Cynthia Cavanaugh

Grant Document: The document to which this Affidavit as to Debts, Liens, and Occupancies is attached and referred to.

Property: The property identified in the Grant Document that is the subject of the Grant Document.

Affiant on oath swears or affirms that the following statements are true and are within the personal knowledge of Affiant:

My name is set forth above as Affiant. I am making this affidavit on my behalf. I am above the age of eighteen years, have never been convicted of a felony or a crime of moral turpitude, am of sound mind and am fully qualified to make this affidavit. I have personal knowledge of the facts contained in this affidavit as holder of title to the Property, I have recently reviewed the records of ownership concerning the Property, and on the basis of this personal knowledge, after diligent inquiry, as of the date of this affidavit, I attest that:

1. I hold title to the Property;
2. there is no lien not subordinated to the Grant Document held by any person, including any bank or similar financial institution, against the Property;
3. there is no lease not subordinated to the Grant Document entered into with any person with respect to the Property;
4. all labor, services, and materials (the "**Labor and Materials**") provided to the Property for improvements, fixtures, and furnishings, or otherwise, at my instance and request, have been paid in full and no liens with respect to the Labor and Materials have been filed or exist with respect to the Property;
5. there are no actions, proceedings, judgments, bankruptcies, liens not subordinated to the Grant Document, or executions filed or pending against me that would affect the Property; and
6. I am not a debtor in bankruptcy.

TM#60866

Executed effective the Date first above stated.

ROY CAVANAUGH

By: _____

STATE OF TEXAS §
COUNTY OF TRAVIS §

Before me, the undersigned notary, on this day personally appeared Roy Cavanaugh, known to me through valid identification to be the person whose name is subscribed to the preceding instrument and acknowledged to me that the person executed the instrument in the person's official capacity for the purposes and consideration expressed in the instrument.

Given under my hand and seal of office on _____.

_____[Seal]

Notary Public, State of Texas

CYNTHIA CAVANAUGH

By: _____

STATE OF TEXAS §
COUNTY OF TRAVIS §

Before me, the undersigned notary, on this day personally appeared Cynthia Cavanaugh, known to me through valid identification to be the person whose name is subscribed to the preceding instrument and acknowledged to me that the person executed the instrument in the person's official capacity for the purposes and consideration expressed in the instrument.

Given under my hand and seal of office on _____.

_____[Seal]

Notary Public, State of Texas

TM#60866

CONSENT BY LIEN HOLDER

Date: _____

Lien Holder: _____, a _____

Lien Holder Notice Address: _____
_____, _____

Liens: Deed of Trust dated _____, from Grantor to _____, Trustee, securing the payment of one promissory note of even date in the original principal amount of \$ _____, payable to **Lien Holder**, of record in Document Number _____, of the Official Public Records of _____ County, Texas and all other liens against the Property held by Lien Holder regardless of how created or evidenced.

Grant Document: The document to which this Consent by Lien Holder is attached, and consented to.

Property: The tract of land described in the Grant Document that is the subject of the grant to City under the Grant Document.

In consideration of \$10 and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, Lien Holder, as the holder of the Liens against the Property, and its successors and assigns:

1. consent to the Grant Document, its contents and recording;
2. agrees that any monetary rights of City for performance of any Grantor obligations under the Grant Document will remain in place and unaffected by the Liens regardless of the frequency or manner of renewal, extension, change, or alteration of the Liens or the note or notes secured by the Liens and will remain the obligation of any subsequent owner of the Property so long as the City provides written notice of any claim or default to Lien Holder at least thirty calendar days prior to incurring any expense claimed as a monetary right of the City;
3. agree that foreclosure of any of the Liens, or other sale of the Property under judicial or non-judicial proceedings, will be sold subject to the Grant Document and will not extinguish the rights and interests of City in the Grant Document or the Property and that the Grant Document shall remain in effect and shall be fully enforceable; and
4. affirm that the undersigned has the authority to bind the Lien Holder, and that all acts necessary to bind Lien Holder have been taken.

TM#60866

As used in this consent the capitalized terms defined in the Grant Document have the same meanings assigned to each term.

Executed effective the date first above stated.

By: _____

Name: _____

Title: _____

STATE OF §

COUNTY OF §

Before me, the undersigned notary, on this day personally appeared _____, of _____, a _____, known to me through valid identification to be the person whose name is subscribed to the preceding instrument and acknowledged to me that the person executed the instrument in the person's official capacity for the purposes and consideration expressed in the instrument.

Given under my hand and seal of office on _____.

[Seal]

Notary Public, State of _____

TM#60866

AFTER RECORDING, PLEASE 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

TM#60866

IMPERVIOUS COVER TRANSFER AGREEMENT

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

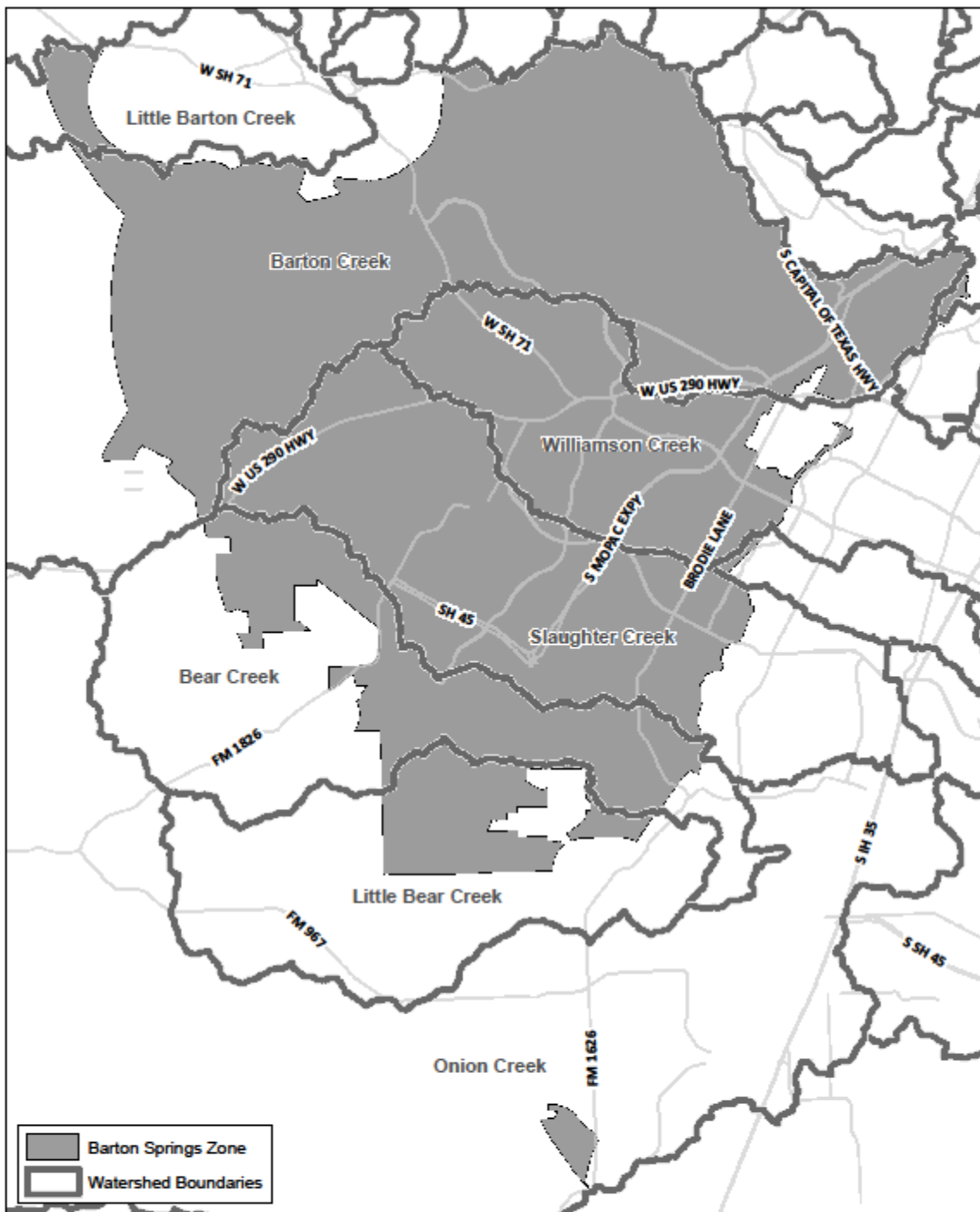


Exhibit D
Barton Springs Zone

TM#60866

draft

TM#60866

M:\GC\General Legal Advice\2015 CITY COUNCIL AGENDA ITEMS\Drafts\11-19-15\51513 ACE Salvage draft agreement 11-18-15
redlined from adopted on second reading.docx L:\Construction Land Water\CS\General Agreements\Ace Salvage TDR Agreement\ACE Salvage
draft agreement 11-16-15-redlined from adopted on second reading.3.docx

IMPERVIOUS COVER TRANSFER AGREEMENT

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

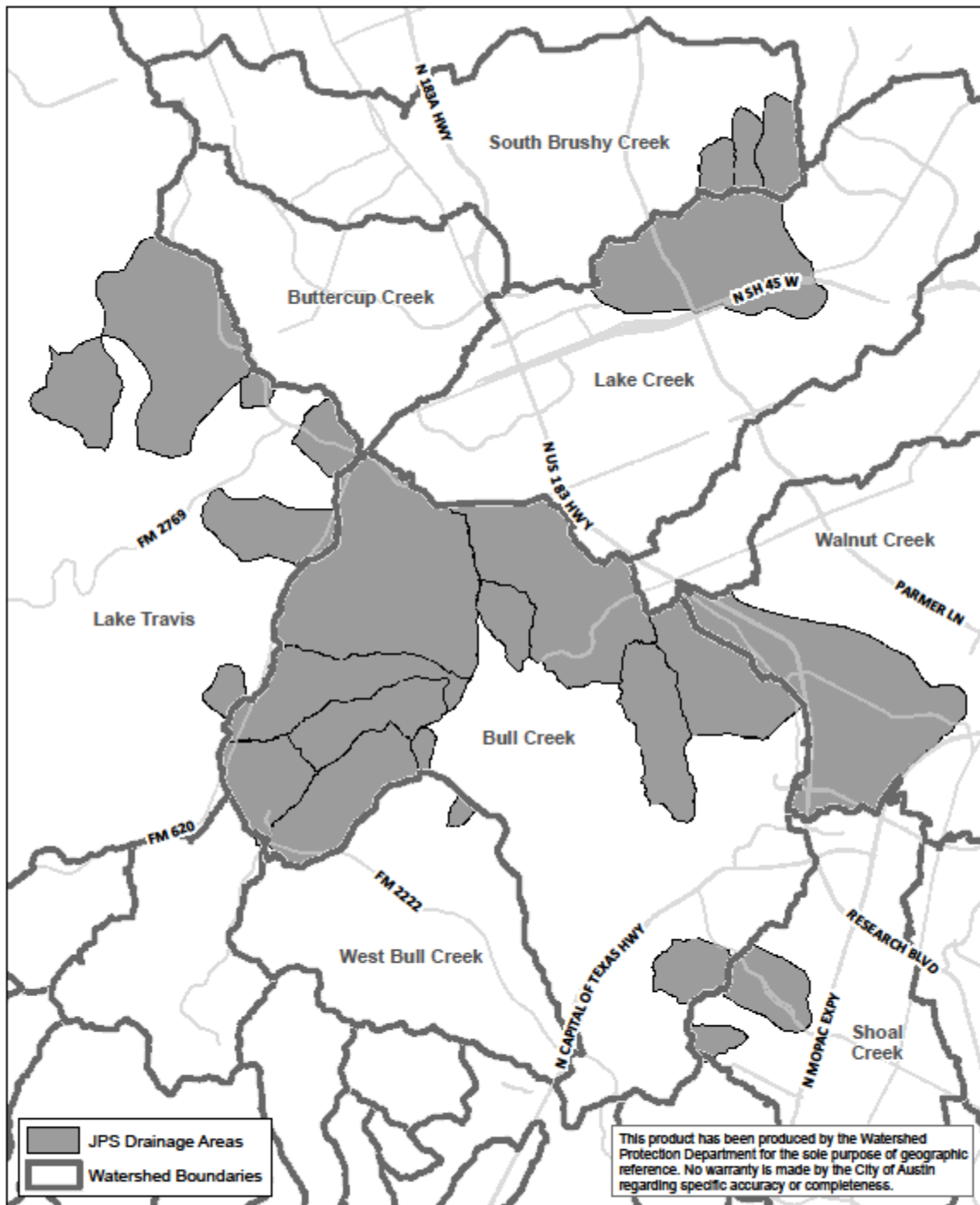


Exhibit E
Jollyville Plateau Salamander Drainage Areas

TM#60866

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

TM#60866