

SIDEWALK, TRAIL, AND RECREATIONAL EASEMENT

Date:

Grantor: **Roy and Cynthia Cavanaugh**

Grantor's Address:

, County,

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

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

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

Easement Duration: Perpetual

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

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

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

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

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

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

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

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

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

Executed effective the Date first above stated.

{Signatures on next page}

ROY CAVANAUGH

By: _____

STATE OF TEXAS §
COUNTY OF TRAVIS §

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

Given under my hand and seal of office on ____ .

[Seal]

Notary Public, State of Texas

CYNTHIA CAVANAUGH

By: _____

STATE OF TEXAS §
COUNTY OF TRAVIS §

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

Given under my hand and seal of office on ____ .

[Seal]

Notary Public, State of Texas

APPROVED AS TO FORM:
CITY OF AUSTIN, TEXAS
LAW DEPARTMENT

REVIEWED:
CITY OF AUSTIN, TEXAS
DEVELOPMENT REVIEW DEPARTMENT

By: _____
Name: _____
Title: Assistant City Attorney

By: _____
Name: _____
Title: _____

Draft

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

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

IF AN INDIVIDUAL, ATTACH:

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

IF A LEGAL ENTITY, ATTACH:

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

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

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

IF LIEN HOLDER, ATTACH FOR EACH LIEN HOLDER:

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

AFFIDAVIT AS TO DEBTS, LIENS, AND OCCUPANCIES
[OWNERSHIP TYPE - INDIVIDUAL]

Date:

Affiant: Roy and Cynthia Cavanaugh

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

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

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

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

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

Executed effective the Date first above stated.

ROY CAVANAUGH

By: _____

STATE OF TEXAS §
COUNTY OF TRAVIS §

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

Given under my hand and seal of office on ____ .

[Seal]

Notary Public, State of Texas

CYNTHIA CAVANAUGH

By: _____

STATE OF TEXAS §
COUNTY OF TRAVIS §

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

Given under my hand and seal of office on ____ .

[Seal]

Notary Public, State of Texas

CONSENT BY LIEN HOLDER

Date:

Lien Holder: _____, a

Lien Holder Notice Address:

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

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

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

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

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

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

Executed effective the date first above stated.

By: _____
Name:
Title:

STATE OF §
COUNTY OF §

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

Given under my hand and seal of office on _____.

[Seal]

Notary Public, State of _____

AFTER RECORDING, PLEASE RETURN TO:

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

Attn: Junie Marie Plummer
File No.: 4884.01

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