

#113

**FIRST AMENDMENT TO
RESTRICTIVE COVENANTS
TERRACE P.U.D.
City of Austin Zoning File No. C814-86-009**

STATE OF TEXAS §
COUNTY OF TRAVIS § KNOW ALL MEN BY THESE PRESENTS:

WHEREAS, W & G Partnership, as Declarant, imposed certain restrictive covenants upon approximately 109.25 acres of land in Travis County, Texas which is commonly referred to as the Terrace P.U.D. by a documents dated April 9, 1987 which is recorded in Volume 10252, Page 135 of the Real Property Records of Travis County, Texas (herein referred to as the "Restrictive Covenants"); and

WHEREAS, the owners of certain property located in the Terrace P.U.D. have determined it is advisable to make certain modifications and amendments to the Restrictive Covenants to (i) eliminate the requirement for a dedication of 11.918 acres to the City of Austin as parkland and in lieu thereof dedicate a conservation easement over 39.425 acres of land and (ii) revise certain building height restrictions on Lot 1, Block A and Lot 2, Block A, The Terrace, Section Five, as recorded as Document 20000036, Real Property Records, Travis County, Texas; and

WHEREAS, pursuant to Section 6.06 of the Restrictive Covenants a majority of the members of the City Council of the City of Austin and the owners of the lots which are directly affected have agreed to the modifications and amendments to the Restrictive Covenants;

NOW, THEREFORE, the undersigned for and in consideration of good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, do hereby modify and amend the Restrictive Covenants as follows:

1. Section 1.04 of the Restrictive Covenants is hereby modified and amended to read
in its entirety as follows:

"1.04. Upon approval of major revision 12 to the Site Plan which results in all of the FAR and the remaining Impervious Cover on Lot 2, Block B being allocated to other tracts within the Property. Lot 1 of Block G of the Property as shown on the Site Plan (Conservation Tract) shall be encumbered with a conservation easement described in Exhibit A attached hereto ("Conservation Easement"). The Conservation Easement shall be conveyed to a qualified conservation entity and shall restrict the area within the easement to no development except fencing, stormwater irrigation, utility construction, exercise stations and hike and bike trails. The Conservation Easement may include other property in addition to the Conservation Tract. Paragraph 1.08 shall apply to any revisions to the Conservation Easement."

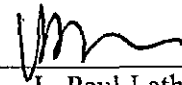
2. Section 1.06 of the Restrictive Covenants is hereby modified and amended to read
in its entirety as follows:

"1.06 The Terrace IV Building located on Lot 2, Block A, The Terrace, Section Five shall not exceed 100 feet in height, as measured by the City of Austin Land Development Code. The height limit exceptions in the Land Development Code (25-2-531) do not apply to the Terrace IV Building and the maximum height of the highest element of said building structure shall be 100 feet. The Terrace III Building located on Lot 1 and Lot 2, Block A, The Terrace, Section Five shall not exceed 120 feet in height, as measured by the City of Austin Land Development Code plus the height exception permitted by Section 25-2-531 of the Land Development Code. The Terrace VIII Building located on Lot 1, Block A, The Terrace, Section Five shall not exceed 120 feet in height, as measured by the City of Austin Land Development Code plus the height exception permitted by Section 25-2-531 of the Land Development Code."

EXECUTED this ____ day of _____, 200__.

W & G PARTNERSHIP, LTD
By: ClayDesta L.P., its general partner

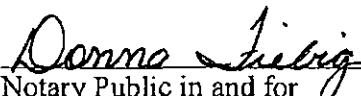
By: ClayDesta Operating LLC
Its general partner

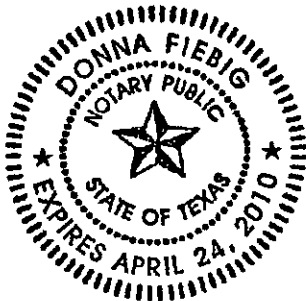
By: 
L. Paul Latham
President

STATE OF TEXAS §
COUNTY OF TRAVIS §

BEFORE Me, the undersigned authority, on this day personally appeared L. Paul Latham, President of ClayDesta Operating, LLC, general partner of ClayDesta, L.P, its general partner of W & G PARTNERSHIP, LTD, known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the said and that he executed the foregoing being informed of the contents of same, as such officer and with full authority, as the act of such corporation on behalf of the company for the purposes and consideration therein expressed, and in the capacity therein stated.

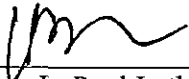
Given under my hand and seal of office this the 17 day of December, 2008.


Notary Public in and for
Travis County, State of Texas



DESTA THREE PARTNERSHIP, LTD

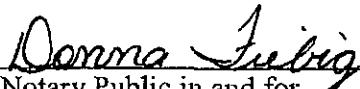
By: Desta Three Development Co.,
its general partner

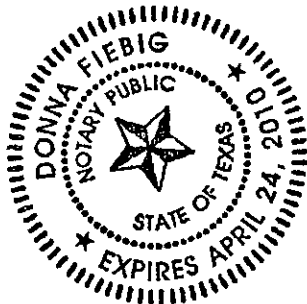
By: 
L. Paul Latham
President

STATE OF TEXAS §
COUNTY OF TRAVIS §

BEFORE Me, the undersigned authority, on this day personally appeared L. Paul Latham, President of Desta Three Development Co, general partner of Desta Three Partnership, LTD, known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the said and that he executed the foregoing being informed of the contents of same, as such officer and with full authority, as the act of such corporation on behalf of the company for the purposes and consideration therein expressed, and in the capacity therein stated.

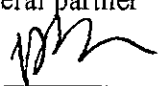
Given under my hand and seal of office this the 17 day of December,
2008.


Notary Public in and for
Travis County, State of Texas



DESTA FOUR PARTNERSHIP, LTD

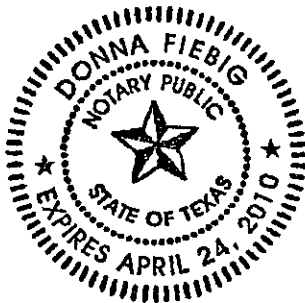
By: Desta Four Development Co.,
its general partner

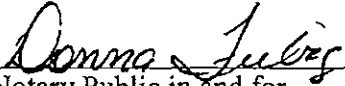
By: 
L. Paul Latham
President

STATE OF TEXAS §
COUNTY OF TRAVIS §

BEFORE Me, the undersigned authority, on this day personally appeared L. Paul Latham, President of Desta Four Development Co, general partner of Desta Four Partnership, LTD, known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the said and that he executed the foregoing being informed of the contents of same, as such officer and with full authority, as the act of such corporation on behalf of the company for the purposes and consideration therein expressed, and in the capacity therein stated.


Given under my hand and seal of office this the 17 day of December, 2008.




Notary Public in and for
Travis County, State of Texas

DESTA SIX PARTNERSHIP, LTD

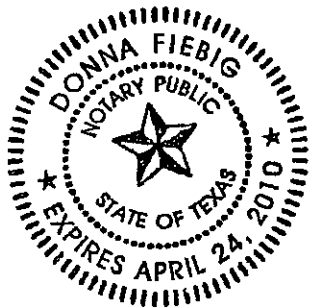
By: Desta Six Development Co.,
its general partner

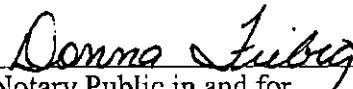
By: 
L. Paul Latham
President

STATE OF TEXAS §
COUNTY OF TRAVIS §

BEFORE Me, the undersigned authority, on this day personally appeared L. Paul Latham, President of Desta Six Development Co, general partner of Desta Six Partnership, LTD, known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the said and that he executed the foregoing being informed of the contents of same, as such officer and with full authority, as the act of such corporation on behalf of the company for the purposes and consideration therein expressed, and in the capacity therein stated.


Given under my hand and seal of office this the 17 day of December,
2008.




Notary Public in and for
Travis County, State of Texas

DESTA EIGHT PARTNERSHIP, LTD

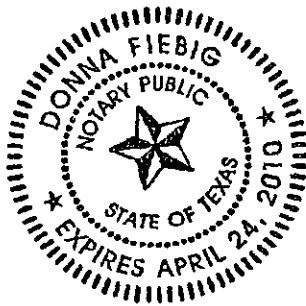
By: Desta Eight Development Co.,
its general partner

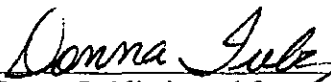
By: 
L. Paul Latham
President

STATE OF TEXAS §
COUNTY OF TRAVIS §

BEFORE Me, the undersigned authority, on this day personally appeared L. Paul Latham, President of Desta Eight Development Co, general partner of Desta Eight Partnership, LTD, known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the said and that he executed the foregoing being informed of the contents of same, as such officer and with full authority, as the act of such corporation on behalf of the company for the purposes and consideration therein expressed, and in the capacity therein stated.

Given under my hand and seal of office this the 17 day of December,
2008.




Notary Public in and for
Travis County, State of Texas

Consent of Lienholder:


BEHRINGER HARVARD OPERATING PARTNERSHIP I LP,
a Texas limited partnership

By: BHR, INC., a Delaware corporation, its General Partner

By: 
Gerald J. Reihsen, III, Secretary

STATE OF TEXAS §
COUNTY OF DALLAS §

This Instrument was acknowledged before me on the 17th day of December, 2008 by Gerald J. Reihsen, III, Secretary of BHR, Inc., a Delaware corporation, the general partner of BEHRINGER HARVARD OPERATING PARTNERSHIP I LP, a Texas limited partnership, on behalf of said corporation and partnership.


Notary Public, The State of Texas



APPROVED AND ACCEPTED:

City of Austin, Texas

By: _____
Its: _____
Date: _____

EXHIBIT A
CONSERVATION EASEMENT

W & G Partnership, Ltd.

6 Desta Drive, Ste. 6500

Midland, Texas 79705

(432) 688-3212

December 13, 2008

Mr. George Cofer
Executive Director
Hill Country Conservancy
P.O. Box 163125
Austin, Texas 78716-3125

**Re: Conservation Easement
The Terrace P.U.D.**

Dear George:

Attached hereto is a Conservation Easement covering 39.425 acres in the Terrace P.U.D., City of Austin ("Conservation Easement") executed on behalf of the Grantor.

You are requested to hold the Conservation Easement in trust pending final approval by the City of Austin of the zone change currently pending which is referred to as "Terrace PUD (Revision 12)."

Upon final approval by the City of Austin of the zone change, W&G Partnership, Ltd. will request Hill Country Conservancy to execute the Conservation Easement and will give written instructions authorizing the Conservation Easement be filed for record in the Official Real Estate Records of Travis County, Texas.

In the event final approval of the zone change by the City of Austin is not received on or before December 31, 2008, Hill Country Conservancy will return the Conservation Easement to me upon receipt of my written request. In the event you are requested to return the Conservation Easement, Hill Country Conservancy acknowledges the Conservation Easement was never consummated.

Please confirm your agreement and understanding regarding your holding the Conservation Easement in trust by your signature below.

Very truly yours,

W&G Partnership, Ltd.

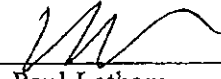
By: ClayDesta L.P.

its general partner

By: ClayDesta Operating LLC

its general partner

By: _____


Paul Latham
President

Acknowledged and Signed:

Hill Country Conservancy of Texas, a non-profit corporation

By: _____

Name: _____

Title: _____

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OF THE FOLLOWING INFORMATION FROM THIS INSTRUMENT BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

**CONSERVATION EASEMENT
GRANTOR
W & G PARTNERSHIP, LTD
DESTA THREE PARTNERSHIP, LTD.
DESTA FOUR PARTNERSHIP, LTD.
DESTA SIX PARTNERSHIP, LTD
AND
DESTA EIGHT PARTNERSHIP, LTD.**

**GRANTEE
HILL COUNTRY CONSERVANCY**

Travis County
December ____, 2008

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CONSERVATION EASEMENT

STATE OF TEXAS
COUNTY OF TRAVIS

§
§

This grant and acceptance of this Conservation Easement ("Conservation Easement") is made on this day of December, 2008, by W & G PARTNERSHIP, LTD, DESTA THREE PARTNERSHIP, LTD., DESTA FOUR PARTNERSHIP, LTD., DESTA SIX PARTNERSHIP, LTD AND DESTA EIGHT PARTNERSHIP, LTD., 6 Desta Drive, Suite 6500, Midland, Texas 79705 (together called "Grantor"), and Hill Country Conservancy, a non-profit corporation organized and existing under the laws of the State of Texas, with a local address of P. O. Box 163125, Austin, Texas 78716-3125 ("Grantee").

RECITALS

A. **Protected Property.** The Grantor is the owner in fee simple of the property composed of approximately 39.425 acres ("Property") legally described in Exhibit A. The Property is also a natural area which qualifies as a "relatively natural habitat of wildlife, or plants, or similar ecosystem", as that phrase is used in Section 170(h)(4)(A)(ii) of the Internal Revenue Code of 1986 (as amended).

B. **Conservation Values.** The Property possesses significant natural, ecological, and aesthetic values for conservation purposes (collectively, the "Conservation Values") which are of importance to Grantor and Grantee, to the people of the county in which the Property is located, and to the people of the State of Texas, as follows:

1. The Conservation Values include, but are not necessarily limited to, natural resource, ecological, and scientific values, including wildlife and plant resources, as well as scenic and open space values.
2. The Conservation Values of the Property include (but are not necessarily limited to) habitats essential to maintaining various natural communities of plant and animal species.
3. The Conservation Values of the Property also include the significant public benefit of preserving open space from development, and providing protection for scenic qualities unique to the area visible from the Barton Creek Wilderness park, a public recreation area.
4. In particular, the Property is adjacent to Barton Creek, an intermittent creek which feeds into the Barton Springs reservoir, the only known habitat of the Barton Springs salamander, a federally-listed endangered species. The United States Fish and Wildlife Service (USFWS) Barton Springs Salamander Plan, signed on August 29, 2005, includes maintenance and enhancement of water quality and quantity through measures such as the acquisition of conservation

easements in the Barton Springs segment of the Edwards Aquifer.

5. The property is within the recharge zone of the Barton Springs Segment of the Edwards Aquifer.

C. **Easement Documentation Report.** The characteristics of the Property, its current use and state of improvement, are described in a report entitled the "Easement Documentation Report" ("EDR"), dated _____, prepared by Grantee for the Grantor, mutually agreed upon by the parties, and signed and acknowledged by both parties. The Grantor worked with the Grantee to ensure that the report is a complete and accurate description of the Property as of the date of this Conservation Easement. It establishes the baseline condition of the Property as of the Effective Date and includes reports, maps, photographs, and other documentation.

D. **Common Purpose.** The Grantor and Grantee have the common purpose of conserving the above-described conservation values of the Property in perpetuity, and the State of Texas has authorized the creation of Conservation Easements pursuant to Chapter 183 of the Texas Natural Resources Code, TEX. NAT. RES. CODE ANN. § § 183.01, *et. seq.*, and Grantor and Grantee wish to avail themselves of the provisions of that law.

NOW, THEREFORE, the Grantor, for and in consideration of the facts recited above and of the mutual covenants, terms, conditions and restrictions contained herein, and as an absolute and unconditional gift, hereby GIVES, GRANTS, BARGAINS, SELLS and CONVEYS unto the Grantee a Conservation Easement in perpetuity over the Property of the nature and character as set forth herein. With respect to rights and obligations under this Conservation Easement, all references to Grantor shall include their heirs, executors, administrators, representatives, successors, and assigns (including, without limitation, subsequent landowners of the Property).

1. **PURPOSE.** The purposes of this Conservation Easement, subject to the permitted rights and uses reserved to Grantor as set forth herein, are: (a) to ensure that the Property will be retained forever predominantly in its natural and scenic condition, and be available for its natural habitat values; (b) to support and protect native animals, plants, or plant communities dependent on the water sources, nesting habitat, cover and food sources found on the Property; and (c) to prevent any use of the Property that will significantly impair or interfere with the Conservation Values of the Property.

2. **PROPERTY USES AND PROHIBITIONS.** Subject to Grantor's affirmative rights reserved in this Conservation Easement, any activity on or use of the Property inconsistent with the purposes of this Conservation Easement is prohibited. Without limiting the generality of the foregoing, and subject to Grantor's rights expressly reserved herein, the following is a listing of activities and uses which are expressly prohibited or which are expressly allowed.

2.1. **Subdivision.** The Property may not be further divided, subdivided or partitioned.

2.2. **Construction.** Construction of improvements is prohibited except where permitted

in this Conservation Easement. Grantor shall at all time use best efforts and practices in the construction of permitted improvements to minimize impact on the Conservation Values of the Property. Subject to Grantor's affirmative rights reserved in this Conservation Easement, no other structures may be placed or constructed on the Property.

Grantor expressly reserves unto itself its successors and assigns, the express right to:

(i) Irrigation. Maintain existing irrigation lines identified in the EDR which distribute detained run-off water collected from developed lots in The Terrace P.U.D. within the 1.7 acre tract of land identified on Exhibit "C" attached hereto . In addition, Grantor shall have the right to locate, construct and maintain additional irrigation lines to distribute detained run-off water collected from Lots 1 and 2, Block A of The Terrace P.U.D. in the 2.0 and the 3.6 acre tracts of land identified on Exhibit "C" attached hereto. Grantor will use reasonable efforts to use above ground irrigation lines but may trench areas as may be necessary for safety and security concerns, including trenches to bury the main lines feeding from the detention tanks. In such event, Grantor shall notify Grantee not less than thirty (30) days prior to commencement of such construction in the same manner and including the same information as set forth under Paragraph 7. Grantor and Grantee agree to work together to address any concerns of Grantee as to the design, route or location of such irrigation lines; however, Grantee's consent shall not be required for the construction rights retained in this subparagraph (i). Upon completion of any maintenance, improvement or construction hereunder, the disturbed area shall be revegetated, at Grantor's expense, pursuant to a plan developed and overseen by Grantee with native vegetation, native grass mixes or other grasses or other vegetation in accordance with any applicable governmental requirements.

(ii) Trails and Impervious Cover. Construct and maintain a walking trail, including exercise stations, approximately in the locations as identified in the EDR, which shall also include the right to maintain said trails and exercise stations. There shall be no new Impervious Cover on the Property. "*Impervious Cover*" means and includes all improvements or materials that are impermeable as to water which in any way cover or are placed above the natural surface of the land. Examples of Impervious Cover include, without limitation, roof tops, paved roads and any other forms of paving. All trails and exercise stations shall be designed so as to minimize their length and must be constructed and maintained so as to minimize erosion and sedimentation.

(iii) Utilities. Maintain and improve the below ground utility lines identified in the EDR. In addition, if the City of Austin requires the construction of additional utility lines in order for building permits to be issued for the construction of new buildings on Lots 1 and 2, Block A of The Terrace P.U.D. (the "New Buildings"), the Grantor shall have the right to construct and maintain additional underground utility lines on the Property to service the New Buildings. In such event, Grantor shall notify Grantee not less than thirty (30) days prior to commencement of such construction in the same manner and including the same information as set forth under Paragraph 7. Grantor and Grantee agree to work together to address any concerns of Grantee as to the design, route or location of such utility lines; however, Grantee's consent shall not be required for the construction rights retained in this subparagraph (iii). Upon completion of any maintenance, improvement or construction hereunder, the disturbed area shall

be revegetated, at Grantor's expense, pursuant to a plan developed and overseen by Grantee with native vegetation, native grass mixes or other grasses or other vegetation in accordance with any applicable governmental requirements.

(iv) Fence. Subject to approval rights of Grantee contained in Paragraph 7 herein, construct and maintain a fence along part of the Property boundary in order to prevent access to the Property from the adjacent parkland by humans. No fence shall exceed five (5) feet in height without Grantee's prior written approval.

(v) Exterior Lighting. Subject to the approval rights of Grantee contained Paragraph 7 herein, any new exterior lighting on the Property must be placed in a manner that does not diminish the scenic character of the Property, and screened, hooded or shielded downward and so as to not be directly visible from, or to create a direct glare into, any adjoining properties or public roads.

2.3 Recreational Uses. Grantor shall have the right to engage in and permit others to engage in recreational uses of the Property.

2.4 Excavation. Subject to the rights reserved unto Grantor, and/or except as necessary to accommodate the activities expressly permitted under this Conservation Easement, there shall be no draining, diking, filling, excavating, dredging, removal of topsoil, sand, caliche, gravel, rock, minerals or other materials, mining, drilling or removal of minerals, nor any building of roads or change in the topography of the Property or disturbance in the soil in any manner, unless in accordance with the Management Plan. Nothing in this section shall be deemed to authorize surface mining (including, without limitation, the removal of gravel, sand or caliche), or any other activity expressly prohibited elsewhere in this Conservation Easement.

2.5 Destruction of Plants, Disturbance of Natural Habitat. All removal, harvesting, destruction or cutting of trees, shrubs, brush or other plants shall be performed in accordance with Paragraph 2 of the Management Plan.

2.6 Signage. No commercial signs or billboards or other advertising displays are allowed on the Property, except those signs whose placement, number and design do not significantly diminish the scenic character of the Property. Such signs may be displayed in connection with the activities expressly permitted under this Conservation Easement.

2.7 No Dumping or waste. Subject to all rights reserved by Grantor herein, there shall be no permanent storage or dumping of trash, garbage, or other unsightly or offensive material on the Property. All facilities and plans for the disposal of wastes other than by public sewage methods (such as shredding, compaction, incineration, reclamation or chemical dissolution) must be submitted to Grantee in advance for its approval.

2.8 Commercial Development. Any commercial or industrial use of or activity on the Property is prohibited.

2.9 Transfer. Grantor expressly reserves the right to sell, give, lease, or otherwise

convey all, or a portion of the Property, subject to the terms of this Conservation Easement.

2.10 Habitat Restoration and Enhancement. Grantor expressly reserves the right to restore and enhance native plant and wildlife habitat, consistent with the Conservation Values.

3. GRANTEE'S RIGHTS. To accomplish the purpose of this Conservation Easement, the following rights are granted to Grantee by this Conservation Easement:

3.1 Right to Enforce. The right to preserve and protect the Conservation Values of the Property and enforce the terms of this Conservation Easement.

3.2 Right of Entry. The right of Grantee to enter the Property as necessary, at least annually and at reasonable times for the purposes of (i) inspecting the Property to determine if there is compliance with the terms of the Conservation Easement, (ii) documenting and assessing the condition of the Property or changes or additions to, existing improvements located on the property and specified in the EDR, (iii) inspecting the Protected Property to determine, due to reasonable suspicion of a violation of the terms of the Conservation Easement, if the Grantor or Grantor's heirs, successors or assigns, are complying with the provisions of this Conservation Easement, and (iv) obtaining evidence for the purpose of seeking judicial enforcement of this easement. Grantee agrees that this entry will be done in a manner that will not interfere unreasonably with the Grantor's permitted uses of the Property.

3.3 Monitoring and Research. The right, but not the obligation, to monitor, and enhance or restore, the native plant and wildlife populations, plant communities and natural habitats on the Property, and cooperate with Grantee in establishing, at no expense to Grantor, a written Monitoring and Research Plan to direct the monitoring of and research on plant and wildlife populations, plant communities and natural habitats on the Property.

3.4 Management of Exotics and Invasive Species. The right, but not the obligation, to control, manage or destroy exotic non-native species or invasive species of plants and animals that threaten the conservation values of the Property. Grantee will consult with Grantor prior to implementing management activities.

4. RESPONSIBILITIES OF GRANTOR. Other than as specified herein, this Conservation Easement is not intended to impose any legal or other responsibility on the Grantor, or in any way to affect any existing obligation of the Grantor as owners of the Property. Among other things, this shall apply to:

(a) Taxes. The Grantor shall be solely responsible for payment of all taxes and assessments levied against the Property.

(b) Upkeep and Maintenance. The Grantor shall be solely responsible for the upkeep and maintenance of the Property, to the extent it may be required by law. The Grantee shall have no obligation for the upkeep or maintenance of the Property.

(c) Inconsistent Acts. Grantor will not perform, nor knowingly allow others to

perform, any act on or affecting the Property that is inconsistent with the purposes of this Conservation Easement.

(d) Acts Beyond Grantor's Control. Nothing contained in this Conservation Easement shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the Property resulting from natural causes beyond Grantor's control, or acts of God, including without limitation, fire, flood, storm, and earth movement, or from any prudent action taken by Grantor under emergency conditions to prevent, abate or mitigate significant injury to the Property resulting from such causes. Further, nothing in this Conservation Easement shall require the Grantor to take any action to restore the condition of the Property after any act of God or any act or event by a third party over which Grantor had no control; provided, however, that Grantor shall take such actions as a reasonable prudent landowner would to prevent or minimize unauthorized activities on the Property which are inconsistent with the purposes of this Conservation Easement.

(e) Obligations of Law. Grantor understands that nothing in this Conservation Easement relieves them of any obligation or restriction on the use of the Property imposed by law.

(f) Management Plan. Any agricultural, hunting, ecotourism or wildlife management operations conducted on the Property must be in accordance with the Management Plan attached hereto as Exhibit "B" and incorporated herein by reference (the "*Management Plan*").

5. ACCESS

5.1 Public Access. No right of access by the general public to any portion of the Property is conveyed by this Conservation Easement. However, the public has the right to view the Property from adjacent publicly accessible areas such as public parks, public roads, and aerial viewing.

5.2 Grantee's Access to the Property. Without limiting the generality of the grant of the Conservation Easement to Grantee, and subject to Grantor's express affirmative rights in this Conservation Easement, Grantor expressly conveys and assigns to Grantee the rights of ingress and egress to the Property as an assignee of a partial interest in the Property solely as an easement holder by virtue of this grant of Conservation Easement.

6. RESPONSIBILITIES OF GRANTEE. Other than as specified herein, this Conservation Easement is not intended to impose any legal or other responsibility on the Grantee.

7. GRANTEE'S APPROVAL. Where Grantee's approval is required by the terms of this Conservation Easement, Grantor shall submit a request in writing via certified mail, return receipt requested, to Grantee with sufficient detail of the proposed activity and with specific reference to this section of the Conservation Easement. Grantee may consent to activities otherwise prohibited under Paragraph 2 above and activities not expressly allowed herein that do not conflict with the purposes of this Conservation Easement, under the following conditions and circumstances. If (a) due to unforeseen or changed circumstances, any of the prohibited activities listed in Paragraph 2 are reasonably determined by both Grantor and Grantee to be

desirable, or (b) Grantor requests to conduct any activities not expressly allowed under Paragraph 2, Grantee, in its sole discretion, may give permission for such activities, provided such activities (i) do not violate the purposes of this Conservation Easement and (ii) either enhance or do not significantly impair any Conservation Values associated with the Property. Grantee shall not agree to any activities that would result in the termination or extinguishment of this Conservation Easement or to allow any residential, commercial or industrial structures not otherwise expressly provided for in this Conservation Easement.

Grantee shall use its reasonable efforts to grant or withhold its approval, with or without conditions, or shall request additional information, in writing not less than thirty (30) days after receipt of Grantor's written request (or such longer period as may be provided in this Conservation Easement). Subject to Grantor's affirmative rights reserved in this Conservation Easement, Grantee's approval may be withheld upon a reasonable determination by Grantee that the action as proposed would be inconsistent with the purposes of this Conservation Easement, unless said action is otherwise expressly prohibited or otherwise restricted by this Conservation Easement. Grantor and Grantee expressly acknowledge that it is an exercise of Grantee's "reasonable determination" to withhold approval on the sole basis that Grantee lacks information or scientific data to make any such determination.

In the event Grantee fails to respond in writing with judgment or a request for more time to provide such judgment within the 30-day period, the proposed activity will be considered to be approved so long as the proposed activity is not inconsistent with the purposes of the Conservation Easement and so long as Grantor's initial written request for approval includes the following notice:

"In accordance with Paragraph 7 of the Conservation Easement, you will use your reasonable efforts to grant or withhold your approval, with or without conditions, or request additional information, in writing not less than thirty (30) days after receipt of this written request (or such longer period as may be provided in the Conservation Easement). If you have not responded within the time period required by Paragraph 7 of the Conservation Easement, then the activity proposed in this letter will be considered to be approved so long as this activity is not inconsistent with the purposes of the Conservation Easement (or otherwise expressly prohibited or restricted in the Conservation Easement)."

This paragraph is only intended to apply to any request(s) for approval by Grantor for activities which are expressly subject to Grantee's approval, and being requested of Grantee. It is not intended for any other purpose, including, without limitation, to request approval for activities for which an amendment of this Conservation Easement is needed. Further, it is not intended to make mandatory that Grantor request approval for any other activity which is expressly reserved in this Conservation Easement as any of Grantor's affirmative rights.

8. EASEMENT ENFORCEMENT. Grantee shall have the right to prevent and correct violations of the terms of this Conservation Easement. The following provisions shall be applicable to enforcement of this Conservation Easement:

(a) Notice of Violation. If Grantee becomes aware that a violation of the terms of this Conservation Easement has occurred or is threatened to occur, Grantee may at its discretion take appropriate legal action. Except when an ongoing or imminent violation could substantially diminish or impair the Conservation Values, Grantee shall give a written notice via certified mail, return receipt requested, of the violation to Grantor.

(b) Corrective Action. Upon the giving of a notice of violation hereunder, Grantor shall promptly halt such action and commence, and thereafter diligently pursue to completion, corrective action sufficient to cure the violation (if there is a violation) and, where the violation involves injury to the Property, to restore the portion of the Property so injured.

(c) Default. Grantor shall be in default of this Conservation Easement if it fails to so cure any such violation, within sixty (60) days after the notice of Grantor's violation is given; provided that, if more than sixty (60) days is reasonably required for the corrective action, then, if the Grantor promptly begins the corrective action within such sixty (60) day period, no default shall exist as to the violation for so long thereafter as Grantor is diligently pursuing such cure to completion and the violation is in any event cured within one hundred twenty (120) days. The fact that a default does not exist under the foregoing provisions shall in no event, however, absolve Grantor from any liability under this Conservation Easement with respect to the violation.

(d) Remedies. In the event of a violation, Grantee shall have all remedies available at law or in equity to enforce the terms of this Conservation Easement, including (but not limited to) the right to: (i) seek a temporary or permanent injunction with respect to any activity causing a violation; (ii) force the restoration of that portion of the Property affected by the violation to a condition similar or equivalent to the condition that existed prior to the violation, by restoring soils, replanting suitable native vegetation, or taking such other action as is reasonably necessary to achieve such restoration; and (iii) recover any additional damages arising from the violation; provided, however, that, except in the event of emergency enforcement, Grantee shall not enforce its rights under clauses (i) or (ii) above after the giving of a notice of violation until such time as a default exists under the foregoing provisions. The foregoing remedies shall be cumulative and shall be in addition to all other remedies existing at law or in equity with respect to the violation.

(e) Costs of Enforcement. In any action, suit or other proceeding undertaken to enforce any right or obligation under this Conservation Easement, or to interpret any of the provisions of this Conservation Easement, the prevailing party shall be entitled to recover from the non-prevailing or responsible party the costs and expenses of such proceeding, including (but not limited to) the court costs and attorneys' fees and expenses incurred by the prevailing party (whether incurred at the trial, appellate, or administrative level), in such amount as the court or administrative body may judge reasonable, all of which may be incorporated into and be a part of any judgment or decision rendered in such action, suit or other proceeding.

(f) Emergency Enforcement. The foregoing provisions notwithstanding, if Grantee reasonably determines that a violation has occurred or is threatened to occur and circumstances require immediate action to prevent, terminate, or mitigate significant damage to or the

destruction of any of the Conservation Values, or to prevent, terminate, or mitigate a significant violation of a material term of this Conservation Easement, such party may give a notice of violation to the extent reasonably practicable under the circumstances (which may be given orally in such cases or not at all depending on the circumstances) and Grantee may then pursue its remedies under this Conservation Easement without waiting for the period to cure the violation which is provided for above.

(g) Discretion. The failure of Grantee to discover a violation or to take action under this Conservation Easement with respect to a violation shall not bar it from doing so at a later time, and shall not be deemed or construed to be a waiver of the Grantee's rights in the event of any subsequent occurrence of that or any other violation.

(h) No Liability for Third Parties. Notwithstanding the foregoing enforcement provisions, Grantor shall have no responsibility or liability for the violation of any of the terms of this Conservation Easement by a third party over which Grantor had no legal or other control. Provided, however, Grantor shall take such actions as a reasonable prudent landowner would take to prevent violations by such third parties, but Grantor shall not be responsible for policing such third party's acts and omissions.

9. ESTOPPEL CERTIFICATE. Upon request by Grantor, Grantee agrees to execute and deliver to Grantor, or to any party designated by Grantor, within thirty (30) days of receipt of the request, an estoppel certificate certifying as to whether or not Grantor is in compliance with the terms of this Conservation Easement as of the date of Grantee's most recent inspection. If Grantor requests more current documentation, Grantee agrees to make reasonable effort to conduct an inspection within sixty (60) days of the request; provided, however, that Grantor agrees not to request such an inspection any more often than annually. If Grantor's requested inspection is outside of the regular inspection schedule of Grantee, then such requested inspection shall be at Grantor's expense, provided such inspection can not be substituted for, but is in addition to, Grantee's normal periodic inspection, whether annual or otherwise. Notwithstanding the foregoing, in no event shall the estoppel certificate provided by Grantee pursuant to this section be construed as a waiver of the Grantee's rights in the event Grantee fails to discover a violation or elects not to take action with respect to a violation at that time.

10. TRANSFER OF PROPERTY. The Grantor shall notify the Grantee in writing at least fifteen (15) days prior to the transfer of the Property, and the document of conveyance shall expressly refer to this Conservation Easement.

11. TRANSFER OF EASEMENT. The parties recognize and agree that the benefits of this easement are in gross and assignable. The Grantee shall have the right to transfer or assign this Conservation Easement to any private nonprofit organization that at the time of transfer, is a "qualified organization" under Section 170(h) of the U.S. Internal Revenue Code, and the organization has the financial ability to, and expressly agrees to assume the responsibility imposed on the Grantee by this Conservation Easement. If the Grantee ever ceases to exist or no longer qualifies under Sec. 170(h) or applicable state law, a court with jurisdiction shall transfer this easement to another qualified organization having similar purposes that agrees to assume the responsibility. Prior to transfer of the Easement, Grantee shall give not less than twenty (20)

days written notice to the Barton Hills Neighborhood Association (the "BHNA") at _____, Austin, Texas _____, or such other address provided to Grantee. The notice of assignment shall include the proposed assignee and the address of the proposed assignee.

12. AMENDMENT OF EASEMENT. This Conservation Easement may be amended, in whole or in part, by written documents signed by Grantor, Grantee and recorded in the real property records of Travis County, Texas. Any such amendment shall be consistent with the purposes of this Conservation Easement and shall comply with Sec. 170(h) of the Internal Revenue Code, or any regulations promulgated in accordance with that section. Any such amendment shall also be consistent with Chapter 183 of the Texas Natural Resources Code, or any regulations promulgated pursuant to that law. The Grantor and Grantee have no right or power to agree to any amendment that would affect the enforceability of this Conservation Easement. Grantor and Grantee agree to give written notice of any amendment to the Conservation Easement not less than twenty (20) days prior to the execution of same to the BHNA at its most recent address.

13. INDEMNIFICATION. Each party agrees to release, hold harmless, defend and indemnify the other from any and all liabilities including, but not limited to, injury, losses, damages, judgments, costs, expenses and fees that the indemnified party may suffer or incur as a result of or arising out of the negligent activities of the other party on the Property.

14. TITLE. The Grantor covenants and represents that the Grantor is the sole owner and is seized of the Property in fee simple and has good right to grant and convey this Conservation Easement; that the Property is free and clear of any and all encumbrances, except as otherwise set forth on the Title Insurance Policy provided to Grantee by Grantor and that the Grantee shall have the use of and enjoy all of the benefits derived from and arising out of this Conservation Easement.

15. INTERPRETATION. This Conservation Easement shall be interpreted under the laws of Texas, resolving any ambiguities and questions of the validity of specific provisions so as to give maximum effect to its Conservation Values. Venue for any state court action shall be in Travis County, Texas. Venue for any federal action shall be in the United States District Court for the Western District of Texas. If any reserved right of the Grantor under this Conservation Easement is found to be not in compliance with Section 170(h) of the Internal Revenue Code, or any regulations promulgated thereunder (including specifically Treasury Regulation Sec. 1.170A-14), then such provision shall be interpreted and applied in such a manner as to be in compliance with Section 170(h) of the Internal Revenue Code, and any regulations promulgated thereunder.

16. NOTICES. Any notices required by this Conservation Easement shall be in writing and shall be personally delivered or sent by first class mail, to Grantor and Grantee, respectively, at the following addresses, unless a party has been notified by the other of a change of address.

To Grantor:
W & G Partnership, Ltd

To the Grantee:
Hill Country Conservancy

6 Desta Drive, Suite 6500
Midland, Texas 79705
Attn: L. Paul Latham

P. O. Box 163125
Austin, Texas 78716-3125

with a copy to: Behringer Harvard Funds
15601 Dallas Parkway, Suite 600
Addison, Texas 75001
Attn: Chief Legal Officer

17. ENVIRONMENTAL CONDITION. The Grantor warrants that they have no actual knowledge of a release or threatened release of hazardous substances or wastes on the Property.

18. COMPLIANCE WITH APPLICABLE LAWS. Grantor and Grantee shall comply with all statutes, laws, ordinances, rules, regulations, codes, orders, guidelines, or other restrictions, or requirements applicable either to the Property or to this Conservation Easement. Nothing herein shall be construed to allow either Grantor or Grantee to engage in any activity which is restricted or prohibited by law, restrictions or other requirements applicable to the Property.

19. POWER OF ATTORNEY. By their execution of this Conservation Easement, Desta Three Partnership, Ltd., Desta Four Partnership, Ltd., Desta Six Partnership, Ltd., Desta Eight Partnership, Ltd., and each of their successors and assigns, do hereby appoint W & G Partnership, Ltd., its agent and attorney-in-fact to act on their behalf as "Grantor" in any and all matters with Grantee under the terms of this Conservation Easement.

20. PARTIES. Every provision of this Conservation Easement that applies to the Grantor or Grantee shall also apply to their respective heirs, executors, administrators, assigns, and all other successors as their interest may appear.

21. RE-RECORDING. In order to ensure the perpetual enforceability of the Conservation Easement, Grantor and Grantee are each authorized to re-record this instrument or any other appropriate notice or instrument, without the joinder of the other.

22. MERGER. The parties agree that the terms of this Conservation Easement shall survive any merger of the fee and easement interest in the Property.

23. SEVERABILITY. If any provision of this Conservation Easement is found to be invalid, the remaining provisions shall not be altered thereby.

24. COUNTERPARTS. The parties may execute this instrument in two or more counterparts, which shall, in the aggregate, be signed by both parties; each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

25. ACCEPTANCE & EFFECTIVE DATE. As attested by the signature of its authorized representative, the Grantee hereby accepts without reservation the rights and responsibilities

conveyed by this Conservation Easement. This Conservation Easement is to be effective the date recorded in the Travis County Real Property Records.

TO HAVE AND TO HOLD, this Grant of Conservation Easement unto the Grantee, its successors and assigns, forever.

IN WITNESS WHEREOF, the Grantor and Grantee, intending to legally bind themselves, have executed this Conservation Easement as of the date first written above.


[SIGNATURE PAGE FOLLOWS]

GRANTOR:

W & G PARTNERSHIP, LTD

By: ClayDesta L.P., its general partner

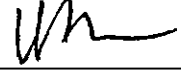
By: ClayDesta Operating LLC
Its general partner

By: 

L. Paul Latham
President

DESTA THREE PARTNERSHIP, LTD

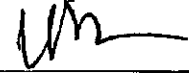
By: Desta Three Development Co.,
its general partner

By: 

L. Paul Latham
President

DESTA FOUR PARTNERSHIP, LTD


By: Desta Four Development Co.,
its general partner

By: 

L. Paul Latham
President

DESTA SIX PARTNERSHIP, LTD


By: Desta Six Development Co.,
its general partner

By: 

L. Paul Latham
President

DESTA EIGHT PARTNERSHIP, LTD

By: Desta Eight Development Co.,
its general partner

By: 

L. Paul Latham
President

GRANTEE:

HILL COUNTRY CONSERVANCY,
a Texas non-profit corporation

By:

Steve Drenner
President

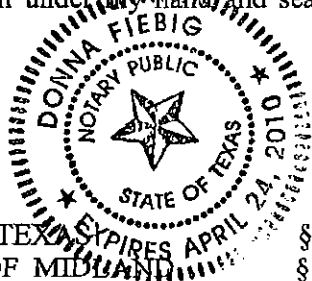
EXHIBITS:

Exhibit A - Property Description
Exhibit B - Management Plan
Exhibit C - Irrigation Plan

STATE OF TEXAS
COUNTY OF MIDLAND

BEFORE Me, the undersigned authority, on this day personally appeared L. Paul Latham, President of ClayDesta Operating, LLC, general partner of ClayDesta, L.P, its general partner of W & G PARTNERSHIP, LTD, known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the said and that he executed the foregoing being informed of the contents of same, as such officer and with full authority, as the act of such corporation on behalf of the company for the purposes and consideration therein expressed, and in the capacity therein stated.

Given under my hand and seal of office this the 17 day of December, 2008.

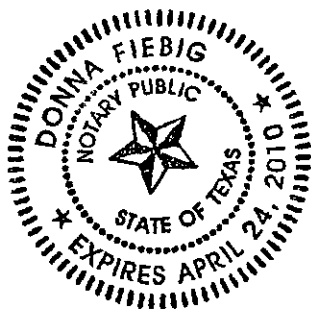


Donna Fickig
Notary Public in and for
Midland County, State of Texas

STATE OF TEXAS
COUNTY OF MIDLAND

BEFORE Me, the undersigned authority, on this day personally appeared L. Paul Latham, President of Desta Three Development Co, general partner of Desta Three Partnership, LTD, known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the said and that he executed the foregoing being informed of the contents of same, as such officer and with full authority, as the act of such corporation on behalf of the company for the purposes and consideration therein expressed, and in the capacity therein stated.

Given under my hand and seal of office this the 17 day of December, 2008.

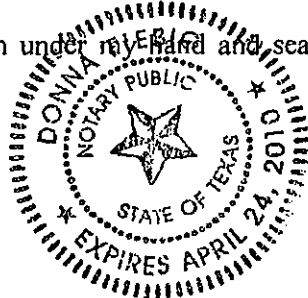


Donna Hilbig
Notary Public in and for
Midland County, State of Texas

STATE OF TEXAS §
COUNTY OF MIDLAND §

BEFORE Me, the undersigned authority, on this day personally appeared L. Paul Latham, President of Desta Four Development Co, general partner of Desta Four Partnership, LTD, known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the said and that he executed the foregoing being informed of the contents of same, as such officer and with full authority, as the act of such corporation on behalf of the company for the purposes and consideration therein expressed, and in the capacity therein stated.

Given under my hand and seal of office this the 17 day of December, 2008.

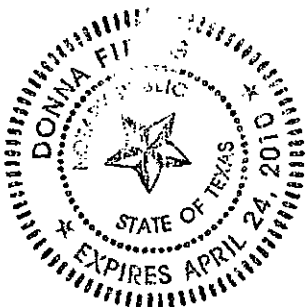


Donna Iubig
Notary Public in and for
Midland County, State of Texas

STATE OF TEXAS §
COUNTY OF MIDLAND §

BEFORE Me, the undersigned authority, on this day personally appeared L. Paul Latham, President of Desta Six Development Co, general partner of Desta Six Partnership, LTD, known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the said and that he executed the foregoing being informed of the contents of same, as such officer and with full authority, as the act of such corporation on behalf of the company for the purposes and consideration therein expressed, and in the capacity therein stated.

Given under my hand and seal of office this the 17 day of December, 2008.

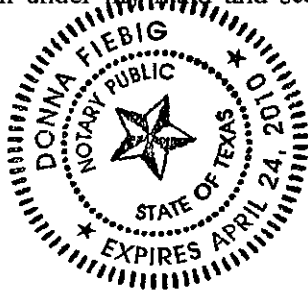


Donna Iubig
Notary Public in and for
Midland County, State of Texas

STATE OF TEXAS §
COUNTY OF MIDLAND §

BEFORE Me, the undersigned authority, on this day personally appeared L. Paul Latham, President of Desta Eight Development Co, general partner of Desta Eight Partnership, LTD, known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the said and that he executed the foregoing being informed of the contents of same, as such officer and with full authority, as the act of such corporation on behalf of the company for the purposes and consideration therein expressed, and in the capacity therein stated.

Given under my hand and seal of office this the 17 day of December, 2008.



Donna Fiebig
Notary Public in and for
Midland County, State of Texas

STATE OF TEXAS §
COUNTY OF _____ §

This instrument was acknowledged before me on the _____ day of _____, 2008, by Steve Drenner, President of HILL COUNTRY CONSERVANCY, a Texas non-profit corporation, on behalf of said corporation.

Notary Public in and for
State of Texas

EXHIBIT A
FIELD NOTES OF
PROPERTY

39.425 Acres
Page 1

Henry P. Hill Survey No. 21, Abst. No. 14
November 26, 2008
08555.70

STATE OF TEXAS

COUNTY OF TRAVIS

§
§
§

FIELDNOTE DESCRIPTION of a 39.425 acre tract out of the Henry P. Hill Survey No. 21, Abstract No. 14, Travis County, Texas, being a portion of the remainder of that 109.25 acre tract conveyed to W & G Partnership, Ltd., by deed recorded in Volume 8755, Page 519 of the Deed Records of Travis County, Texas, all of Lot 2, Block "E", The Terrace, Section Six, a subdivision recorded in Document No. 200000362 of the Official Public Records of Travis County, Texas, a portion of Lot 1 and Lot 2, Block "B". The Terrace, Section Seven, a subdivision recorded in Document No. 200100072 of the said Official Public Records and a portion of Lot 2, Block "A", The Terrace, Section Five, a subdivision recorded in Document No. 200000361 of the said Official Public Records, the said 39.425 acre tract being more particularly described by metes and bounds as follows:

BEGINNING at a ½" iron rod, without cap, found on the east line of the remainder of the said 109.25 acre tract, being the southwest corner of Lot 3, Block "A", Wallingwood, Section II-A, P.U.D., a subdivision recorded in Book 86, Pages 43A and 43B of the Plat Records of Travis County, Texas, being also the northwest corner of that 3.05 acre tract conveyed to the City of Austin by deed recorded in Volume 5024, Page 2191 of the said Deed Records and an angle point on the east line of aforesaid Lot 2, Block "E", The Terrace, Section Six, from which a cotton gin spindle found on the common line between aforesaid Lot 3, Block "A", Wallingwood, Section II-A, P.U.D., being the northeast corner of said Lot 2, Block "E", The Terrace, Section Six, bears N00°58'23"E, a distance of 271.43 feet;

THENCE, S01°02'37"W, leaving the southeast line of said Lot 2, Block "E" and the southwest corner of said Lot 3, Block "A", Wallingwood, Section II-A, P.U.D., along the common east line of the remainder of the said 109.25 acre tract and west line of the said 3.05 acre tract, a distance of 2187.50 feet to a ½" iron rod, without cap, found for the southwest corner of the said 3.05 acre tract, being an angle point on the west line of that 126.65 acre tract conveyed to the City of Austin by deed recorded in Volume 5024, Page 2197 of the said Deed Records;

THENCE, S00°32'25"W, leaving the southwest corner of the said 3.05 acre tract, along the common line between the remainder of the said 109.25 acre tract and the said 126.65 acre tract, a distance of 219.42 feet to a bolt found for the southeast corner of the aforesaid remainder of the said 109.25 acre tract, being the northeast corner of that 10.11 acre tract conveyed to the City of Austin by Judgement recorded in Volume 6656, Page 902 of the said Deed Records;

THENCE, leaving the west line of the said 126.65 acre tract, along the common line between the remainder of the said 109.25 acre tract and the said 10.11 acre tract, for the following two (2) courses:

- 1) N81°14'26"W, a distance of 1198.32 feet to a bolt found for corner;
- 2) S78°42'58"W, a distance of 90.96 feet to a TxDOT concrete monument found for the northwest corner of the said 10.11 acre tract and southeast corner of the remainder of the said 109.25 acre tract, being a point in the northeast right-of-way line of State Highway Loop 360 (right-of-way varies), said point being 390.35 feet left of State Highway Loop 360 centerline station 843+67.99;

THENCE, N33°01'49"W, leaving the northwest corner of the said 10.11 acre tract, along the common line between the remainder of the said 109.25 acre tract and the said northeast right-of-way line of State Highway Loop 360, a distance of 52.87 feet to a cotton gin spindle found for the southeast corner of said Lot 2, Block "A", The Terrace, Section Five, from which a TxDOT concrete monument found bears N33°01'49"W, a distance of 247.44 feet;

THENCE, leaving the said northeast right-of-way line of State Highway Loop 360, across the remainder of the said 109.25 acre tract, with the south line of said Lot 2, Block "A", The Terrace, Section Five, for the following three (3) courses:

- 1) N72°14'02"E, a distance of 115.83 feet to a ½" iron rod, without cap, found for corner;
- 2) N76°38'14"E, a distance of 104.60 feet to a ½" iron rod, with plastic cap marked "Capital Surveying Co., Inc.", found for corner;
- 3) N80°29'34"E, a distance of 101.79 feet to a ½" iron rod, with plastic cap marked "Capital Surveying Co., Inc.", found for corner;

THENCE, across said Lot 2, Block "A", The Terrace, Section Five, for the following four (4) courses:

- 1) N22°48'50"E, 119.71 feet to a calculated point for corner;
- 2) N69°28'48"W, 25.00 feet to the calculated point of curvature of a non-tangent curve to the right;

- 3) With the said curve to the right having a central angle of $90^{\circ}00'00''$, a radius of 5.00 feet, a chord distance of 7.07 feet (chord bears $N24^{\circ}28'48''W$), for an arc distance of 7.85 feet to the calculated point of non-tangency;
- 4) $N20^{\circ}31'12''E$, 151.05 feet to a calculated point on the common east line of aforesaid Lot 2, Block "A", The Terrace, Section Five and west line of Lot 1, Block "B", The Terrace, Section Seven, from which a $\frac{1}{2}$ " iron rod, without cap, found for the common southeast corner of aforesaid Lot 2, Block "A", and southwest corner of Lot 1, Block "B", bears $S18^{\circ}51'46''E$, 280.75 feet and also from which a cotton gin spindle found for an angle point on the aforesaid common line between Lot 2, Block "A" and Lot 1, Block "B", bears $N18^{\circ}51'46''W$, 265.77 feet;

THENCE, leaving the east line of said Lot 2, Block "A", The Terrace, Section Five, across said Lot 1, Block "B", The Terrace, Section Seven, for the following eleven (11) courses:

- 1) $N20^{\circ}31'12''E$, 79.66 feet to the calculated point of curvature of a curve to the left;
- 2) With the said curve to the left having a central angle of $54^{\circ}15'16''$, a radius of 320.00 feet, a chord distance of 291.82 feet (chord bears $N06^{\circ}36'26''W$), for an arc distance of 303.01 feet to the calculated point of non-tangency;
- 3) $S51^{\circ}05'30''E$, 90.49 feet to a calculated point for corner;
- 4) $N88^{\circ}47'37''E$, 64.33 feet to a calculated point for corner;
- 5) $N41^{\circ}38'00''E$, 32.47 feet to a calculated point for corner;
- 6) $N04^{\circ}07'59''W$, 67.67 feet to a calculated point for corner;
- 7) $N17^{\circ}22'41''W$, 68.76 feet to a calculated point for corner;
- 8) $N41^{\circ}01'21''W$, 141.56 feet to a calculated point for corner;
- 9) $N29^{\circ}45'50''E$, 136.97 feet to a calculated point for corner;
- 10) $S64^{\circ}46'54''E$, 70.67 feet to a calculated point for corner;

- 11) N42°17'46"E, 25.50 feet to a calculated point on the northeast line of aforesaid Lot 1, Block "B", being on the southeast line of Lot 2, Block "B", The Terrace, Section Seven, from which a ½" iron rod, with plastic cap marked "Capital Surveying Company, Inc.", found for an angle point on the said common line between Lot 1 and Lot 2, Block "B", bears N27°36'50"W, 332.79 feet and also from which a cotton gin spindle found for an angle point on the common line between said Lot 1 and Lot 2, Block "B", The Terrace, Section Seven, bears S27°36'50"E, 188.35 feet;

THENCE, leaving the northeast line of aforesaid Lot 1, Block "B", across said Lot 2, Block "B", The Terrace, Section Seven, for the following four (4) courses:

- 1) N42°17'46"E, 77.25 feet to a calculate point for corner;
- 2) N00°08'04"E, 79.07 feet to a calculated point for corner;
- 3) N76°31'11"W, 72.62 feet to a calculated point for point;
- 4) N30°23'19"E, 102.00 feet to a calculated point on the north line of aforesaid Lot 2, Block "B", being a point on the southeast line of said Lot 3, Block "B", The Terrace, Section Seven;

THENCE, N60°09'12"E (Basis of Bearing), with the common line between said Lot 2 and Lot 3 Block "B", The Terrace, Section Seven, for a distance of 725.38 feet to a ½" iron rod, with plastic cap marked "Capital Surveying Company, Inc.", found for the northeast corner of aforesaid Lot 2, Block "B", being the most easterly corner of Lot 3, Block "B", the southeast corner of said Lot 1, Block "B", The Terrace, Section Six, and a point on a westerly remainder line of the above said 109.25 acre tract;

THENCE, leaving the north line of said Lot 2, Block "B", The Terrace, Section Seven and Lot 3, Block "B", The Terrace, Section Seven, with the easterly line of said Lot 1, Block "E", The Terrace, Section Six and a westerly remainder line of the 109.25 acre tract, for the following three (3) courses:

- 1) N28°48'06"W, 77.23 feet to a ½" iron rod, with plastic cap marked "Capital Surveying Company, Inc.", found for an angle point;
- 2) N07°22'21"W, 67.44 feet to a cotton gin spindle found for an angle point;
- 3) N04°26'01"E, 137.31 feet to a ½" iron rod, with plastic cap marked "Capital Surveying Company, Inc.", found for the northeast corner of aforesaid Lot 1, Block "E", The Terrace, Section Seven, being the southeast corner of Lot 2, Block "E", The Terrace, Section Six;

THENCE, with the common line between said Lot 1 and Lot 2, Block "E", The Terrace, Section Six, for the following three (3) courses:

- 1) N58°30'38"W, 418.64 feet to a ½" iron rod, with plastic cap marked "Capital Surveying Company, Inc.", found for an angle point;
- 2) N27°47'32"W, 143.13 feet to a ½" iron rod, with plastic cap marked "Capital Surveying Company, Inc.", found for an angle point;
- 3) N62°07'51"W, 158.25 feet to an "X" found in concrete for the common northwest corner of aforesaid Lot 1, Block "E" and Lot 2, Block "E", being a point on the easterly right-of-way line of Via Fortuna (right-of-way varies) as dedicated by plat in Book 97, Pages 115 and 116 of the Plat Records of Travis County, Texas;

THENCE, N27°51'09"E, leaving the north line of said Lot 1, Block "E", with the common west line of Lot 2, Block "E", The Terrace, Section Six and the easterly right-of-way line of Via Fortuna, for a distance of 194.93 feet to a ½" iron rod, with plastic cap marked "Capital Surveying Company, Inc.", found for the northwest corner of aforesaid Lot 2, Block "E", being the southeast corner of Lot 3, Block "E", The Terrace, Section Three, a subdivision recorded in Book 97, Pages 113 and 114 of the said Plat Records;

THENCE, leaving the easterly right-of-way line of Via Fortuna, with the common north line of said Lot 2, Block "E", The Terrace, Section Six and south line of Lot 3, Block "E", The Terrace, Section Three, for the following six (6) courses:

- 1) S36°38'04"E, 101.91 feet to a ½" iron rod, with plastic cap marked "Capital Surveying Company, Inc.", found for an angle point;
- 2) N86°24'02"E, 54.00 feet to a ½" iron rod, without cap, found for an angle point;
- 3) N03°35'58"W, 2.62 feet to a calculated point for corner;
- 4) N86°24'02"E, 36.50 feet to a ½" iron rod, without cap, found for an angle point;
- 5) N03°35'58"W, 23.00 feet to a ½" iron rod, without cap, found for an angle point;
- 6) N86°24'02"E, 478.90 feet to a cotton gln spindle found for the common east corner of aforesaid Lot 2, Block "E", The Terrace, Section Six and Lot 3, Block "E", The Terrace, Section Three, being a point on the west line of aforesaid Lot 3, Block "A", Wallingwood, Section II-A, P.U.D.;

39.425 Acres
Page 6

Henry P. Hill Survey No. 21, Abst. No. 14
November 26, 2008
08555.70

THENCE, S00°58'23"W, leaving the south line of said Lot 3, Block "E", The Terrace, Section Three, with the common east line of Lot 2, Block "E", The Terrace, Section Six and west line of Lot 3, Block "A", Wallingwood, Section II-A, P.U.D., 271.43 feet to the POINT OF BEGINNING, CONTAINING within these metes and bounds 39.425 acres of land area.

Note: Basis of Bearing is the record bearing, as shown on the recorded plat referenced above, between Lot 2 and Lot 3, Block "B", The Terrace, Section Seven subdivision.

I, Gregory A. Way, a Registered Professional Land Surveyor, do hereby certify that the above description is true and correct to the best of my knowledge and that the property described herein was determined by a survey made on the ground under my direction and supervision.

WITNESS MY HAND AND SEAL at Austin, Travis County, Texas, this the 26th day of November, 2008.



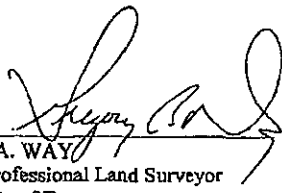

GREGORY A. WAY
Registered Professional Land Surveyor
No. 4567 State of Texas

EXHIBIT "B"

MANAGEMENT PLAN

This Management Plan is attached to and made part of the Conservation Easement. Any capitalized terms used but not otherwise defined herein has the meaning given to such terms in the Conservation Easement. Any activity on or use of the Property inconsistent with the Purpose of this Conservation Easement is prohibited.

1. **Purpose of Management Plan.** The purpose of this Management Plan is to provide guidelines for conducting the allowed activities on the Property in order to promote the purposes of the Conservation Easement. To the extent there is any conflict in the provisions of the Conservation Easement and this Management Plan, the provisions of the Conservation Easement govern. All activities allowed under the Conservation Easement must be conducted in accordance with the following provisions.

2. **Brush Management.** Management of Ashe juniper and other brushy species must be pursuant to a plan submitted in advance and approved by Grantee, setting forth the area(s) to be cleared, method of clearing, target species and erosion control measures, unless such extensive clearing is necessary for the emergency containment of wild fire and is made pursuant to the authorization of the Fire Marshal or other appropriate governmental official or authority. Vegetation may be removed as reasonably necessary for appropriate management of the Property, including removal of exotic species of vegetation, Ashe juniper and other invasive species of plants, cutting and/or trimming of trees and shrubs for trail maintenance, wildlife management, fire prevention or containment, and maintenance and enhancement of the rangeland consistent with the Purpose of this Conservation Easement. Any vegetation clearing or removal must be accomplished by hand held tools or mechanical methods (excluding the use of bulldozers, root plowing or chaining, which methods are prohibited without Grantee's prior written consent). Burning or other chemical methods are prohibited without the prior written consent of Grantee, except for the use of herbicides in connection with fence lines, as provided in Paragraph 3 below. Grantor shall not engage in any clearing activities that would violate any Applicable Laws, including the Endangered Species Act. Brush will be managed so as not to harm any species listed under the Endangered Species Act, such as the Golden-cheeked Warbler. In any event, Grantor will use its reasonable efforts to restore and stabilize the cleared area as needed to prevent erosion and sedimentation (for instance, laying cut brush perpendicular to slopes to create windrows). Areas of brushy species which are cleared must be revegetated naturally with native vegetation or with native seed mixes if Grantee determines in its reasonable discretion that such vegetation is recommended to stabilize soils. Notwithstanding anything herein to the contrary, Grantor is not allowed to cut or remove Ashe juniper or other brush or trees from areas within the Critical Water Quality Zone or from portions of the Property with a greater than 25% slope without Grantee's prior written approval, except as is necessary for the emergency containment of wild fire and pursuant to the authorization of the Fire Marshal or other appropriate governmental official or authority. As used herein, "Applicable Laws" means all laws, ordinances, statutes, codes, rules, regulations, orders and decrees of any governmental authorities having jurisdiction over the Property."

3. **Pesticides.** Only chemical pesticides that are biodegradable and approved by Grantee may be used on the Property and only if used for its intended purpose(s) and in accordance

with the manufacturer's product label. A list of pesticides currently approved by Grantee and their intended use(s) is shown on Schedule "B-2-1" attached hereto. Grantee reserves the right to modify such list of approved pesticides as it determines is reasonable to protect or enhance the surface and subsurface hydrology. Notwithstanding anything herein to the contrary, the use of chemical pesticides within 500 feet of any waterways, water wells, springs, wetlands, caves, recharge features, and other sensitive features is prohibited, unless Grantee determines in its reasonable discretion that a greater or lesser distance is appropriate. Also, broadcast (aerial) pesticide treatments are prohibited.

4. **Grazing.** There shall be no livestock grazing on the Property at any time.

5. **Agriculture and Wildlife Management Activities.** Agriculture and wildlife management operations are allowed on the Property provided such activities do not violate or otherwise negatively impair the purposes of the Conservation Easement.

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

7. **Compliance With Applicable Laws.** Grantor must comply with all Applicable Laws.

SCHEDULE "B-1" TO THE CONSERVATION EASEMENT AGREEMENT

APPROVED PESTICIDES

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

EXHIBIT "C"

