Hough
3395.01

FILED
94 DEC 16 AM 10:50
DANA DEBEAUVOIR
COUNTY CLERK
TRAVIS COUNTY, TEXAS

CAUSE NO. 2171

CITY OF AUSTIN	§	PROCEEDINGS IN EMINENT DOMAIN
	§	
V.	§	IN PROBATE COURT NO. 1
	§	
RICHARD L. HOUGH ET UX,	§	
DORIS MAE HOUGH	§	TRAVIS COUNTY, TEXAS

AWARD OF SPECIAL COMMISSIONERS

On this the 14th day of December, 1994, at the Norwood Tower, 114 West 7th Street, in Austin, Travis County, Texas, the above-styled and numbered proceeding came on to be heard before the undersigned, three disinterested freeholders of Travis County, Texas, heretofore appointed as Special Commissioners by the Judge of Probate Court No. 1 of Travis County, Texas, to assess the damages occasioned by this condemnation.

The Condemnor, the City of Austin, appeared by and through the City Attorney of Austin, Texas, and came also the Condemnees, Richard L. Hough and Doris Mae Hough, and all sides having announced ready, the Special Commissioners proceeded to hear evidence and arguments of the parties and made the following findings:

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Received:
DEC 29 1994
P# Q1000S
F# 3395.01
D# 13407

I.

That on the 20th day of September, 1994, the City of Austin filed an Original Petition For Condemnation with the County Clerk of Travis County, Texas wherein, upon the facts and for the purposes therein alleged, they sought a decree of condemnation vesting in the City of Austin, the following: fee simple title to the real property hereinafter for the public purpose of constructing, reconstructing, maintaining and operating a Municipal Airport upon the tract of land described in Exhibit "A", however there is excluded from said estate to be condemned all the oil, gas and sulfur which can be removed from beneath said land aforesaid without any right whatever remaining to the Condemnees, their heirs, assigns or successors in interest, of ingress to or egress from the surface of said land for the purpose of exploring, developing, drilling, or mining of the same; and for such other purposes as may be required in connection with the use of the tract of land described as follows:

> All that certain tract, piece or parcel of land lying and being situated in the County of Travis, State of Texas, described in Exhibit "A" attached hereto and made a part hereof for all purposes.

FROM 12.21.1994 15:35 P. 3

II.

That upon consideration of such written statement so filed by said Condemnor, the Judge of the Probate Court No. 1 of Travis County, Texas, did appoint Tom Fritz, Ken W. Glasgow, and Trev Seymour, three disinterested freeholders in Travis County, Texas, as Special Commissioners to assess the value of said tract and improvements and the damages, if any, occasioned by this acquisition of such land. The Court entered the Order Appointing Commissioners on the 23rd day of October, 1994.

III.

That thereafter, said Special Commissioners, duly qualified as such, each took the oath prescribed by law, which Oaths are on file with the papers in this cause.

IV.

That after having so qualified, said Special Commissioners, by written order, designated and appointed the 14th day of December, 1994, at 9:00 o'clock a.m. at the Norwood Tower, 114 West 7th Street, Fifth Floor Large Conference Room, in Austin, Travis County, Texas, as the day and place for hearing such Petition and parties, such date being the earliest practicable time for hearing and such place being as near as practicable to said property in controversy.

V.

That on the 1st day of November, 1994, Barry Bishop, the attorney of record for the Condemnees signed a Waiver Of Notice. Said Waiver Of Notice being filed with the County Clerk of Travis County, Texas on the 1st day of November, 1994.

VI.

That on the 14th day of December, 1994, said Special Commissioners did convene and the following named parties appeared in person or by their attorneys.

The City of Austin represented by the City Attorney of Austin, Texas, and the Condemnees represented by Barry Bishop of CLARK, THOMAS & WINTERS and announced ready for such hearing, and said Special Commissioners proceeded to hear evidence as to the fee simple value of the tract sought by reason of the condemnation and, after hearing and considering such evidence, said Special Commissioners did find and determine and accordingly assessed the compensation due and owing to the Condemnees to be the sum of TWO HUNDRED NINETY FOUR THOUSAND & 00/100 Dollars ($ 294,000.00).

The costs of this proceeding are adjudged against the Condemnor. Such costs are to be paid to the County Clerk of Travis County, Texas.

FROM 12.21.1994 15:35 P. 5

RENDERED this the 14th day of DECEMBER, 1994.

Tom Fritz

Ken W. Glasgow

Trev Seymour

SPECIAL COMMISSIONERS

The foregoing decision and award was filed with the Court this the 15th day of December, 1994.

JUDGE, Probate Court No. 1
Travis County, Texas

g:\hough\award

FROM 12.21.1994 15:36 P. 6

MACIAS & ASSOCIATES, Inc.
LAND SURVEYORS

EXHIBIT "A"

Richard L. Hough and
Doris Mae Hough
to
City of Austin
Parcel 1
Land Acquisition Program
New Austin Airport
C.I.P. No. 448 817 0907

FIELD NOTES

FIELD NOTES FOR A PARCEL OF LAND CONTAINING 43.001 ACRES, LOCATED IN THE SANTIAGO DEL VALLE TEN LEAGUE GRANT SURVEY, ABSTRACT NO. 24, IN TRAVIS COUNTY, TEXAS; SAID 43.001 ACRE PARCEL BEING THE SAME DESCRIBED IN A DEED TO RICHARD L. HOUGH, AND WIFE DORIS MAE HOUGH, RECORDED IN VOLUME 2838, PAGE 436 OF THE DEED RECORDS OF SAID TRAVIS COUNTY; SAID 43.001 ACRE PARCEL BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING, at an 1/2" iron rod found in the westernmost corner of this parcel, said rod also being the northernmost corner of a 100.27 acre described in a deed to Richard A. Brunswick recorded in Volume 4574, Page 78 of the Deed Records of said Travis County;

THENCE, N46°00'31"E, 720.85 feet with the common boundary between this parcel and a 54.73 acre parcel described in a warranty deed to Jim Pearce Johnson recorded in Volume 6636, Page 1599, of the Deed Records of said Travis County, to a 1/2" iron rod found at the northernmost corner of this parcel;

THENCE, the following four (4) consecutive courses with the common fenced boundary between this parcel and a 109.90 acre parcel described in a deed to Richard A. Brunswick recorded in Volume 4357, Page 30 of the Deed Records of said Travis County:

(1) S44°47'32"E, 704.83 feet to a 1" iron pipe found;
(2) S44°17'07"E, 333.00 feet to a 1/2" iron rod set;
(3) S45°07'51"E, 498.00 feet to a 1" iron pipe found;
(4) S44°50'51"E, 944.99 feet to a 1" iron pipe found at the easternmost corner of this parcel;

MAP FILE
Received:
MAR 23 1994
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THENCE, the following two (2) consecutive courses with the common fenced boundary between this parcel and said 100.27 acre parcel:

(1) S27°25'54"W, 756.85 feet to a 1" iron pipe found;
(2) N44°48'45"W, 2721.94 feet to the POINT OF BEGINNING, containing 43.001 acres of land.

STATE OF TEXAS |

COUNTY OF TRAVIS |

I hereby certify that this field note description was prepared from the results of an actual survey made on the ground under my supervision and that it is true and correct to the best of my knowledge.

MACIAS AND ASSOCIATES, INC.

11-23-93

HENRY A. DUFEAU
REGISTERED PROFESSIONAL LAND SURVEYOR NO. 1707
Revised 11-23-93

STATE OF TEXAS REGISTERED HENRY A. DUFEAU 1707 PROFESSIONAL LAND SURVEYOR DATE

REFERENCES

Bearing Basis: Assumed NORTH Bearing between brass disks at both ends of primary runway 17R - 35L
Austin Grid N - 14
TCAD# 3 - 3131 - 01 - 03

FIELD NOTES REVIEWED
By Mike Sitter Date 1/27/94
Engineering Support Section
Department of Public Works
and Transportation

LAP1.FLN

Hough
3395.01

OWNER POLICY OF TITLE INSURANCE ISSUED BY

STEWART TITLE

GUARANTY COMPANY

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B AND THE CONDITIONS AND STIPULATIONS, STEWART TITLE GUARANTY COMPANY, a Texas corporation, herein called the Company, insures, as of Date of Policy shown in Schedule A, against loss or damage, not exceeding the Amount of Insurance stated in Schedule A, sustained or incurred by the insured by reason of:

1. Title to the estate or interest described in Schedule A being vested other than as stated therein;
2. Any defect in or lien or encumbrance on the title;
3. Any statutory or constitutional mechanic's, contractor's, or materialman's lien for labor or material having its inception on or before Date of Policy;
4. Lack of a right of access to and from the land;
5. Lack of good and indefeasible title.

The Company also will pay the costs, attorneys' fees and expenses incurred in defense of the title, as insured, but only to the extent provided in the Conditions and Stipulations.

IN WITNESS WHEREOF, Stewart Title Guaranty Company has caused this policy to be signed and sealed by its duly authorized officers as of the Date of Policy shown in Schedule A.

Stewart Morris Jr.
Chairman of the Board

Malcolm S. Morris
President

STEWART TITLE
GUARANTY COMPANY

Countersigned by:
Carolyn Stegall
Authorized Signatory

Title Agency of Austin
Company
3305 Northland Dr., #100
Austin, Texas 78731
City, State

NAPTITLE
Received:
MAY 16 1995
P# Q10005
F# 3395.01
D# 18124

EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating to (i) the occupancy, use, or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.

(b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.

2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking that has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge.

3. Defects, liens, encumbrances, adverse claims or other matters:

(a) created, suffered, assumed or agreed to by the insured claimant;

(b) not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under this policy;

(c) resulting in no loss or damage to the insured claimant;

(d) attaching or created subsequent to Date of Policy; or

(e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the estate or interest insured by this policy.

4. The refusal of any person to purchase, lease or lend money on the estate or interest covered hereby in the land described in Schedule A because of unmarketability of the title.

5. Any claim, which arises out of the transaction vesting in the person named in paragraph 3 of Schedule A the estate or interest insured by this policy, by reason of the operation of federal bankruptcy, state insolvency, or other state or federal creditors' rights laws, that is based on either (i) the transaction creating the estate or interest Insured by this Policy being deemed a fraudulent conveyance or fraudulent transfer or a voidable distribution or voidable dividend; (ii) the subordination or recharacterization of the estate or interest insured by this Policy as a result of the application of the doctrine of equitable subordination; or (iii) the transaction creating the estate or interest insured by this Policy being deemed a preferential transfer except where the preferential transfer results from the failure of the Company or its issuing agent to timely file for record the instrument of transfer to the insured after delivery or the failure of such recordation to impart notice to a purchaser for value or a judgment or lien creditor.

14. **ARBITRATION.**

Unless prohibited by applicable law or unless this arbitration section is deleted by specific provision in Schedule B of this policy, either the Company or the insured may demand arbitration pursuant to the Title Insurance Arbitration Rules of the American Arbitration Association. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the Insured arising out of or relating to this policy, any service of the Company in connection with its issuance or the breach of a policy provision or other obligation. All arbitrable matters when the Amount of Insurance is $1,000,000 or less SHALL BE arbitrated at the request of either the Company or the insured, unless the insured is an individual person (as distinguished from a corporation, trust, partnership, association or other legal entity). All arbitrable matters when the Amount of Insurance is in excess of $1,000,000 shall be arbitrated only when agreed to by both the Company and the insured. Arbitration pursuant to this policy and under the Rules in effect on the date the demand for arbitration is made or, at the option of the insured, the Rules in effect at Date of Policy shall be binding upon the parties. The award may include attorney's fees only if the laws of the state in which the land is located permit a court to award attorneys' fees to a prevailing party. Judgment upon the award rendered by the Arbitrator(s) may be entered in any court having jurisdiction thereof.

The law of the situs of the land shall apply to an arbitration under the Title Insurance Arbitration Rules.

A copy of the Rules may be obtained from the Company upon request.

15. **LIABILITY LIMITED TO THIS POLICY: POLICY ENTIRE CONTRACT.**

(a) This policy together with all endorsements, if any, attached hereto by the Company. In interpreting any provision of this policy, this policy shall be construed as a whole.

(b) Any claim of loss or damage, whether or not based on negligence, and which arises out of the status of the title to the estate or interest covered hereby or by any action asserting such claim, shall be restricted to this policy.

(c) No amendment of or endorsement to this policy can be made except by a writing endorsed hereon or attached hereto signed by either the President, a Vice President, the Secretary, an Assistant Secretary, or validating officer or authorized signatory of the Company

16. **SEVERABILITY.**

In the event any provision of the policy is held invalid or unenforceable under applicable law, the policy shall be deemed not to include that provision and all other provisions shall remain in full force and effect.

17. **NOTICES, WHERE SENT.**

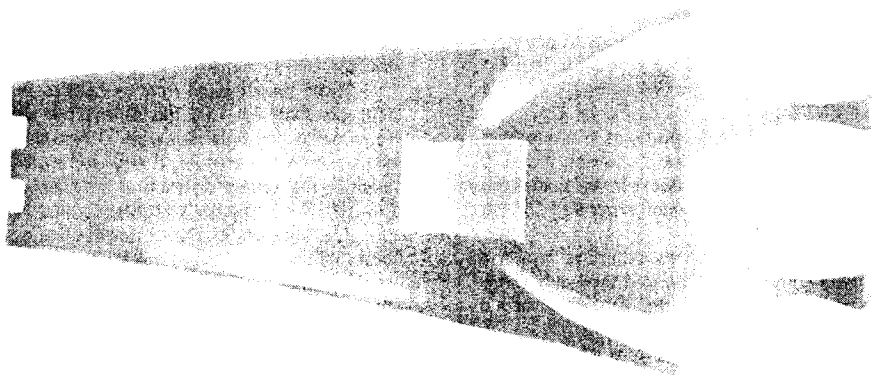
All notices required to be given the Company and any statement in writing required to be furnished the Company shall include the number of this policy and shall be addressed to the Company at P.O. Box 2029, Houston, Texas 77252-2029.

COMPLAINT NOTICE.

Should any dispute arise about your premium or about a claim that you have filed, contact the agent or write to the Company that issued the policy. If the problem is not resolved, you also may write the Texas Department of Insurance, P.O. Box 149091, Austin, TX 78714-9091, Fax No. (512) 475-1771. This notice of complaint procedure is for information only and does not become a part or condition of this policy.

STEWART TITLE
GUARANTY COMPANY

POLICY OF TITLE INSURANCE



Sanctity of Contract

STEWART TITLE
GUARANTY COMPANY

P. O. Box 2029
Houston, Texas 77252

records, books, ledgers, checks, correspondence and memoranda in the custody or control of a third party, which reasonably pertain to the loss or damage. All information designated as confidential by the insured claimant provided to the Company pursuant to this Section shall not be disclosed to others unless, in the reasonable judgment of the Company, it is necessary in the administration of the claim. Failure of the insured claimant to submit for examination under oath, produce other reasonably requested information or grant permission to secure reasonably necessary information from third parties as required in this paragraph shall terminate any liability of the Company under this policy as to that claim.

6. **OPTIONS TO PAY OR OTHERWISE SETTLE CLAIMS; TERMINATION OF LIABILITY.**

In case of a claim under this policy, the Company shall have the following additional options:

(a) **To Pay or Tender Payment of the Amount of Insurance.**

To pay or tender payment of the amount of insurance under this policy together with any costs, attorneys' fees and expenses incurred by the insured claimant, which were authorized by the Company, up to the time of payment or tender of payment and which the Company is obligated to pay.

Upon the exercise by the Company of this option, all liability and obligations to the insured under this policy, other than to make the payment required, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, and the policy shall be surrendered to the Company for cancellation.

(b) **To Pay or Otherwise Settle With Parties Other than the Insured or With the Insured Claimant.**

(i) to pay or otherwise settle with other parties for or in the name of an insured claimant any claim insured against under this policy, together with any costs, attorneys' fees and expenses incurred by the insured claimant, which were authorized by the Company up to the time of payment and which the Company is obligated to pay; or

(ii) to pay or otherwise settle with the insured claimant the loss or damage provided for under this policy, together with any costs, attorneys' fees and expenses incurred by the insured claimant, which were authorized by the Company up to the time of payment and which the Company is obligated to pay.

Upon the exercise by the Company of either of the options provided for in paragraphs (b)(i) or (ii), the Company's obligations to the insured under this policy for the claimed loss or damage, other than the payments required to be made, shall terminate, including any liability or obligation to defend, prosecute or continue any litigation.

7. **DETERMINATION, EXTENT OF LIABILITY AND COINSURANCE.**

This policy is a contract of indemnity against actual monetary loss or damage sustained or incurred by the insured claimant who has suffered loss or damage by reason of matters insured against by this policy and only to the extent herein described.

(a) The liability of the Company under this policy shall not exceed the least of:

(i) the Amount of Insurance stated in Schedule A; or

(ii) the difference between the value of the insured estate or interest as insured and the value of the insured estate or interest subject to the defect, lien or encumbrance insured against by this policy at the date the insured claimant is required to furnish to Company a proof of loss or damage in accordance with Section 5 of these Conditions and Stipulations.

(b) In the event the Amount of Insurance stated in Schedule A at the Date of Policy is less than 80 percent of the value of the insured estate or interest or the full consideration paid for the land, whichever is less, or if subsequent to the Date of Policy an improvement is erected on the land which increases the value of the insured estate or interest by at least 20 percent over the Amount of Insurance stated in Schedule A, then this Policy is subject to the following:

(i) where no subsequent improvement has been made, as to any partial loss, the Company shall only pay the loss pro rata in the proportion that the amount of insurance at Date of Policy bears to the total value of the insured estate or interest at Date of Policy; or

(ii) where a subsequent improvement has been made, as to any partial loss, the Company shall only pay the loss pro rata in the proportion that 120 percent of the Amount of Insurance stated in Schedule A bears to the sum of the Amount of Insurance stated in Schedule A and the amount expended for the improvement.

The provisions of this paragraph shall not apply to costs, attorneys' fees and expenses for which the Company is liable under this policy, and shall only apply to that portion of any loss which exceeds, in the aggregate, 10 percent of the Amount of Insurance stated in Schedule A.

(c) The Company will pay only those costs, attorneys' fees and expenses incurred in accordance with Section 4 of these Conditions and Stipulations.

8. **APPORTIONMENT.**

If the land described in Schedule A consists of two or more parcels that are not used as a single site, and a loss is established affecting one or more of the parcels but not all, the loss shall be computed and settled on a pro rata basis as if the amount of insurance under this policy was divided pro rata as to the value on Date of Policy of each separate parcel to the whole, exclusive of any improvements made subsequent to Date of Policy, unless a liability or value has otherwise been agreed upon as to each parcel by the Company and the insured at the time of the issuance of this policy and shown by an express statement or by an endorsement attached to this policy.

9. **LIMITATION OF LIABILITY.**

(a) If the Company establishes the title, or removes the alleged defect, lien or encumbrance, or cures the lack of a right of access to or from the land, all as insured, or takes action in accordance with Section 3 or Section 6, in a reasonably diligent manner by any method, including litigation and the completion of any appeals therefrom, it shall have fully performed its obligations with respect to that matter and shall not be liable for any loss or damage caused thereby.

(b) In the event of any litigation, including litigation by the Company or with the Company's consent, the Company shall have no liability for loss or damage until there has been a final determination by a court of competent jurisdiction, and disposition of all appeals therefrom, adverse to the title as insured.

(c) The Company shall not be liable for loss or damage to any insured for liability voluntarily assumed by the insured in settling any claim or suit without the prior written consent of the Company.

10. **REDUCTION OF INSURANCE: REDUCTION OR TERMINATION OF LIABILITY.**

All payments under this policy, except payments made for costs, attorneys' fees and expenses, shall reduce the amount of the insurance pro tanto.

11. **LIABILITY NONCUMULATIVE.**

It is expressly understood that the amount of insurance under this policy shall be reduced by any amount the Company may pay under any policy insuring a mortgage to which exception is taken in Schedule B or to which the insured has agreed, assumed, or taken subject, or which is hereafter executed by an insured and which is a charge or lien on the estate or interest described or referred to in Schedule A, and the amount so paid shall be deemed a payment under this policy to the insured owner.

12. **PAYMENT OF LOSS.**

(a) No payment shall be made without producing this policy for endorsement of the payment unless the policy has been lost or destroyed, in which case proof of loss or destruction shall be furnished to the satisfaction of the Company.

(b) When liability and the extent of loss or damage has been definitely fixed in accordance with these Conditions and Stipulations, the loss or damage shall be payable within 30 days thereafter.

13. **SUBROGATION UPON PAYMENT OR SETTLEMENT.**

(a) **The Company's Right of Subrogation.**

Whenever the Company shall have settled and paid a claim under this policy, all right of subrogation shall vest in the Company unaffected by any act of the insured claimant.

The Company shall be subrogated to and be entitled to all rights and remedies that the insured claimant would have had against any person or property in respect to the claim had this policy not been issued. If requested by the Company, the insured claimant shall transfer to the Company all rights and remedies against any person or property necessary in order to perfect this right of subrogation. The insured claimant shall permit the Company to sue, compromise or settle in the name of the insured claimant and to use the name of the insured claimant in any transaction or litigation involving these rights or remedies.

If a payment on account of a claim does not fully cover the loss of the insured claimant, the Company shall be subrogated to these rights and remedies in the proportion that the Company's payment bears to the whole amount of the loss.

If loss should result from any act of the insured claimant, as stated above, that act shall not void this policy, but the Company, in that event, shall be required to pay only that part of any losses insured against by this policy that shall exceed the amount, if any, lost to the Company by reason of the impairment by the insured claimant of the Company's right of subrogation.

(b) **The Company's Rights Against Non-insured Obligors.**

The Company's right of subrogation against non-insured obligors shall exist and shall include, without limitation, the rights of the insured to indemnities, guaranties, other policies of insurance or bonds, notwithstanding any terms or conditions contained in those instruments that provide for subrogation rights by reason of this policy.

CONDITIONS AND STIPULATIONS

1. **DEFINITION OF TERMS.**

The following terms when used in this policy mean:

(a) "insured": the insured named in Schedule A, and, subject to any rights or defenses the Company would have had against the named insured, those who succeed to the interest of the named insured by operation of law as distinguished from purchase including, but not limited to, heirs, distributees, devisees, survivors, personal representatives, next of kin, or corporate, partnership or fiduciary successors, and specifically, without limitation, the following:

(i) The successors in interest to a corporation resulting from merger or consolidation or the distribution of the assets of the corporation upon partial or complete liquidation;

(ii) The partnership successors in interest to a general or limited partnership which dissolves but does not terminate;

(iii) The successors in interest to a general or limited partnership resulting from the distribution of the assets of the general or limited partnership upon partial or complete liquidation;

(iv) The successors in interest to a joint venture resulting from the distribution of the assets of the joint venture upon partial or complete liquidation;

(v) The successor or substitute trustee(s) of a trustee named in a written trust instrument; or

(vi) The successors in interest to a trustee or trust resulting from the distribution of all or part of the assets of the trust to the beneficiaries thereof.

(b) "insured claimant": an insured claiming loss or damage.

(c) "knowledge" or "known": actual knowledge, not constructive knowledge or notice that may be imputed to an insured by reason of the public records as defined in this policy or any other records which impart constructive notice of matters affecting the land.

(d) "land": the land described or referred to in Schedule A, and improvements affixed thereto that by law constitute real property. The term "land" does not include any property beyond the lines of the area described or referred to in Schedule A, nor any right, title, interest, estate or easement in abutting streets, roads, avenues, alleys, lanes, ways or waterways, but nothing herein shall modify or limit the extent to which a right of access to and from the land is insured by this policy.

(e) "mortgage": mortgage, deed of trust, trust deed, or other security instrument.

(f) "public records": records established under state statutes at Date of Policy for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without knowledge. With respect to Section 1(a)(iv) of the Exclusions From Coverage, "public records" also shall include environmental protection liens filed in the records of the clerk of the United States district court for the district in which the land is located.

(g) "Access": legal right of access to the land and not the physical condition of access. The coverage provided as to access does not assure the adequacy of access for the use intended.

2. **CONTINUATION OF INSURANCE AFTER CONVEYANCE OF TITLE.**

The coverage of this policy shall continue in force as of Date of Policy in favor of an insured only so long as the insured retains an estate or interest in the land, or holds an indebtedness secured by a purchase money mortgage given by a purchaser from the insured, or only so long as the insured shall have liability by reason of covenants of warranty made by the insured in any transfer or conveyance of the estate or interest. This policy shall not continue in force in favor of any purchaser from the insured of either (i) an estate or interest in the land, or (ii) an indebtedness secured by a purchase money mortgage given to the insured.

3. **NOTICE OF CLAIM TO BE GIVEN BY INSURED CLAIMANT.**

The insured shall notify the Company promptly in writing (i) in case of any litigation as set forth in Section 4(a) below, or (ii) in case knowledge shall come to an insured hereunder of any claim of title or interest that is adverse to the title to the estate or interest, as insured, and that might cause loss or damage for which the Company may be liable by virtue of this policy. If prompt notice shall not be given to the Company, then as to the insured all liability of the Company shall terminate with regard to the matter or matters for which prompt notice is required; provided, however, that failure to notify the Company shall in no case prejudice the rights of any insured under this policy unless the Company shall be prejudiced by the failure and then only to the extent of the prejudice.

When, after the Date of the Policy, the insured notifies the Company as required herein of a lien, encumbrance, adverse claim or other defect in title to the estate or interest in the land insured by this policy that is not excluded or excepted from the coverage of this policy, the Company shall promptly investigate the charge to determine whether the lien, encumbrance, adverse claim or defect is valid and not barred by law or statute. The Company shall notify the insured in writing, within a reasonable time, of its determination as to the validity or invalidity of the insured's claim or charge under the policy. If the Company concludes that the lien, encumbrance, adverse claim or defect is not covered by this policy, or was otherwise addressed in the closing of the transaction in connection with which this policy was issued, the Company shall specifically advise the insured of the reasons for its determination. If the Company concludes that the lien, encumbrance, adverse claim or defect is valid, the Company shall take one of the following actions: (i) institute the necessary proceedings to clear the lien, encumbrance, adverse claim or defect from the title to the estate as insured; (ii) indemnify the insured as provided in this policy; (iii) upon payment of appropriate premium and charges therefor, issue to the insured claimant or to a subsequent owner, mortgagee or holder of the estate or interest in the land insured by this policy, a policy of title insurance without exception for the lien, encumbrance, adverse claim or defect, said policy to be in an amount equal to the current value of the property or, if a mortgagee policy, the amount of the loan; (iv) indemnify another title insurance company in connection with its issuance of a policy(ies) of title insurance without exception for the lien, encumbrance, adverse claim or defect; (v) secure a release or other document discharging the lien, encumbrance, adverse claim or defect; or (vi) undertake a combination of (i) through (v) herein.

4. **DEFENSE AND PROSECUTION OF ACTIONS: DUTY OF INSURED CLAIMANT TO COOPERATE.**

(a) Upon written request by the insured and subject to the options contained in Section 6 of these Conditions and Stipulations, the Company, at its own cost and without unreasonable delay, shall provide for the defense of an insured in litigation in which any third party asserts a claim adverse to the title or interest as insured, but only as to those stated causes of action alleging a defect, lien or encumbrance or other matter insured against by this policy. The Company shall have the right to select counsel of its choice (subject to the right of the insured to object for reasonable cause) to represent the insured as to those stated causes of action and shall not be liable for and will not pay the fees of any other counsel. The Company will not pay any fees, costs or expenses incurred by the insured in the defense of those causes of action that allege matters not insured against by this policy.

(b) The Company shall have the right, at its own cost, to institute and prosecute any action or proceeding or to do any other act that in its opinion may be necessary or desirable to establish the title to the estate or interest, as insured, or to prevent or reduce loss or damage to the insured. The Company may take any appropriate action under the terms of this policy, whether or not it shall be liable hereunder, and shall not thereby concede liability or waive any provision of this policy. If the Company shall exercise its rights under this paragraph, it shall do so diligently.

(c) Whenever the Company shall have brought an action or interposed a defense as required or permitted by the provisions of this policy, the Company may pursue any litigation to final determination by a court of competent jurisdiction and expressly reserves the right, in its sole discretion, to appeal from any adverse judgment or order.

(d) In all cases where this policy permits or requires the Company to prosecute or provide for the defense of any action or proceeding, the insured shall secure to the Company the right to so prosecute or provide defense in the action or proceeding, and all appeals therein, and permit the Company to use, at its option, the name of the insured for this purpose. Whenever requested by the Company, the insured, at the Company's expense, shall give the Company all reasonable aid (i) in any action or proceeding, securing evidence, obtaining witnesses, prosecuting or defending the action or proceeding, or effecting settlement, and (ii) in any other lawful act that in the opinion of the Company may be necessary or desirable to establish the title to the estate or interest as insured. If the Company is prejudiced by the failure of the insured to furnish the required cooperation, the Company's obligations to the insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such cooperation.

5. **PROOF OF LOSS OR DAMAGE.**

In addition to and after the notices required under Section 3 of these Conditions and Stipulations have been provided the Company, a proof of loss or damage signed and sworn to by the insured claimant shall be furnished to the Company within 91 days after the insured claimant shall ascertain the facts giving rise to the loss or damage. The proof of loss or damage shall describe the defect in, or lien or encumbrance on the title, or other matter insured against by this policy that constitutes the basis of loss or damage and shall state, to the extent possible, the basis of calculating the amount of the loss or damage. If the Company is prejudiced by the failure of the insured claimant to provide the required proof of loss or damage, the Company's obligations to the insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such proof of loss or damage.

In addition, the insured claimant may reasonably be required to submit to examination under oath by any authorized representative of the Company and shall produce for examination, inspection and copying, at such reasonable times and places as may be designated by any authorized representative of the Company, all records, books, ledgers, checks, correspondence and memoranda, whether bearing a date before or after Date of Policy, which reasonably pertain to the loss or damage. Further, if requested by any authorized representative of the Company, the insured claimant shall grant its permission, in writing, for any authorized representative of the Company to examine, inspect and copy all

(continued and concluded on last page of this policy)

3395.01

OWNER POLICY OF TITLE INSURANCE

SCHEDULE A

File No: **93063325** Policy No: O- **43268**

Amount of Insurance: **$294,000.00**

Date of Policy: **January 23, 1995 at 2:34 PM**

1. Name of Insured:

   The City of Austin

2. The estate or interest in the land that is covered by this Policy is:

   FEE SIMPLE

3. Title to the estate or interest in the land is insured as vested in:

   The City of Austin

4. The land referred to in this Policy is described as follows:

   Approximately 43.001 ACRES of land out of the Santiago Del Valle Ten League Grant Survey Abstract No. 24, located in Travis County, Texas, recorded in Volume 2838, Page 436, Deed Records of Travis County, Texas, and being more particularly described in Exhibit "A" attached hereto.

Title Agency of Austin, Inc. STEWART TITLE GUARANTY COMPANY

Carolyn Stegall

Authorized Signatory

EXHIBIT "A"

FIELD NOTES

FIELD NOTES FOR A PARCEL OF LAND CONTAINING 43.001 ACRES, LOCATED IN THE SANTIAGO DEL VALLE TEN LEAGUE GRANT SURVEY, ABSTRACT NO. 24, IN TRAVIS COUNTY, TEXAS; SAID 43.001 ACRE PARCEL BEING THE SAME DESCRIBED IN A DEED TO RICHARD L. HOUGH, AND WIFE DORIS MAE HOUGH, RECORDED IN VOLUME 2838, PAGE 436 OF THE DEED RECORDS OF SAID TRAVIS COUNTY; SAID 43.001 ACRE PARCEL BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING, at an 1/2" iron rod found in the westernmost corner of this parcel, said rod also being the northernmost corner of a 100.27 acre described in a deed to Richard A. Brunswick recorded in Volume 4574, Page 78 of the Deed Records of said Travis County;

THENCE, N46°00'31"E, 720.85 feet with the common boundary between this parcel and a 54.73 acre parcel described in a warranty deed to Jim Pearce Johnson recorded in Volume 6636, Page 1599, of the Deed Records of said Travis County, to a 1/2" iron rod found at the northernmost corner of this parcel;

THENCE, the following four (4) consecutive courses with the common fenced boundary between this parcel and a 109.90 acre parcel described in a deed to Richard A. Brunswick recorded in Volume 4357, Page 30 of the Deed Records of said Travis County:

(1) S44°47'32"E, 704.83 feet to a 1" iron pipe found;
(2) S44°17'07"E, 333.00 feet to a 1/2" iron rod set;
(3) S45°07'51"E, 498.00 feet to a 1" iron pipe found;
(4) S44°50'51"E, 944.99 feet to a 1" iron pipe found at the easternmost corner of this parcel;

THENCE, the following two (2) consecutive courses with the common fenced boundary between this parcel and said 100.27 acre parcel:

(1) S27°25'54"W, 756.85 feet to a 1" iron pipe found;
(2) N44°48'45"W, 2721.94 feet to the POINT OF BEGINNING, containing 43.001 acres of land.

OWNER POLICY OF TITLE INSURANCE

SCHEDULE B

FILE NO: 93063325 POLICY NO: O- 43268

EXCEPTIONS FROM COVERAGE

This Policy does not insure against loss or damage (and the Company will not pay costs, attorney's fees or expenses) that arise by reason of the terms and conditions of the leases or easements insured if any, shown in Schedule A, and the following matters:

1. ~~The following restrictive covenants of record itemized below (the Company must either insert specific recording data or delete this exception)~~:

2. Any discrepancies, conflicts, or shortages in area or boundary lines, or any encroachments, or protrusions, or any overlapping of improvements.

3. Homestead or community property or survivorship rights, if any, of any spouse of any insured.

4. Any titles or rights asserted by anyone, including, but not limited to, persons, corporations, governments or other entities,

   a. to tidelands,or lands comprising the shores or beds of navigable or perennial rivers and streams, lakes, bays, gulfs or oceans, or
   b. to lands beyond the line of the harbor or bulkhead lines as established or changed by any government, or
   c. to filled-in lands, or artificial islands, or
   d. statutory water rights, including riparian rights, or
   e. to the area extending from the line of mean low tide to the line of vegetation, or the right of access to that area or easement along and across that area.

5. Standby fees, taxes and assessments by any taxing authority for the year 19 95 and subsequent years, and subsequent taxes and assessments by any taxing authority for prior years due to change in land usage or ownership.

6. The following matters and all terms of the documents creating or offering evidence of the matters(We must insert matters or delete this exception.):

A. Blanket electric and telephone transmission and/or distribution line easement granted to the City of Austin, recorded in Volume 684, Page 618, Deed Records of Travis County, Texas.

B. Aerial safety easement, together with all rights set out therein, awarded to the United States of America by Judgment on Declaration of Taking recorded in Volume 1689, Page 509, Deed Records of Travis County, Texas.

C. 10' electric and telephone line easement granted to the City of Austin, recorded in Volume 2873, Page 15, Deed Records of Travis County, Texas.

D. 5' electric and telephone line easement granted to the City of Austin, recorded in Volume 2941, Page 48, Deed Records of Travis County, Texas.

SCHEDULE B (CONTINUED)

E. Subject to the exclusion from said estate all the oil, gas and sulphur which can be removed from beneath said land without any right whatever remaining to the owners of said oil, gas and sulphur of ingress or egress to or from the surface of the land condemned for the purposes of exploring, developing, drilling or mining of the same, all as set out in the Judgment recorded in Volume 12358, Page 779, Real Property Records of Travis County, Texas.

F. Rights of parties in possession.

G. Section 14 of the Conditions and Stipulations of this policy is hereby deleted.