



**RCA  
CITY OF AUSTIN  
RECOMMENDATION FOR COUNCIL ACTION**

**AGENDA ITEM NO.:** 39  
**AGENDA DATE:** Thu 06/17/2004  
**PAGE:** 1 of 2

**SUBJECT:** Approve an ordinance adopting the Robinson Ranch Annexation and Development Agreement, concerning annexation and development of approximately 6300 acres of land in Travis and Williamson Counties, (known as the "Robinson Properties"), including waiving and modifying certain development regulations, fees, and procedures, for land generally located north and east of West Parmer Lane, west of FM 1325, south and southeast of RM 620. (Lake Creek, Rattan Creek and Walnut Creek Watersheds).

**AMOUNT & SOURCE OF FUNDING:** N/A

**FISCAL NOTE:** There is no unanticipated fiscal impact. A fiscal note is not required.

**REQUESTING** Watershed Protection and **DIRECTOR'S**  
**DEPARTMENT:** Development Review **AUTHORIZATION:** Joe Pantalione

**FOR MORE INFORMATION CONTACT:** Patrick Murphy, 974-2821; Greg Guernsey, 974-2387; Martha Vincent, 974-3371

**PRIOR COUNCIL ACTION:** N/A

**BOARD AND COMMISSION ACTION:** Recommended with conditions by the Environmental Board. The Zoning and Platting Commission will consider the development agreement on June 15, 2004.

**PURCHASING:** N/A

**MBE / WBE:** N/A

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City staff has negotiated an agreement providing for the phased annexation of the Robinson Ranch area, and establishing development regulations and conditions for the area.

Under the agreement, the owners have requested immediate annexation of the area for limited purposes of planning and zoning. A related limited purpose annexation ordinance, and limited purpose regulatory plan ordinance, and a PUD zoning ordinance, are also on the agenda. Under the agreement, the owners have waived the statutory requirement for conversion of the area from limited purposes to full purposes within 3 years. The agreement provides that the individual tracts will be converted to full purpose areas as those tracts receive development approvals in the form of final plat recording, or site plan or building permit approval where a plat is not required.

The term of the Agreement is 45 years. Existing quarry, ranching and agricultural related operations will be allowed to continue. Generally, except for specific provisions in the agreement, development regulations are "locked in" for three consecutive 15-year periods. Approximately 1,634 acres of "open space" are set aside, consisting of critical water quality zones along the creek beds within the area, adjacent transition zones, major headwaters and FEMA floodplain areas outside of the CWQZ and WQTZ. Development in those areas is generally restricted to passive recreational uses. Over the term of the agreement, Open Space areas will either be dedicated to the City or reserved for private use. A public



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trail easement will be reserved throughout the Open Space areas. Setbacks are also established from major headwaters and large critical environmental features.

Subdivision and site plan fees are "locked in" for a period of 10 years from the Effective Date for initial developers of tracts in the Robinson Ranch. The owners are allowed to designate specific land use categories for tracts as they apply for development approvals. Most land uses currently allowed in the city would be allowed in the area and could be designated by the owners of individual tracts, subject to site development and compatibility regulations set out in the agreement and the proposed PUD zoning ordinance. The agreement also provides for administrative approval of certain variances.



## ENVIRONMENTAL BOARD MOTION 050504-C2

Date: May 5, 2004

Subject: Robinson Ranch Development and Annexation Agreement

Motioned By: Mary Ruth Holder

Seconded By: Bill Curra

### **Recommendation**

The Environmental Board recommends conditional approval of the Robinson Ranch annexation agreement.

### **Conditions**

1. All provisions in the draft PUD Environmental Protection Plan are incorporated in the agreement.
2. Stormwater treatment systems will be designed to avoid point discharges, promote sheet flow over undeveloped vegetated open space to further enhance water quality, and minimize/mitigate loss of volumetric recharge to the aquifer.
3. Stormwater treatment for all roads should be provided.
4. No provision in the agreement will alter COA requirements for compliance with its federal 10a permit.
5. Operating quarries will not require cut and fill or construction on slopes variances until time of redevelopment.
6. Open space areas should be dedicated as public parkland or, where appropriate, managed as wildlife habitat. If some open space is privately administered, a public trail easement through it will be required.

Continued on next page

7. Open space areas will have utility easements limited to crossing only. (The Board is cognizant that in extraordinary situations it may be necessary or desirable to locate easements for underground utilities other than for crossing in transition zones, and that an amendment or variance process where the easement does not impact Critical Environmental Features could be provided in the agreement.)
8. Open space uses will be passive recreational uses only. Such uses include hiking and biking (non-motorized).
9. Temporary erosion controls and sedimentation management practices will be in accordance with the COA Environmental Criteria Manual as amended and in effect at the time of development.
10. Landscaping in all public areas will be native or in accordance with recommendations of the COA Grow Green program. The same requirement is recommended for incorporation into all commercial parcels at the time of development.
11. An IPM plan will be incorporated into each parcel as developed in order to provide maximum protection of the aquifer from toxic chemicals and other pollutants.
12. Use of coal tar base sealants or other pavement sealants will be prohibited if and when such prohibition is incorporated into the Land Development Code.
13. All health and safety code requirements, and all building code requirements will, at any time comply with code in effect at that time.

#### **Rationale**

The Board is concerned with regard to setback protection of small karst features, and also karst features within 1500 ft. of transportation nodes (none of which are given setback protection). However, the negative effects of this restriction will be at least partially offset by prohibition of development in the transition zones of major waterways, and the setbacks from small waterways (drainage areas 32 acres or more), which would not be protected under current code. There is also the expectation that many of the unprotected karst features can be addressed at the development stage by modification of drainage and/or strategic location of structures. The Board of course encourages this practice to the maximum extent possible.

The augmented major waterway setbacks also provide a unique opportunity to provide a large, contiguous greenbelt that will protect the riparian ecosystem and associated plant and animal species in perpetuity.

The Board also recognizes the importance of timely implementation of the annexation agreement in that many or most of the protections contained in the Environmental Protection Plan could be lost entirely if COA authority over development is diminished. The annexation agreement provides COA with the necessary flexibility to effect the entire annexation in a timely fashion.

Continued on next page

Vote 6-0-0-2

For: Anderson, Curra, Holder, Leffingwell, Maxwell, Moncada.

Against: None

Abstain: None

Absent: Ascot, Riley

Approved By:

Lee Leffingwell, Chair

DRAFT 5/12/04

**ROBINSON RANCH  
ANNEXATION AND DEVELOPMENT AGREEMENT**

Effective as of \_\_\_\_\_, 2004

**ROBINSON RANCH ANNEXATION AND DEVELOPMENT AGREEMENT**

THE STATE OF TEXAS

§

§

COUNTY OF TRAVIS

§

This Robinson Ranch Annexation and Development Agreement (the "Agreement") is made and entered into by and among the **CITY OF AUSTIN, TEXAS**, a municipal corporation, acting by and through its duly authorized City Manager (the "City"); and **[ROBINSON RANCH ENTITIES]** ("Robinson").

**RECITALS**

A. Robinson owns a total of approximately 6,044.64 acres of land located in Travis County, Texas and Williamson County, Texas, as described in the attached Exhibit "A" ("**Robinson Ranch**"). The majority of Robinson Ranch is located in the City's extraterritorial jurisdiction ("**ETJ**"), but not within its corporate limits. Certain small portions of Robinson Ranch have previously been annexed into the City for limited and/or full purposes and are within the City's corporate limits. Robinson also owns property contiguous to Robinson Ranch which is located in the ETJ of the City and of the City of Round Rock, Texas, but such property is not part of or covered by this Agreement.

B. The family members that comprise Robinson and their ancestors have owned or controlled the majority of Robinson Ranch for over 100 years. Robinson is not a land developer, has no current plans to develop Robinson Ranch and presently has no intention of changing the current land uses on Robinson Ranch upon the execution of this Agreement. However, as the areas surrounding Robinson Ranch continue to urbanize, the parties recognize that Robinson Ranch will also become more urbanized and lose its character as a working ranch.

C. The City initiated discussions with Robinson regarding the long term development of Robinson Ranch and desires to (i) establish, define, protect and clarify the City's jurisdictional and regulatory authority over Robinson Ranch and (ii) provide for the annexation of Robinson Ranch by the City. Robinson is entering into this Agreement and is consenting to the annexation of Robinson Ranch for limited purposes to assist the City in establishing, defining, protecting and clarifying the City's jurisdiction and regulatory authority over Robinson Ranch. The City acknowledges that Robinson's cooperation in this endeavor enables the City to establish, define, protect and clarify the City's jurisdiction and regulatory authority over Robinson Ranch and Robinson would not have consented to the limited purpose annexation of Robinson Ranch but for this Agreement.

D. In connection with the foregoing, the City and Robinson desire to establish certain restrictions and commitments imposed and made in connection with the development of Robinson Ranch; to provide increased certainty to the owners of Robinson Ranch concerning certain development rights, entitlements, arrangements and commitments for a period of years; and to identify land uses, intensity, impervious cover and other physical aspects of the Robinson

Ranch in the form of this Agreement which is promulgated under Section 172 of Chapter 212 of the Texas Local Government Code.

**NOW, THEREFORE**, for and in consideration of the mutual agreements, covenants, and conditions contained in this Agreement, and other good and valuable consideration, the City and Robinson agree as follows:

## **ARTICLE I**

### **DEFINITIONS**

**Section 1.01 Terms Defined in this Agreement.** In this Agreement, each of the following terms shall have the meanings indicated:

**“Applicable Requirements”** shall have the meaning set forth in Section 3.03a.

**“Arbitrable Dispute”** shall have the meaning set forth in Section 12.01a.

**“Arbitration Remedy”** shall have the meaning set forth in Section 12.03.

**“Cave”** shall mean a naturally occurring (including surface excavation of no more than ten {10} cubic feet of material), humanly enterable cavity in the earth, in which no dimension of the entrance exceeds the length or depth of the cavity.

**“City”** shall have the meaning set forth in the recitals to this Agreement.

**“City Code”** shall mean the City Code of Austin, together with all its related administrative rules and technical criteria manuals, except as provided by Section 3.03.

**“City Council”** shall mean the City Council of the City or any successor governing body.

**“City Green Space”** shall have the meaning set forth in Section 3.06a.

**“Dedicated Review Team”** shall have the meaning set forth in Section 3.09.

**“Director”** shall have the meaning set forth in Section 3.05a.

**“Effective Date”** and similar references shall mean the date defined in Section 13.01.

**“ETJ”** shall have the meaning set forth in the recitals to this Agreement.

**“Land Development Code”** shall mean the Land Development Code of the City, codified as Titles 25 and 30 of the City Code, except as provided by Section 3.03.

**“Major Headwaters”** shall mean a drainage way with a drainage area of at least thirty-two (32) acres which ultimately flows into Rattan Creek, Lake Creek or Walnut Creek.



**“Major Land Use Category” or “Major Land Use Categories”** shall mean the major land use categories for property within Robinson Ranch, specifically MXD, OS and/or TOD.

**“Major Mass Transit Facility”** shall mean an existing or transit-agency proposed rail station or bus rapid transit transfer station.

**“Major Recharge Feature”** shall mean a Cave with a drainage area of at least two (2) acres and at least one hundred fifty (150) cubic feet in capacity.

**“Major Transportation Facility”** shall have the meaning set forth in Section 7.05c.1.

**“MXD”** shall mean the major mixed land use category for property within Robinson Ranch which includes any combination of residential, commercial, industrial, agricultural and civic uses, as further described in Section 3.02a.

**“MXD Site Development Standards”** shall mean the site development standards for those portions of Robinson Ranch designated as MXD, and which are set forth on Exhibit “D”.

**“Notice”** shall have the meaning set forth in Section 13.09.

**“Ordinances”** shall mean the ordinances of the City.

**“OS”** shall mean the open space land use category for property within Robinson Ranch as further described in Section 3.02a.

**“OS Land”** shall have the meaning set forth in Section 3.06.

**“OS Site Development Standards”** shall mean the site development standards for those portions of Robinson Ranch designated as OS, and which are set forth on Exhibit “E”.

**“Robinson”** shall have the meaning set forth in the recitals to this Agreement.

**“Robinson Ranch”** shall have the meaning set forth in the recitals to this Agreement, and consists of the land described on Exhibit “A”.

**“Robinson Ranch Use Summary Table”** shall mean the table attached as Exhibit “B” which identifies and describes the permitted, conditional and prohibited residential, commercial, industrial, agricultural and civic uses on Robinson Ranch and related land use categories.

**“Second Applicable Requirements”** shall have the meaning set forth in Section 3.03a.

**“Specific Land Use Category” or “Specific Land Use Categories”** shall mean the specific land use categories permitted under each Major Land Use Category for property within Robinson Ranch, specifically SF-ROB, THC-ROB, MF-ROB, CO-ROB1, CO-ROB2, LI-ROB, R&D-ROB, CV-ROB and/or OS-ROB. The permitted, conditional and prohibited land uses for each Specific Land Use Category are set forth on the Robinson Ranch Use Summary Table. The Specific Land Use Categories that are permitted within portions of Robinson Ranch designated

as MXD are identified on the MXD Site Development Standards, the Specific Land Use Categories that are permitted within portions of Robinson Ranch designated as TOD are identified on the TOD Site Development Standards, and the Specific Land Use Categories that are permitted within portions of Robinson Ranch designated as OS are identified on the OS Site Development Standards.

**"Term"** and similar references shall have the meaning set forth in Section 13.02.

**"Third Applicable Requirements"** shall have the meaning set forth in Section 3.03a.

**"TOD"** shall mean the major mixed land use category required for Transit-Oriented Development within Robinson Ranch which includes any combination of residential, commercial, and civic uses (and industrial uses if allowed), as further described in Section 3.02a.

**"TOD Site Development Standards"** shall mean the site development standards for those portions of Robinson Ranch designated as TOD, and which are set forth on Exhibit "F".

**"Transit-Oriented Development"** shall mean Development that is encouraged to be of a design, configuration and mix of uses that emphasize a pedestrian-oriented environment and that reinforce the use of mass transit (rail or bus rapid transit). Transit-Oriented Development is encouraged to mix residential, retail, office, open space and public uses, within a comfortable walking distance, making it convenient for residents, workers and shoppers to travel by mass transit, bicycle or foot, as well as by car. The arrangement of uses and buildings is also encouraged to allow residents, workers and shoppers to walk or bicycle to mass transit and other destinations within the Transit-Oriented Development.

**"Undeveloped Green Space"** shall have the meaning set forth in Section 3.06a.

**Section 1.02 Other Definitions.** All capitalized terms used but not defined in this Agreement shall have the meaning given to them in the City Code.

## ARTICLE II

### LAND USE

**Section 2.01 Uses.** All uses described as permitted and conditional residential, commercial, industrial, agricultural and civic uses on the Robinson Ranch Use Summary Table attached as Exhibit "B" are permitted and conditional uses on Robinson Ranch, except as expressly modified by the terms of this Agreement. The uses described as "not permitted" on the Robinson Ranch Use Summary Table are not permitted on Robinson Ranch unless otherwise approved by the City Council. Any commercial uses added as permitted or conditional uses under the City Code after the Effective Date shall automatically become permitted uses under the CO-ROB1 and CO-ROB2 Specific Land Use Categories. Any industrial uses added as permitted or conditional uses under the City Code after the Effective Date shall automatically become permitted uses under the CO-ROB2 Specific Land Use Category and conditional uses under the CO-ROB1 Specific Land Use Category.

**Section 2.02 Continuation of Existing Uses and Activities.** Land uses and activities that currently exist within Robinson Ranch shall be allowed to continue operating in the same manner, upon annexation of Robinson Ranch into the City, subject only to whatever City regulation of those uses and activities that existed as of the day prior to the Effective Date. Current uses and activities which are expressly permitted to continue include: (i) quarrying, lime production and transportation, storage of materials and equipment for quarrying and lime production, and all related activities, including but not limited to excavating, filling, crushing and screening; (ii) ranching and agricultural related operations; (iii) hunting (including the use of firearms) and recreational (non-commercial) firearm activities; and (iv) sales and use of fireworks; provided, however, the hunting and recreational firearm activities shall not be permitted in areas that have been annexed for full purposes and sales of fireworks shall comply with all applicable state law requirements as adopted by the City. For purposes of this Section 2.02, "uses" are set forth in (i) and (ii) above, and "activities" are set forth in (iii) and (iv) above. Robinson may extend, expand or relocate the uses and activities set forth in (i) through (iv) above to any other portion of Robinson Ranch, at its sole discretion and without any City regulation whatsoever, other than whatever City regulation of such extension, expansion or relocation that may have been applicable the day before the Effective Date. Robinson will not, however, expand the quarrying use set forth in (i) above into either designated OS area or into areas within the set backs from Major Recharge Features.

### **ARTICLE III**

#### **SITE DEVELOPMENT, APPLICABLE ORDINANCES AND RELATED MATTERS**

**Section 3.01 Phased Development.** The City acknowledges that when and if Robinson Ranch develops, it will likely develop over an extended period of time in numerous multiple phases.

**Section 3.02 Land Uses.**

**a. Land Use Categories.**

**1. Applicable Major Land Use Categories.** With the exception of property to be developed under TOD Site Development Standards and property designated as OS, all of the Robinson Ranch shall be developed under the MXD Major Land Use Category, MXD Site Development Standards and Specific Land Use Categories permitted within MXD areas. Within one thousand three hundred twenty (1320) feet of a Major Mass Transit Facility Robinson Ranch shall be developed as a Transit-Oriented Development using the TOD Major Land Use Category, TOD Site Development Standards and Specific Land Use Categories permitted within TOD areas. From more than one thousand three hundred twenty (1320) feet and up to two thousand (2000) feet Robinson Ranch may, at Robinson's option, be developed as a Transit-Oriented Development using the TOD Major Land Use Category, TOD Site Development Standards and Specific Land Use Categories.

- (i) Robinson may, in its sole discretion, designate at any time and from time to time by separate instrument Specific Land Use Category designations for areas covered by the MXD designation. Robinson may designate different Specific Land Use Categories for different portions of property within the MXD areas.
- (ii) If and when the TOD Major Land Use Category is mandated, or permitted, as applicable based on Section 3.02a.1, because of the presence of a Major Mass Transit Facility, Robinson may in its sole discretion at any time and from time to time by separate instrument designate different Specific Land Use Categories for different portions of property within the TOD areas.
- (iii) The OS areas shall be comprised of the following areas and Robinson shall designate the following areas as OS: Critical Water Quality Zones, Water Quality Transition Zones, FEMA Inundation Areas, and Major Headwaters. The OS areas shall be fixed based upon the boundaries of the areas described in the preceding sentence as they exist on the Effective Date. The OS areas are generally shown on Exhibit "C".

**2. Applicable Specific Land Use Categories.** The Specific Land Use Categories within the Major Land Use Categories collectively contain all the land uses allowed by this Agreement which are identified on the Robinson Ranch Use Summary Table.

- (i) The Specific Land Use Categories that are permitted within portions of Robinson Ranch designated as MXD are identified on the MXD Site Development Standards and the Specific Land Use Categories that are permitted within portions of Robinson Ranch designated as TOD are identified on the TOD Site Development Standards. Specifically, the CO-ROB2, MF-ROB, THC-ROB, SF-ROB, LI-ROB, R&D-ROB and CV-ROB Specific Land Use Categories are permitted within portions of Robinson Ranch designated as MXD ; the CO-ROB1, MF-ROB, THC-ROB, and CV-ROB Specific Land Use Categories are permitted within portions of Robinson Ranch designated as TOD; and the OS-ROB Specific Land Use Category is permitted within portions of Robinson Ranch designated as OS. All permitted and conditional uses identified on the Robinson Ranch Use Summary Table for the Specific Land Use Category designated will be permitted and conditional uses for the portion of Robinson Ranch covered by the Specific Land Use Category designation.

- (ii) Except as modified by this Agreement, (i) the site development standards set forth on the MXD Site Development Standards shown on Exhibit "D" for each Specific Land Use Category within the MXD Major Land Use Category shall apply to those portions of Robinson Ranch designated as MXD; (ii) the site development standards set forth on the TOD Site Development Standards shown on Exhibit "E" for each Specific Land Use Category within the TOD Major Land Use Category shall apply to those portions of Robinson Ranch that shall be designated as TOD because of the presence of a Mass Transit Facility; and (iii) the site development standards set forth on the OS Site Development Standards shown on Exhibit "F" for each Specific Land Use Category within the OS Major Land Use Category shall apply to those portions of Robinson Ranch designated as OS.

**b. Designation of Specific Land Use Categories.** Within the MXD or TOD Major Land Use Categories, if a preliminary subdivision plan is required for a development, Robinson must designate the Specific Land Use Category or Categories upon the filing with the City of an application for a preliminary subdivision plan for the portion of Robinson Ranch covered by the preliminary plan application if the Specific Land Use Category or Categories was not previously declared for such portion of Robinson Ranch. If a preliminary subdivision plan is not required for a development, Robinson must designate the Specific Land Use Category or Categories upon the filing with the City of an application for a final subdivision plat for the portion of Robinson Ranch covered by the plat application if the Specific Land Use Category or Categories was not previously declared for such portion of Robinson Ranch.

**c. Example of Designation of Land Use Category.** By way of example but not limitation, if Robinson plans to develop a portion of Robinson Ranch in an area designated as MXD for a mixed-use development that includes single family residential, office, retail, restaurant, and educational facility uses and Robinson decides, in its sole discretion, to use the CO-ROB2 Specific Land Use Category, then Robinson shall designate such property as MXD/CO-ROB2 prior to or upon the preliminary subdivision plan application that covers such property (or final subdivision plat application if a preliminary subdivision plan is not required). Accordingly, (i) all permitted and conditional uses identified on the Robinson Ranch Use Summary Table for the CO-ROB2 Specific Land Use Category will be permitted and conditional uses for the portion of Robinson Ranch covered by the MXD/CO-ROB2 designation, including but not limited to single family residential, office, retail, restaurant, and educational facility uses and (ii) all development regulations applicable to the CO-ROB2 Specific Land Use Category as set forth in the MXD Site Development Standards and this Agreement shall apply to the portion of Robinson Ranch covered by the MXD/CO-ROB2 designation.

**d. Change of Designation of Specific Land Use Categories.** Robinson may designate Specific Land Use Categories for different non-OS portions of property

covered by a single preliminary plan or final plat application. Robinson shall be free to change the Specific Land Use Category designation for any non-OS portion of Robinson Ranch at any time prior to a preliminary subdivision plan application (or final subdivision plat application if a preliminary subdivision plan is not required) by written notice to the City. If a preliminary subdivision plan is required, Robinson may change the Specific Land Use Category designation for any non-OS portion of Robinson Ranch after the filing of an application for a preliminary subdivision plan covering such portion; however, Robinson must file a new preliminary subdivision plan application after such a change in Specific Land Use Category designation. Moreover, if a submitted preliminary plan or final plat has been approved by the City, in order to change the Specific Land Use Category or Categories in such an approved subdivision plan, Robinson must comply with the provisions of City Code Section 25-4-61 regarding changes to approved preliminary plans and/or final plats. In addition, Robinson shall be free to change at any time, by written notice to the City, the Specific Land Use Category designation for any non-OS portion of the Robinson Ranch for which a preliminary subdivision plan application (or final subdivision plat application if a preliminary subdivision plan is not required) has been withdrawn by Robinson or denied by the City.

**Section 3.03 Applicable Requirements.**

a. **Controlling Ordinances, Manuals, and Rules.** All of the City's laws, ordinances, manuals, and administrative rules, (including the City Code) as they regard land development as they exist as of the Effective Date of this Agreement (the "**First Applicable Requirements**") shall apply to Development within Robinson Ranch, except as otherwise specified in this Agreement. The First Applicable Requirements will apply to all Development within Robinson Ranch for fifteen (15) years from the Effective Date of this Agreement. After fifteen (15) years, the First Applicable Requirements will no longer apply, and Development within Robinson Ranch will be subject to all of the City's then current laws, ordinances, manuals, and administrative rules (including the City Code) as they regard land development. At the expiration of fifteen (15) years from the Effective Date of this Agreement, the City's then current laws, ordinances, manuals, and administrative rules, (including the City Code) as they regard land development (the "**Second Applicable Requirements**") shall apply to Development within Robinson Ranch, except as otherwise specified in this Agreement, for fifteen (15) years from the date on which the Applicable Requirements ceased to apply. After thirty (30) years from the Effective Date of this Agreement, the Second Applicable Requirements will no longer apply. At the expiration of thirty (30) years from the Effective Date of this Agreement, the City's then current laws, ordinances, manuals, and administrative rules, (including the City Code) as they regard land development (the "**Third Applicable Requirements**") shall apply to Development within Robinson Ranch, except as otherwise specified in this Agreement, for fifteen (15) years from the date on which the Second Applicable Requirements ceased to apply. After forty-five (45) years from the Effective Date of this Agreement, the Third Applicable Requirements will no longer apply and Development within Robinson Ranch will be subject to all of the City's then current laws, ordinances, manuals, and administrative rules (including the City Code) as they regard land

development. During the Term of this Agreement the provisions of Article II, Article III and Article VII of this Agreement will continue to apply to Development within Robinson Ranch even if those provisions are in conflict with the First Applicable Requirements, Second Applicable Requirements, Third Applicable Requirements, or any future City laws, ordinances, manuals, or administrative rules. Applicable City Code provisions or Ordinances regulating conduct in the nature of health or safety, which are subject to the City's police power shall not be "locked in" as of the Effective Date of this Agreement as part of the First Applicable Requirements or "locked-in" as part of the Second Applicable Requirements or Third Applicable Requirements and may be enforced as enacted or amended. Such health and safety provisions or ordinances include, but are not limited to, Title 25, Chapter 25-12 of the Austin City Code and also the City's Utility Criteria Manual. In addition, measures which the City must enact or enforce pursuant to state or federal mandates or court order may be enforced to the extent necessary to comply with state or federal law or court order. Finally, Robinson agrees that the City may enforce as enacted or amended in the future all ordinances regarding signs.

b. **City Fees.** Development of any portion of Robinson Ranch shall be subject to the City fees in effect at the time of such Development. However, with respect to each initial subdivision and site plan application processed and approved for each parcel within Robinson Ranch, for ten (10) years from the Effective Date the applicant (whether such applicant is Robinson or not) shall receive a waiver of a portion of development review and permitting fees only equal to the difference between: (i) the City's development review and permitting fees required and in effect at the time the application is submitted and (ii) the City's development review and permitting fees in effect as of the Effective Date. The City's development review and permitting fees as of the Effective Date are listed on the attached Exhibit "G". All subsequent subdivision, re-subdivision and site plan applications shall not receive a partial waiver of development review and permitting fees and shall be subject to the City's fees then in effect; provided, however, if an initial subdivision or site plan application for a parcel within Robinson Ranch is denied or withdrawn, then the subsequent subdivision or site plan application for such parcel shall be deemed the initial subdivision or site plan application and the partial waiver of development review and permitting fees described in this Section 3.03b shall apply with respect to such subsequent applications, if such subsequent applications are filed within 10 years from the Effective Date.

c. **No Special Fees.** In no event will the City impose any special fees for administering the terms of this Agreement.

**Section 3.04 Site Development Regulations.** Except as modified by this Agreement, (i) the site development standards set forth on the MXD Site Development Standards for each Specific Land Use Category within the MXD Major Land Use Category shall apply to those portions of Robinson Ranch designated as MXD; (ii) the site development standards set forth on the TOD Site Development Standards for each Specific Land Use Category within the TOD Major Land Use Category shall apply to those portions of Robinson Ranch designated as TOD; and (iii) the site development standards set forth on the OS Site Development Standards for each

Specific Land Use Category within the OS Major Land Use Category shall apply to those portions of Robinson Ranch designated as OS. On Robinson Ranch, Development shall only be required to comply with the impervious cover limits set forth in the site development standards for the land uses as set forth in the MXD Site Development Standards, the TOD Site Development Standards and the OS Site Development Standards, as applicable, and no other impervious cover limits found in the City Code shall apply. No compatibility standards shall apply to any Development within Robinson Ranch in a TOD area. In the MXD areas compatibility standards will apply in accordance with Exhibit "H." Those areas on the perimeter of Robinson Ranch which are shown on Exhibit "I", shall comply with the compatibility standards in the City Code with respect to the directly adjacent property not within Robinson Ranch. On Robinson Ranch, City Code limitations and restrictions with respect to cut, fill, spoil, construction on slopes, clearing of vegetation, clearing for or construction of private ranch or haul roadways, or blasting shall not apply with respect to current or future quarry or agricultural operation sites within Robinson Ranch, as these shall not be considered Development.

**Section 3.05 Variances.**

a. **Former Quarries.** The Director of the City's Watershed Protection and Development Review Department (the "**Director**"), or its successor department, is authorized to grant variances as the Director may elect to grant, without review by any City board, commission or council, from any City Code requirements otherwise regulating or affecting: construction of driveways, buildings, residences and other improvements on slopes created by past quarrying operations provided structural stabilizations acceptable to the Director are contained within the property on which such improvements are constructed.

b. **Platting Adjacent Property.** An automatic waiver of Subsection (B) of 25-4-33 of the Land Development Code shall be granted provided the following criteria are met: (i) subdividing only a portion of the original tract will not substantially impair the orderly planning of roads, utilities, drainage and other public facilities; and (ii) the portion of the original tract contiguous to the area to be subdivided has direct access to a public street, or the applicant has provided access to a public street by dedicating right-of-way at least 50 feet wide.

c. **Site.** The Director is authorized to grant variances as the Director may elect to grant, without review by any City board, commission or council, from any City Code requirements otherwise regulation or affecting what may constitute a Site for Development purposes.

d. **Detention.** It is anticipated that detention capacity available within Smith Lake, Ganzert Lake and other excavated areas (including the quarries) may be used to meet detention requirements for upstream development if the City criteria for the provision of offsite detention are met. Where development in Robinson Ranch employs



non-City offsite detention facilities to meet detention requirements, that development will not be subject to payment of the Regional Stormwater Management Program Fee.

**Section 3.06 Open Space.** The parties intend that after this Agreement becomes effective, all the land within the OS Major Land Use Category (each tract individually and all such tracts collectively, the "OS Land") will become subject to the use and Development restrictions on OS Land set forth in this Agreement. As Robinson Ranch develops, portions of OS Land will become either publicly owned open space or privately owned land with public trail easements in one of three ways: (1) Robinson may sell OS Land to a third-party as "Undeveloped Green Space;" (2) Robinson may dedicate OS Land to the City; or (3) Robinson may dedicate OS Land in the Critical Water Quality Zone to the City and reserve for itself "Undeveloped Green Space" adjacent to the dedicated Critical Water Quality Zone. These three options are described in more detail below.

**a. Green Space.** In this Agreement, "Undeveloped Green Space" means OS Land transferred by Robinson to a third party, or reserved by Robinson for itself. Undeveloped Green Space shall be subject to an obligation to accommodate the City's public trail easement, if required by this Agreement, along both sides of the waterway. If an trail easement is required by this Section 3.06, the easement shall be granted to the City in a form reasonably acceptable to the City. In this Agreement, "City Green Space" means OS Land dedicated to the City.

**1. Trail Easement.** The public trail easement required by this Section 3.06a shall be fifteen (15) feet wide, shall be located on both sides of the waterway (the easement on each side being a separate fifteen (15) foot wide portion of the easement), and shall follow generally along the direction of the waterway as the waterway traverses the OS Land corridor. The trail may cross the waterway or be connected across the waterway. The City shall maintain the trail easement. In the Critical Water Quality Zone, whether privately owned or owned by the City, the City may align the trail in its sole discretion. The City shall make all reasonable attempts to align the trail in the Critical Water Quality Zone. In the event, however, that the City seeks to locate the trail in privately owned land outside the Critical Water Quality Zone, the City and Robinson, or its successor or assign, must reach mutual agreement about the location of the trail easement. If no agreement is reached about the alignment of the trail in privately held land outside the Critical Water Quality Zone within ninety (90) days of Notice initiating discussions, the location of the trail easement shall be decided by arbitration as described in XII of this Agreement.

**2. Configuration of Third-Party Owned Undeveloped Green Space.** Subject to the limitations of Section 3.06a.4, Undeveloped Green Space sold by Robinson to a third-party may consist of any portion of OS Land.

**3. Configuration of Robinson Owned Undeveloped Green Space.** In conjunction with the dedication of OS Land to the City, and without the

necessity of a third-party sale, Robinson may reserve for itself certain Undeveloped Green Space. Robinson may only reserve for itself Undeveloped Green Space that is located outside the Critical Water Quality Zone. Undeveloped Green Space reserved by Robinson must border contemporaneously dedicated Critical Water Quality Zone land, and must traverse the length of the contemporaneously dedicated Critical Water Quality Zone land. The Critical Water Quality Zone land required to be dedicated by Robinson contemporaneously with a reservation of Undeveloped Green Space shall extend from the center of the waterway to one Critical Water Quality Zone boundary.

**4. Maximum Amount.** Robinson agrees that Undeveloped Green Space shall not exceed fifty (50%) percent of the OS Land. Robinson agrees that Undeveloped Green Space in the Water Quality Transition Zone will not exceed fifty (50%) percent of the Water Quality Transition Zone land found in the OS Land.

**b. Incremental Establishment of Undeveloped Green Space.** The parties agree that as Robinson Ranch develops, OS Land will be established as Undeveloped Green Space or City Green Space or a combination of Undeveloped Green Space and City Green Space in accordance with the following:

**1. Trigger.** Upon the first to occur of: (a) approval of a final plat or plats, (b) for Development for which a final plat is not required, approval of a site plan or site plans, or (c) for Development for which neither a final plat nor site plan is required, issuance of a building permit or permits (hereafter in this Section 3.06 "final plat" "final plats" or "final platted" shall mean the first to occur of (a), (b) or (c)) that include land totaling five percent (5%) of the total non-OS Land area of Robinson Ranch, Robinson shall establish Undeveloped Green Space and/or City Green Space, in any combination at Robinson's sole discretion, totaling five percent (5%) of the OS Land. Thereafter, for every additional incremental five percent (5%) of the non-OS Land area of Robinson Ranch for which a final plat or plats is approved, Robinson shall establish an additional five percent (5%) of the OS Land as Undeveloped Green Space or City Green Space. All OS Land previously established as Undeveloped Green Space or dedicated as City Green Space shall be counted toward each incremental five percent (5%) requirement.

**(i) Infrastructure.** On Robinson Ranch, a final plat for Development that is either: (a) a Major Transportation Facility or (b) utility infrastructure maintained by a public entity shall not be counted as part of the described five (5%) percent trigger.

**2. Location.** Undeveloped Green Space and/or City Green Space must adjoin final platted land, previously established Undeveloped Green Space, or an existing public roadway, and the dedicated OS Land shall have public

access points. Incremental establishments of Undeveloped Green Space as described in Section 3.06b, must consist of contiguous sections of OS Land. Prior to each incremental establishment of Undeveloped Green Space or City Green Space, Robinson shall attempt to reach agreement with the City regarding the location of OS Land to be dedicated or reserved.

**3. Configuration.** Dedications to the City of OS Land as City Green Space shall consist of sections of OS Land that extend: (a) from one side of the OS Land corridor to the other side of the OS Land corridor, or (b) from one side of the OS Land corridor to the center of the waterway within the OS Land corridor, or (c) from one side of the OS Land Corridor to the boundary between the Water Quality Transition Zone and Critical Water Quality Zone on either side of the waterway; or (d) across the waterway to both boundaries of the Critical Water Quality Zone with the Water Quality Transition Zone.

**c. Final Dedication of OS Land.** Upon the approval of a final plat or plats for land totaling seventy-five (75%) percent or more of the non-OS Land on Robinson Ranch, any land within the OS Major Land Use Category that has not been dedicated to the City as City Green Space, or reserved for Undeveloped Open Space shall be dedicated to the City by Robinson within sixty (60) days of a request by the City for such dedication.

**1. Condemnation.** Neither condemnation of a portion of Robinson Ranch by a public entity nor the sale by Robinson of land to be used as part of a Major Transportation Facility or for utility infrastructure maintained by a public entity may serve as the trigger for the final dedication of OS Land, unless the condemnation or sale for a Major Transportation Facility or utility infrastructure results in final platting of ninety (90%) percent or more of Robinson Ranch.

**d. Miscellaneous.** The City shall accept dedications of OS Land made in accordance with this Section 3.06. The City's obligation to accept dedications of OS Land made in accordance with this Section 3.06 does not apply in the event that OS Land is offered for dedication in order to comply with the parkland dedication requirements of Section 25-4-211 et seq. of the City Code.

**Section 3.07 Parkland Dedication.** The parkland dedication requirements of Section 25-4-211 et seq. of the City Code apply to all residential property to be developed within Robinson Ranch.

**Section 3.08 Transportation Analysis.** In recognition of the major transportation corridors that surround and bisect Robinson Ranch, the original development of any portion of the Robinson Ranch will be exempt from any requirement to obtain a traffic impact analysis and the City hereby waives the requirement of any such analysis in connection with the land uses contemplated by this Agreement for the original development of the Robinson Ranch. For purposes of this paragraph "original development" means any development on the Robinson

Ranch other than the existing uses and activities described in Section 2.02, and which requires the submission of a plat and/or site plan application to the City. Subsequent development on the Robinson Ranch will require a traffic impact analysis. For purposes of this paragraph, "subsequent development" of a tract means the removal and/or replacement of improvements that were the result of original development of the Robinson Ranch, provided such removal and/or replacement requires the submission of a new plat and/or site plan application.

**Section 3.09 Dedicated Review Team.** The City will establish and maintain throughout the term of this Agreement a dedicated permit review team in the Watershed Protection and Development Review Department, Neighborhood Planning and Zoning Department, and Water and Wastewater Department, or their successor departments, who will be responsible for the review, processing and approval of all subdivision plats, site development permits, and all other permits for development within Robinson Ranch which are normally processed by such departments, or their successor departments (the "**Dedicated Review Team**"). The Dedicated Review Team will be familiar with the terms and provisions of this Agreement, and other issues particular to Robinson Ranch and, accordingly, will be in a position to more efficiently process and expedite applications for permits, subdivision plat approvals and site development permit approvals for projects within Robinson Ranch. The initial Dedicated Review Team will be designated to Robinson by the City Manager in writing within thirty (30) days after the Effective Date of this Agreement. All development review, although conducted by Dedicated Review Team, will be subject to the then current City development review processes and procedures.

**Section 3.10 City Code Amendment.** This Agreement is approved by ordinance of the City Council and the ordinance adopting this Agreement is an amendment to the City Code to the extent necessary to give effect to this Agreement. The City specifically acknowledges that all processes required for the enactment of such ordinances have been duly observed. The City agrees to promptly take any and all action necessary to cure any alleged defects in the process required for enactment of such ordinances or any alleged defects in the process for entering into this Agreement if such alleged defects are raised by any third party or party to this Agreement.

#### **ARTICLE IV**

#### **AMENDMENTS**

**Section 4.01 Amendments to Agreement.** This Agreement may be amended only by a written agreement signed by the City and Robinson, or all the then current owners of all portions of Robinson Ranch (other than the individual owners of occupied single family, duplex, townhouse or attached single family residential lots); provided, however, an owner of a portion of Robinson Ranch (other than an individual owner of an occupied single family, duplex, townhouse or attached single family residential lot) and the City may amend this Agreement as it relates solely to such owner's parcel without the joinder of any other landowner. In addition, as long as Robinson owns any portion of Robinson Ranch, Robinson and the City may amend this Agreement without the joinder of any other landowner.

## ARTICLE V

### ANNEXATION

#### **Section 5.01 Annexation.**

**a. Limited Purpose Annexation.** By the execution and in consideration of the mutual covenants of this Agreement, Robinson agrees to and requests the annexation of Robinson Ranch into the City for the limited purposes of planning and zoning only. If the City does not annex Robinson Ranch for the limited purposes of planning and zoning only within ninety (90) days of execution of this Agreement by both parties, this Agreement shall automatically terminate and the planned unit development land use plan application for Robinson Ranch submitted in connection with the annexation shall automatically be withdrawn.

**b. Full Purpose Annexation.** Robinson hereby waives the City's obligation to annex Robinson Ranch for full purposes within three (3) years of the date Robinson Ranch is annexed for limited purposes pursuant to Section 5.01a above. Instead, after Robinson Ranch is annexed for limited purposes, Robinson requests, and the City shall have the option, but not the obligation, to annex for full purposes portions of Robinson Ranch under the following terms and according to the following schedule:

1. At any time after the first to occur of: (a) recording of a final plat or plats, (b) for Development for which a final plat is not required, approval of a site plan or site plans, or (c) for Development for which neither a final plat nor site plan is required, issuance of a building permit or permits (hereafter in this Section 5.01 "final plat" "final plats" or "final platted" shall mean the first to occur of (a), (b) or (c)), the City may annex those portions of Robinson Ranch included in the final plat;

2. Concurrent with the annexation of any land for which a final plat has been recorded, the City may annex any portions of Robinson Ranch necessary to establish contiguity between the land within the recorded final plat and the then-existing full purposes City limits, provided however, unless otherwise authorized in writing by Robinson or the owner of the property affected, the maximum width annexed for such contiguity purposes shall be no greater than, at the City's option, either: (a) fifty (50) feet in width whether over land or adjacent to existing right of way, or (b) the width of an existing right of way if the City elects to annex right of way to establish contiguity. The City shall attempt to reach agreement with Robinson regarding the location of land annexed to establish contiguity. In the event the City and Robinson do not reach agreement on the location of such land annexed for contiguity, the City first shall attempt to establish contiguity along or adjacent to existing public rights of way, rather than annexing over land, to the extent feasible in the City's reasonable determination. Notwithstanding anything in this paragraph, absent Robinson's agreement, the

City will not establish contiguity over land by annexing any portion of the lime plant unless no other means exists to establish contiguity;

3. The City may annex those portions of Robinson Ranch mutually agreed to be annexed for full purposes by the parties; or

4. The City may annex for full purposes any portion of Robinson Ranch which remains unannexed forty-four (44) years and six (6) months from the Effective Date of this Agreement.

During the Term of this Agreement, the City shall not annex any part of Robinson Ranch for full purposes except as provided in paragraphs 1 through 4 above. Specifically, the City shall not annex the lime plant or its related operations without the consent of Robinson. Notwithstanding Section 5.01b.4, The City and Robinson agree that following the expiration of the Term of this Agreement it is the intention of the parties that the City will continue to annex property for full purposes as it is final platted. Accordingly, provided that, as of forty-four (44) years and six (6) months from the Effective Date of this Agreement, the City continues to have the statutory power to annex for full purposes the un-platted portions of Robinson Ranch at the expiration of the Term of this Agreement, the City will not annex un-platted portions of Robinson Ranch pursuant to Section 5.01b.4. In the event, however, that absent this Agreement, the City does not have the discretionary power to annex for full purposes the un-platted portions of Robinson Ranch, the City may proceed to annex for full purposes the unannexed portions of Robinson Ranch pursuant to Section 5.01b.4 of this Agreement, and Robinson consents to such annexation if Robinson's consent is necessary because of changes in state law.

## ARTICLE VI

### UTILITIES

**Section 6.01 Water and Wastewater Service.** The City agrees to provide water and wastewater service to Robinson Ranch in accordance with its service, rate and extension policies applicable to similarly situated properties within the City's service area.

**Section 6.02 Electric Service.** For those portions of Robinson Ranch within the City's service area, the City agrees to provide electric service to Robinson Ranch in accordance with its service, rate and extension policies applicable to similarly situated properties within the City's service area. The City acknowledges that portions of Robinson Ranch are within a dual electric service area and that electric service may be provided to those portions of Robinson Ranch by other providers.

**Section 6.03 Fees.** The City agrees to provide utility services in accordance with rates and other policies applicable to all other similarly situated properties and City utility customers.

## ARTICLE VII

### ENVIRONMENTAL PROTECTION

**Section 7.01 Critical Water Quality Zones.** Waterway classifications, corresponding setbacks and development prohibitions for Critical Water Quality Zones are in accordance with the Land Development Code.

**Section 7.02 Water Quality Transition Zones.** Waterway classifications and corresponding setbacks for Water Quality Transition Zones are in accordance with the Land Development Code. Despite any provision in the Land Development Code to the contrary, no development is permitted in any Water Quality Transition Zones, except for the following: the permitted and conditional uses set forth on the Robinson Ranch Use Summary Table for the OS-ROB Specific Land Use Category; and utility, roadway, and railway crossings that are allowed in the Critical Water Quality Zone. Water and wastewater utilities are permitted in Water Quality Transition Zones provided the water and wastewater utilities are designed and constructed in a manner to protect Critical Environmental Features and to prevent the diversion and alteration of the natural conveyance of ground water.

**Section 7.03 Major Headwaters.** A setback of fifty (50) feet will be provided from the centerline of the drainage way of a Major Headwaters. The following development is permitted within a setback or buffer from the centerline of the drainage way of a Major Headwaters: the permitted and conditional uses set forth on the Robinson Ranch Use Summary Table for the OS-ROB Specific Land Use Category; water quality controls that consist of natural treatment systems, such as wet ponds, constructed wetlands or vegetated filter strips; and utility and roadway crossings that can not be reasonably located elsewhere.

**Section 7.04 Critical Environmental Features.** Protection of bluffs, canyon rimrock, springs and wetlands will be in accordance with the Land Development Code. With regard to recharge features, setbacks are only required for Major Recharge Features. Such setbacks may vary in distance and shape. Major Recharge Feature setbacks shall not, however, exceed the following:

- a. one hundred (100) feet from the edge of the opening of such Major Recharge Feature; and
- b. three hundred (300) feet from a single point on the edge of the upstream opening of such Major Recharge Feature, which upstream setback shall not, in any event, exceed the actual drainage area of such Major Recharge Feature.

**Section 7.05 Provisions Regarding Certain Setbacks.**

- a. **Bluffs.** No setbacks shall be required from bluffs associated with quarries.
- b. **Endangered Species Caves.** With regards to the caves on the Robinson Ranch listed in the City's "10a Permit" with U.S. Fish & Wildlife, the City and Robinson

recognize that as of the Effective Date of this Agreement, several possibilities exist for the protection (if necessary) of those caves. Those possibilities include, but are not limited to: acquisition of the caves by a third party, the establishment of a karst preserve on the Robinson Ranch or elsewhere, or the substitution of other caves on the Robinson Ranch or elsewhere for the caves listed in the 10a permit. The City and Robinson further realize that any resolution will require the permission/approval of U.S. Fish & Wildlife, assuming U.S. Fish & Wildlife retains jurisdiction. Accordingly, Robinson agrees not to disturb by Development the Endangered Species Caves on the Robinson Ranch listed in the City's 10a permit without the written consent of U.S. Fish & Wildlife, as long as U.S. Fish & Wildlife has jurisdiction because of the Endangered Species Act.

**c. No Setbacks Near Major Transportation Facility Intersections.** Notwithstanding anything in this Agreement to the contrary, no setbacks shall be required for any Major Recharge Feature which is located within 1,500 feet of the center of the intersection of two Major Transportation Facilities.

**1. "Major Transportation Facility,"** for purposes of this Agreement, means: (a) a Freeway, Parkway, Expressway, Toll Road, Major Arterial Divided, Major Arterial Undivided, or Minor Arterial as defined and contained in the most recently adopted version of the Capital Area Metropolitan Planning Organization Transportation Plan, as amended from time to time or (b) a railway.

**Section 7.06 Water Quality Controls.** Water quality controls for new development will be in accordance with the Land Development Code. Robinson shall not be obligated by the City to construct, maintain, finance, or grant any type of property interest for any water quality or detention facilities related to any county, state or federally maintained roadway or transportation corridor.

## **ARTICLE VIII**

### **ROADWAYS, DRIVEWAYS AND SIDEWALKS**

**Section 8.01 Roadways.** The following will apply with regard to roadways platted and/or constructed on Robinson Ranch:

**a.** Upon approval from the provider of fire protection and emergency medical services stating no objection to the contrary for proposed roadway facilities, the Watershed Protection and Development Review Department of the City, or its successor department, may grant administrative waivers without review by any City board, commission or council to the provisions of the City Code with regard to: private streets provisions in Section 25-4-171(A) (Access to Lots), prohibitions on block lengths exceeding the limitations in Sections 25-4-152 (Dead-End Streets) and 25-4-153 (Block Length) of the Land Development Code, taking into consideration topography, traffic circulation and access to pedestrian and transit facilities.



b. Any private street developed on Robinson Ranch will be treated as a "roadway" for purposes of Sections 25-8-341 (Cut Requirements) and 25-8-342 (Fill Requirements) of the Land Development Code;

c. The Director may approve alternate urban street standards under Section 25-6-171 (Standards for Design and Construction) of the Land Development Code;

d. At the time the subdivision construction plans are prepared, the City and the developer of the subdivision will identify potential locations for traffic signals. The developer, at its expense, will install the necessary traffic signal infrastructure, including conduit, pole foundations and pull boxes, to accommodate the identified potential traffic signals.

**Section 8.02 Driveways and Access.** Driveways and curb cuts to public rights-of-way from commercial, industrial, civic and multifamily areas shall be permitted at least every 200 feet. Driveways and curb cuts shall be permitted from every lot within a single family residential area. Notwithstanding the foregoing, Robinson acknowledges that certain driveways and curb cuts to public rights-of-way maintained by the State of Texas may be subject to driveway and access standards established by the Texas Department of Transportation. In addition, Robinson acknowledges and agrees that the City may prohibit certain driveways and curb cuts if such driveways or curb cuts create a traffic safety hazard.

**Section 8.03 Sidewalks.** Sidewalks shall not be required within platted areas that provide alternative methods of pedestrian access, such as pedestrian/bicycle trails; provided, however, any such alternative methods of pedestrian access must comply with the Americans with Disabilities Act and the corresponding laws of the State of Texas. In addition, sidewalks constructed on private streets may be constructed with widths, locations and materials other than those required by the City Code; provided, however, any such sidewalks must comply with the Americans with Disabilities Act and the corresponding laws of the State of Texas, and provided that the sidewalks are a minimum of four feet wide, are convenient to persons who will use them, and are constructed of durable materials.

## **ARTICLE IX**

### **CONDITIONS PRECEDENT; REPRESENTATIONS AND WARRANTIES**

**Section 9.01 Conditions Precedent.** After the execution of this Agreement, the following conditions set forth in this Article IX must occur in order for this Agreement to become effective:

a. Approval by a majority of the City Council of an ordinance annexing Robinson Ranch for the limited purposes of planning and zoning;

b. Approval by a majority of the City Council of the planned unit development land use plan for Robinson Ranch submitted in connection with the limited purpose annexation of Robinson Ranch;

c. This Agreement, including the conditions precedent set forth in this Section 9.01, is not intended to bind, and the parties agree in fact and law that the Agreement does not bind, the legislative discretion of the City Council to approve or disapprove any proposed annexation ordinance or proposed planned unit development land use plan for Robinson Ranch.

The conditions precedent set forth above are not subject to waiver, unless such waiver is approved in writing by a resolution of the City and Robinson.

**Section 9.02 Representations and Warranties of Robinson.**

a. **Organization and Good Standing.** Robinson consists of individuals and multiple partnerships and trusts, each of which is duly organized and validly existing in good standing under the laws of the State of Texas, with full power and authority to conduct its business as it is now being conducted, to own or use the properties and assets that it purports to own or use, and to perform all its obligations under this Agreement.

b. **Authority, No Conflict.** This Agreement constitutes the legal, valid and binding obligation of Robinson, enforceable against Robinson in accordance with its terms. Robinson has the absolute and unrestricted right, power, authority, and capacity to execute and deliver this Agreement and to perform its obligations under this Agreement.

**Section 9.03 Representations and Warranties of the City.**

a. **Organization and Good Standing.** The City is a duly organized and validly existing municipal corporation in good standing under the laws of the State of Texas, with full power and authority to conduct its business as it is now being conducted, to own or use the properties and assets that it purports to own or use, and to perform all its obligations under this Agreement.

b. **Authority; No Conflict.** This Agreement constitutes the legal, valid and binding obligation of the City, enforceable against the City in accordance with its terms. The City has the absolute and unrestricted right, power, authority, and capacity to execute and deliver this Agreement and to perform its obligations under this Agreement.

**ARTICLE X**

**FRUSTRATION OF PURPOSE**

**Section 10.01 Frustration of Purpose.**

a. If any word, phrase, clause, sentence, paragraph, section or other part of this Agreement is modified in whole or in part as a result of modifications or amendments to the underlying statutory authority for this Agreement, or a final judicial decree for which all appeals have expired or been exhausted, or if the Texas Legislature modifies or amends state law in a manner having the effect of limiting or curtailing the

City's ability to maintain Robinson Ranch as a limited purpose annexation area, and to annex Robinson Ranch for full purposes in accordance with the provisions of this Agreement, then the parties agree and understand that the purpose of this Agreement may be frustrated.

b. If one party contends that a frustration of purpose has occurred, that party shall notify all other parties in writing of the alleged frustration of purpose and the factual and legal basis for that claim.

c. The parties agree that upon receipt of Notice of an alleged frustration of purpose, the parties will meet and confer and attempt to amend or revise the Agreement to accomplish to the greatest degree practical the same purpose and objective of the part of this Agreement effected by the frustration of purpose.

d. If the parties cannot agree within 90 days of one party notifying the other parties in writing of an alleged frustration of purpose to a mutually agreeable amendment or revision to this Agreement, either party may thereafter file a court action, or as provided in Article XII a Notice of Arbitration, seeking a declaration that a frustration of purpose has occurred. If neither party files such an action within thirty (30) days of the 90-day period just described, then no frustration of purpose will have occurred, and this Section 10.03 will be inapplicable unless and until either party sends another notification pursuant to Section 10.03c. If a court of competent jurisdiction or an arbitration panel provided for in Article XII issues an order, which becomes final because of the exhaustion of all appellate rights, ("final order") which final order adjudicates that the Agreement has had its purpose frustrated; the parties agree to again attempt for ninety (90) days to amend or modify this Agreement to the extent necessary to address the frustration of purpose declared by the final order. The parties agree that they will attempt to amend or revise this Agreement to the greatest degree practical to accomplish the same purpose and objective of the part of this Agreement that has been frustrated as declared by the court or arbitration panel. If the parties cannot agree on any such amendment or revision within ninety (90) days from the date of the final order, then either party may:

1. Terminate this Agreement, and this Agreement shall no longer apply to those portions of Robinson Ranch which have not been annexed for full purposes. It is the intent of the parties that, to the extent allowed by law, the portions of Robinson Ranch to which this Agreement ceases to apply shall return to their jurisdictional status as the property existed on the date immediately prior to the Effective Date of this Agreement;

2. Notwithstanding Section 10.03e.1 above, any portion of the property which has not yet been annexed for full purposes, but for which water or wastewater service has been made available or for which water and wastewater service is planned and for which the City has awarded a contract for construction of infrastructure to provide service to that portion of Robinson Ranch, the City

may annex such areas for full purposes within 60 days of any termination of this Agreement pursuant to this Section 10.03; and

3. If this Agreement is not terminated by either party within sixty (60) days after such ninety (90) post-final judgment, amendment or revision period, the City may, at its sole option, proceed to annex for full purposes those portions of Robinson Ranch which have not been previously annexed for full purposes.

## ARTICLE XI

### **DEFAULT AND REMEDIES FOR DEFAULT**

**Section 11.01 Preventative Default Measures.** The parties presently enjoy a good working relationship and understand the meaning and intent of this Agreement; however, the parties recognize that individual representatives of each of the parties will likely change over the course of this Agreement, particularly those of the City. The City accordingly agrees that oversight of the implementation of this Agreement shall at all times during its term be assigned directly to an Assistant City Manager (or equivalent). In the event of a dispute involving an interpretation or any other aspect of this Agreement, upon Robinson's request, such Assistant City Manager shall convene a meeting of the parties as soon as reasonably practical and use all reasonable efforts to avoid processing delays and to resolve the dispute and carry out the spirit and purpose of this Agreement.

**Section 11.02 Default.** It shall be a default under this Agreement by a party, if such party shall fail to perform any of its obligations under this Agreement and such failure shall remain uncured following the expiration of ten (10) business days after written Notice of such failure. However, in the event the default is of a nature that cannot be cured within such ten (10) day period, the defaulting party shall have a longer period of time as may be reasonably necessary to cure the default in question; but, in no event more than forty-five (45) days.

**Section 11.03 City's Default.** In addition, the City shall be in default under this Agreement if the City unreasonably withholds the approval or release of any proposed development, development permit, utility service extension request and/or development application with respect to Development on any portion of Robinson Ranch that complies with the terms of this Agreement. The City shall also be in default if it imposes any requirements, standards, moratoria, or interim development controls upon Robinson Ranch that are in conflict with or limit the express provisions of this Agreement. The City shall not, however, be in default based upon the imposition of temporary moratoria due to an emergency constituting an imminent threat to the public health or safety, provided that any such moratorium will continue with respect to Robinson Ranch only during the duration of the emergency.

**Section 11.04 Remedies between the City and Robinson.** Should any default between Robinson and the City remain uncured after Notice to the other as provided in Section 11.02, the non-defaulting party, whether Robinson or the City, may pursue any remedy that is available at

law or in equity at the time of the breach, including, but not limited to: damages, including damages for delays in development approval caused by a City default, code enforcement, mandamus, injunctive relief, termination of the remaining term of the Agreement, rescission, reverter, and/or specific performance. The remedies listed in this paragraph are cumulative. For purposes of this Section 11.04 only, "Robinson" refers only to the signatories to this Agreement, both the individuals and the entities, but not the individuals or the entities that constitute or comprise the signatories that are entities.

**Section 11.05 Remedies between the City and Third Parties.** Should any default between a third party (that is, any individual or entity other than Robinson, as Robinson is defined in Section 11.04), and the City remain uncured after Notice to the other as provided in Section 11.02, the City may pursue the remedies listed in Section 11.04 against the third party, and the third party may pursue all remedies listed in Section 11.04 against the City except that a third party shall not be able to pursue the remedies of termination, rescission, or reverter, such remedies belonging exclusively to Robinson (as Robinson is defined in Section 11.04).

**Section 11.06 Mediation.** In order to avoid unnecessary litigation, in the event that either party fails to cure an alleged default within the cure period set out in Section 11.02 above, then if requested by either party, prior to seeking any form of relief from a court of law or agency of competent jurisdiction, each party agrees to enter into mediation concerning the alleged default for a period of not more than thirty (30) days prior to the filing of any court action. Nothing in this Agreement shall be construed to limit the parties from mediating a default after any court or agency action may have been filed.

**Section 11.07 No Liability For Actions of Others.** Except as expressly set forth: (a) the liabilities, obligations and responsibilities of each owner, their successors and assigns, under this Agreement are several, and not joint; and (b) no owner, or successor or assign, of any portion of Robinson Ranch will be in default under this Agreement or otherwise liable or responsible for any default which is not caused by such landowner or by any person acting by, through or under such owner or successor or assign.

## ARTICLE XII

### ARBITRATION

**Section 12.01 Agreement to Arbitrate.** The parties agree that certain disputes that may arise between or among Robinson, its successors and assigns, and the City may be submitted to binding arbitration (an "Arbitrable Dispute"). An Arbitrable Dispute may be resolved by binding arbitration solely and exclusively in Austin, Travis County, Texas.

**a. Meaning of Arbitrable Dispute.** Only certain disputes may be the subject of binding arbitration. The parties agree that the arbitration panel shall not have jurisdiction to determine the arbitrators' jurisdiction or to determine arbitrability. Accordingly, if the parties do not agree that a dispute is an Arbitrable Dispute, a state district court in Texas shall determine the arbitrators' jurisdiction and/or arbitrability in a

summary proceeding. Disputes concerning the following issues, and no others, are an Arbitrable Dispute under this Agreement:

1. Whether a frustration of purpose has occurred as described in Article X of this Agreement; and
2. The location of a trail easement as described in Section 3.06 of this Agreement.

All other disputes shall be resolved only in state district court in Texas. The parties also expressly agree, without limiting the variety of non-Arbitrable Disputes, that the City shall not be compelled to arbitrate any claim for prohibitive or compulsory injunctive relief by the City against Robinson seeking to enforce Robinson's compliance with the terms of this Agreement.

**Section 12.02 Binding Arbitration.** Upon the request of any party, whether made before or after the institution of any legal proceeding, any Arbitrable Dispute between or among the parties must be resolved by binding arbitration in accordance with the terms and provisions of this Article XII. Either party may, by summary proceeding bring an action in court to compel arbitration of any Arbitrable Dispute.

**Section 12.03 Arbitration Remedy.** The parties agree that the arbitration panel's remedy powers are limited. The arbitration panel may only issue a declaratory judgment (the "Arbitration Remedy") with regard to an Arbitrable Dispute. The arbitration panel may not award money damages, grant injunctive relief, or issue any other form of legal or equitable relief that is not expressly provided for in this Section 12.03.

**Section 12.04 Governing Rules.** This Agreement is governed by the Federal Arbitration Act. All Arbitrable Disputes between the parties may be resolved by binding arbitration in accordance with the terms of this Agreement and the commercial arbitration rules of the American Arbitration Association (the "Arbitration Rules"). In the event of any inconsistency between this Agreement and the Arbitration Rules, this Agreement shall control. Judgment upon the Arbitration Remedy rendered by the arbitration panel shall be binding and may be entered in state district court in Texas. Such judgment on an Arbitrable Dispute shall not be subject to appeal.

**Section 12.05 Exceptions to Arbitration; Preservation of Remedies.** As described in this Article XII, the arbitration rights of the parties to this Agreement are limited. Additionally, even for an Arbitrable Dispute, no provision of, or any exercise of any arbitration rights shall limit the right of any party, and the parties shall have the right during any Arbitrable Dispute to seek, use and employ ancillary or preliminary remedies, judicial or otherwise, including without limitation, rights and remedies relating to (a) exercising otherwise lawful self-help remedies or (b) obtaining provisions or ancillary remedies such as injunctive relief, sequestration or attachment from a state district court in Texas, during or after the pendency of any arbitration.

**Section 12.06 Statute of Limitation.** All statutes of limitation that would otherwise be applicable shall apply to any arbitration proceeding under this Agreement.

**Section 12.07 Exhaustion of Remedies.** The agreement to arbitrate Arbitrable Disputes reflected in this Article XII shall not in any way alter any otherwise existing requirement that a party exhaust its remedies with the City prior to seeking judicial relief.

**Section 12.08 Appointment or Arbitrators; Scope of Remedy.** All arbitration proceedings shall be submitted to a panel of three arbitrators. Each party shall appoint one arbitrator. The parties agree that the two party-appointed arbitrators may be non-neutral. The two party-appointed arbitrators shall select a mutually agreeable and neutral third arbitrator. The neutral third arbitrator who is selected by the two party-appointed arbitrators shall serve as chair of the arbitration panel. The arbitration panel shall resolve any Arbitrable Dispute in accordance with the applicable substantive law and this Agreement. The arbitration panel may not grant any remedy other than an Arbitration Remedy.

**Section 12.09 Other Arbitration Manners.** To the maximum extent practicable, an Arbitrable Dispute shall be concluded within one hundred eighty (180) days of the filing of the Arbitrable Dispute for arbitration by Notice. The Texas Rule of Civil Procedure and the Texas Rules of Evidence will apply in any arbitration of an Arbitrable Dispute. The provisions of this agreement to arbitrate Arbitrable Disputes shall survive the termination, amendment or expiration of the Term of this Agreement, unless the parties otherwise expressly agree in writing.

**Section 12.10 Arbitration Expenses.** Each of the parties to any arbitration of an Arbitrable Dispute shall pay an equal share of the arbitration fees and any costs of the arbitration as those fees and costs come due. Upon the conclusion of any arbitration proceeding of an Arbitrable Dispute, the prevailing party, as determined by the arbitration panel, shall be entitled to recover from the non-prevailing party, the prevailing party's reasonable and necessary attorneys' fees and expenses in connection with such arbitration, and arbitration fees and costs previously advanced by the prevailing party. An award of reasonable and necessary attorneys' fees and expenses, and previously advanced arbitration fees and costs shall not be subject to appeal.

## ARTICLE XIII

### MISCELLANEOUS PROVISIONS

**Section 13.01 Effective Date.** The "Effective Date" of this Agreement shall be \_\_\_\_\_, 2004.

**Section 13.02 Term.** This Agreement shall commence and bind the parties on the Effective Date and continue in three fifteen (15) year periods, which second and third (15) fifteen year periods are hereby agreed to and are automatically renewing without any further actions of the parties until a date which is forty-five (45) years from the Effective Date, unless sooner terminated by express written agreement executed by both parties (the "Term").

**Section 13.03 Termination.** This Agreement may be terminated as to all of Robinson Ranch only by express written agreement executed by the City and Robinson, or all the then current owners of all portions of Robinson Ranch (other than owners of occupied single family, duplex, townhouse, or attached single family residential lots). This Agreement may be terminated as to a portion of Robinson Ranch only by express written agreement executed by the City and the owners of the portion of land affected by the termination. In the event this Agreement is terminated by mutual agreement of the parties or by its terms, the parties shall promptly execute and file of record in the Official Public Records of Travis County, Texas and Williamson County, Texas, a document confirming the termination of this Agreement, and such other documents as may be appropriate to reflect the basis upon which such termination occurs.

**Section 13.04 Addition of Land.** The City acknowledges that Robinson may, in the future, desire to add additional property to the property that is subject to this Agreement. If Robinson, or its successors or assigns, owns or acquires property from within the areas described on Exhibit "J" that it desires to add to and make subject to this Agreement, Robinson, or its successors or assigns, will give written notice to the City of the addition, which will include a description of the property to be added. The City's approval of the addition of property within the areas described on Exhibit "J" will not be required. The term "Robinson Ranch" as used throughout this Agreement shall include any property added pursuant to the terms of this Section 13.04. If any property is added to this Agreement by virtue of this Section 13.04, the City shall initiate a zoning case and an annexation case within 60 days of the addition of the property to the Agreement to annex and zone the property consistent with the applicable Major Land Use Category.

**Section 13.05 Agreement Binds Succession and Runs with the Land.** This Agreement shall bind and inure to the benefit of the parties, their successors and assigns. The terms of this Agreement shall constitute covenants running with the lands comprising Robinson Ranch and shall be binding on all future developers and owners of property in Robinson Ranch. A memorandum of this Agreement, in the form attached as Exhibit "K", shall be recorded in the Official Public Records of Travis County, Texas and Williamson County, Texas (as applicable). Nothing in this Agreement is intended to impose obligations on individual owners of platted single family, duplex, townhouse or attached single family residential lots, except as set forth in Section 13.06.

**Section 13.06 Restrictive Covenants.** Upon the transfer of any portion of Robinson Ranch, Robinson, its successors or assigns, shall execute and record a restrictive covenant that expressly restricts the conveyed property to the applicable terms of this Agreement; provided, however, with respect to a fully developed and improved lot within Robinson Ranch acquired by an end-buyer, the restrictive covenant shall only restrict such lot to the land use and development regulations set forth in this Agreement, which shall include, without limitation, a restriction that the end-buyer consents to full purpose annexation by the City.

**Section 13.07 Assignment.** Robinson may assign this Agreement with respect to all or part of the Robinson Ranch from time to time to any party. Robinson shall provide the City notice of any such assignment. Upon such assignment or partial assignment, Robinson shall be



fully released from any and all obligations under this Agreement and shall have no further liability with respect to this Agreement for the part of the Robinson Ranch so assigned.

**Section 13.08 Entire Agreement.** This Agreement and the agreements between the parties referenced in this Agreement, contain the entire agreement of the parties. There are no other agreements or promises, oral or written, between the parties regarding the subject matter of this Agreement. This Agreement can be amended only by written agreement signed by the parties as provided for in this Agreement. This Agreement and the agreements between the parties referenced in this Agreement, supersede all prior agreements between the parties concerning the subject matter of this Agreement.

**Section 13.09 Notice.** It is contemplated that the parties will engage in informal communications with respect to the subject matter of this Agreement. However, any formal notices or other communications ("Notice") required to be given by one party to another by this Agreement shall be given in writing addressed to the party to be notified at the address set forth below for such party, (i) by delivering same in person, (ii) by depositing the same in the United States Mail, certified or registered, return receipt requested, postage prepaid, addressed to the party to be notified, or (iii) by depositing the same with Federal Express or another nationally recognized courier service guaranteeing "next day delivery", addressed to the party to be notified, or (iv) by sending same by telefax with confirming copy sent by mail. Notice deposited in the United States mail in the manner described above shall be deemed effective from and after the earlier of the date of actual receipt or three (3) days after the date of such deposit. Notice given in any other manner shall be effective only if and when received by the party to be notified. For the purposes of notice, the addresses of the parties shall, until changed as provided below, be as follows:

Robinson: Mr. A. H. Robinson, III  
P. O. Box 9556  
Austin, TX 78766

With copy to: David B. Armbrust / Richard T. Suttle, Jr.  
Armbrust & Brown, L.L.P.  
100 Congress, Suite 1300  
Austin, Texas 78701

City: City of Austin  
Attn: Mayor / City Manager  
P.O. Box 1088  
Austin, Texas 78767

With copy to: City of Austin  
Attn: City Attorney  
P.O. Box 1088  
Austin, Texas 78767

The parties shall have the right from time to time to change their respective addresses, and each shall have the right to specify as its address any other address within the United States of America by at least five (5) days written notice to the other party. If any date or any period provided in this Agreement ends on a Saturday, Sunday or legal holiday, the applicable period for calculating the notice shall be extended to the first business day following such Saturday, Sunday or legal holiday.

**Section 13.10 Estoppel Certificate.** Within five (5) days after receipt of a written request by Robinson or a current owner of a tract in Robinson Ranch, the City will certify in a written instrument duly executed and acknowledged to any person, firm or corporation specified in such request as to (i) the validity and force and effect of this Agreement in accordance with its terms; (ii) modifications or amendments to this Agreement and the substance of such modifications or amendments; (iii) the existence of any default to the best of the City's knowledge; and (iv) such other factual matter that may be reasonably requested.

**Section 13.11 No Joint Venture.** It is acknowledged and agreed by the parties that the terms of this Agreement are not intended to and shall not be deemed to create any partnership or joint venture among the parties. The City, its past, present and future officers, elected officials, employees and agents of the City, do not assume any responsibilities or liabilities to any third party in connection with the development of Robinson Ranch.

**Section 13.12 Time.** Time is of the essence in all things pertaining to the performance of this Agreement.

**Section 13.13 Severability.** If any provision of this Agreement is illegal, invalid, or unenforceable under present or future laws, then, and in that event, it is the intention of the parties that the remainder of this Agreement shall not be affected.

**Section 13.14 Waiver.** Any failure by a party hereto to insist upon strict performance by the other party of any material provision of this Agreement shall not be deemed a waiver of such provision or of any other provision of this Agreement, and such party shall have the right at any time(s) thereafter to insist upon strict performance of any and all of the provisions of this Agreement.

**Section 13.15 Attorney's Fees and Court Costs.** In the event that any matter relating to this Agreement results in the institution of legal proceedings by any party to this Agreement, the prevailing party in such proceeding shall be entitled to recover all costs and expenses incurred by it in connection with such proceedings, including, without limitation, reasonable court costs and reasonable attorneys' fees

**Section 13.16 Applicable Law and Venue.** THE CONSTRUCTION AND VALIDITY OF THIS AGREEMENT SHALL BE GOVERNED BY THE LAWS OF THE STATE OF TEXAS (WITHOUT REGARD TO CONFLICTS OF LAW PRINCIPLES). Venue for any dispute arising from or related to this Agreement shall be in a Texas state district court and shall be in accordance with the Texas Civil Practice and Remedies Code.

**Section 13.17 Reservation of Rights.** To the extent not inconsistent with this Agreement, each party reserves all rights; privileges and immunities under applicable laws.

**Section 13.18 Further Assurances.** Both parties agree that at any time after execution of this Agreement, they will, upon request of the other party, execute and deliver such further documents and do such further acts and things as may be reasonably necessary or desirable to effectuate the terms of this Agreement.

**Section 13.19 Incorporation of Exhibits and Other Documents by Reference.** All Exhibits and other documents attached to or referred to in this Agreement are incorporated by reference for the purposes set forth in this Agreement.

**Section 13.20 Counterparts.** This Agreement may be executed in multiple counterparts which shall be construed together as a single original instrument as though all parties had signed one instrument, and, when executed, each counterpart shall be binding upon and inure to the benefit of each of the parties executing the instrument whether or not all other parties have executed same.

**Section 13.21 Exhibits.**

- Exhibit "A" – Description of Robinson Ranch
- Exhibit "B" – Robinson Ranch Use Summary Table
- Exhibit "C" – OS Areas
- Exhibit "D" – MXD Site Development Standards
- Exhibit "E" – TOD Site Development Standards
- Exhibit "F" – OS Site Development Standards
- Exhibit "G" – City of Austin Development Review and Permitting Fees as of the Effective Date
- Exhibit "H" – MXD Compatibility Standards
- Exhibit "I" – Boundary Areas to Comply with City Code Compatibility Standards
- Exhibit "J" – Description of Property That Can Be Added to Agreement
- Exhibit "K" – Memorandum of Development Agreement

DRAFT 5/12/04

**COUNSEL FOR CITY:**

APPROVED AS TO FORM BY:

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

EXECUTED in multiple counterparts, each of which shall constitute an original, this  
\_\_\_\_\_ day of \_\_\_\_\_, 2004.

**CITY:**

**CITY OF AUSTIN,**  
a home rule city and Texas municipal corporation

By: \_\_\_\_\_  
Printed Name: Toby Futrell  
Title: City Manager  
Date: \_\_\_\_\_

**ROBINSON:**

**[ROBINSON],** a \_\_\_\_\_

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_