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DANA DEBEAUVOIR  
COUNTY CLERK  
TRAVIS COUNTY TEXAS

## CONSERVATION EASEMENT AGREEMENT

### PREAMBLE

This Conservation Easement Agreement ("**Agreement**") is made by and between Concordia University at Austin, a Texas non-profit corporation ("**Grantor**") and Travis County, a governmental entity and political subdivision of the State of Texas ("**Grantee**").

### RECITALS

- A. Grantor is the owner of that certain real property in Travis County, Texas, being an approximately 250.65 acre tract described as a portion of Lot 2 of the Schlumberger Subdivision, a Resubdivision of Lot 1 Canyon Creek, Section Two, according to the plat filed under Document 200000066 of the Official Public Records of Travis County, Texas, and being more particularly described on Exhibit "A" attached hereto and incorporated herein by reference (hereinafter referred to as the "**Preserve Tract**").
- B. Grantee is a party to the Interlocal Cooperation Agreement dated August 3, 1995, between Grantee and the City of Austin implementing the Balcones Canyonlands Conservation Plan Shared Vision (the "**Regional Plan**"). The Regional Plan is outlined and described in the "Habitat Conservation Plan and Environmental Impact Statement" dated March 1996, between the City of Austin and Grantee. The City of Austin and Grantee are referred to in the Regional Plan as the "**Permit Holders**" and are sometimes referred to in this Agreement collectively as the "**Regional Plan Permit Holders**". The Balcones Canyonlands Coordinating Committee (the "**Coordinating Committee**") is an entity which was created pursuant to Section 791.013 of the Texas Government Code and established by Grantee and the City of Austin to implement and administer the Regional Plan.
- C. The Coordinating Committee administers the Regional Plan under the terms of the regional permit issued by the United States Fish & Wildlife Service (the "**USFWS**") under its Permit No. PRT 788841 on May 2, 1996 (the "**Regional Permit**"). In accordance with the Regional Plan and under the terms of the Permit, the Regional Plan Permit Holders operate and maintain a regional endangered species habitat preserve known as the Balcones Canyonlands Preserve (the "**Regional Preserve**").
- D. The Preserve Tract is in a substantially undisturbed natural and open space condition and the USFWS has determined that the Preserve Tract contains natural habitat of the golden-cheeked warbler (*Dendroica chrysoparia*) (the "**GCWA**"). The GCWA has been listed as

endangered species under the Federal Endangered Species Act of 1973, as amended, 16 USC Section 1531 et seq. (the "*Act*").

- E. Grantor is the permittee under that certain Federal Fish and Wildlife Permit issued by the USFWS under its Permit No. TE-827597-2 dated effective December 21, 2005 (the "*Site Permit*"). The Site Permit covers an approximately 438.8 acre tract of land, more particularly described as Lots 1, 2, 3 and 4, Schlumberger Subdivision, a Resubdivision of Lot 1, Canyon Creek Section 2, a subdivision in Travis County, Texas, according to the plat filed under Document 200000066 of the Official Public Records of Travis County, Texas (the "*Parent Tract*") of which the Preserve Tract is a part. The Site Permit and the Regional Permit are collectively referred to herein as the "*Permits*." The Parent Tract save and except the Preserve Tract is referred to herein as the "*Development Tract*."
- F. Grantor now desires to grant to Grantee a conservation easement over and across the Preserve Tract pursuant to the terms of this Agreement (the "*Conservation Easement*") and in accordance with the Permits.
- G. Grantee has agreed to accept the Conservation Easement granted hereunder for inclusion in the Regional Preserve under the terms of the Regional Plan and in accordance with the Regional Permit.

NOW THEREFORE, for and in consideration of the premises herein stated and the mutual covenants, terms, conditions and restrictions set forth in this Agreement, Grantor and Grantee hereby incorporate the Recitals within the body of this Agreement, and further agree as follows:

1. **Conveyance of Easement.** Pursuant to Texas Natural Resource Code Section 183.001 et seq., Grantor voluntarily grants to Grantee the Conservation Easement in perpetuity over, upon and across the Preserve Tract, subject to the terms and provisions of this Agreement.
2. **Purpose of Easement.** The purpose of the Conservation Easement is to ensure that the Preserve Tract will be retained forever predominantly in its natural and openspace condition as part of the Regional Preserve and to prevent any use of the Preserve Tract that will impair or interfere with the open space condition of the Preserve Tract, except as otherwise allowed under this Agreement. Without limitation on the generality of the

foregoing, Grantor and Grantee agree that it is the purpose of the Conservation Easement: (i) to ensure that the Preserve Tract will be preserved as breeding habitat for the GCWA and/or other endangered species listed in the Site Permit; (ii) to prevent activities which are inconsistent with the purposes of the Conservation Easement and which might damage, compromise or interfere with the ecological diversity or resource quality of the Preserve Tract or the natural processes occurring within the Preserve Tract; (iii) to prevent any use of the Preserve Tract that is inconsistent with the requirements of the Site Permit; (iv) to ensure that the Preserve Tract is managed so as to meet the requirements for mitigation under the Regional Plan for the incidental take of endangered species within the Property.

3. **Duration of Conservation Easement.** The Conservation Easement, with its rights and privileges, is and shall be perpetual.
4. **Rights Included in the Conservation Easement.** Grantee will have the right to use and obligation, pursuant to the Regional Permit, to maintain the Preserve Tract for the purposes specified in **Paragraph 2** hereinabove and in any manner which is consistent with the terms and provisions of this Agreement. To carry out the purpose of the Conservation Easement, Grantor hereby conveys to Grantee under the terms and provisions of this Agreement: (a) the right to identify, preserve, protect and enhance the natural, open space, and endangered species habitat features of the Preserve Tract (including, but not limited to, the clearing of vegetation, controlled burning of vegetation, wildlife population management, revegetation activities and/or other activities for such purposes, provided such activities are not otherwise specifically prohibited under this Agreement or the Permits; and (b) the right of ingress and egress to and from the Preserve Tract as may be reasonably necessary for Grantee to exercise its rights and obligations hereunder. The rights of access granted to Grantee hereunder shall not be construed to prohibit or deny Grantee the right of access to and from the Preserve Tract from adjacent rights of way or through other points of access which may be otherwise lawfully available to Grantee. Grantee is allowed to mark the boundaries of the Preserve Tract with signs in accordance with the provisions more particularly provided in **Exhibit "B"**.
5. **Access to Preserve Tract.** Notwithstanding any provision herein to the contrary, however, it is agreed and understood that the retention of property rights by Grantor hereunder is not intended to reserve unto Grantor any rights of entry onto the Preserve Tract which are greater than or in addition to those specific rights of entry which are expressly granted or reserved to Grantor under the terms and provisions of this

Agreement. GRANTOR HEREBY EXPRESSLY WAIVES THE RIGHT TO EXPLORE OR DRILL FOR OR MINE ANY OIL, GAS, OR MINERALS UPON OR WITHIN THE PRESERVE TRACT. Finally, and by way of further clarification of the foregoing statements, Grantor expressly waives all rights to enter upon and/or utilize the surface of the Preserve Tract, except as specifically provided in **Paragraphs 6 and 7** below and **Exhibit "C"** or as otherwise approved by the USFWS and Grantee (collectively, the "***Reserved Rights***").

6. **Trails.** Grantor, other owners of any portion of the Development Tract and their respective employees and invitees shall have access to the existing trail system located in the Preserve Tract in accordance with the provisions more particularly set forth in **Exhibit "C"**.
7. **Utilities.** Grantee acknowledges that Grantor has indicated a desire to place a utility line and possible water quality pond within the Preserve Tract. Such activity and use of the Preserve Tract will be allowed hereunder subject, however, to the written consent of the USFWS and Grantor's compliance with any terms and conditions required by the USFWS and Grantee in connection therewith.
8. **Usage Requirements and Fencing.** Grantor and Grantee each covenant to comply with their respective obligations and the requirements set out in **Exhibit "C"** attached hereto and incorporated herein by reference.
9. **Costs, Expenses and Liabilities.** Grantor is responsible for the payment of ad valorem taxes on the Preserve Tract. In addition, Grantor has agreed to bear and pay for certain costs, expenses and liabilities for the operation and maintenance of the Preserve Tract as set out on **Exhibit "D"** attached hereto and incorporated herein by reference.
10. **Baseline.** Grantor and Grantee agree to undertake certain actions and obligations to determine the acceptable baseline condition of the Preserve Tract as outlined on **Exhibit "E"** attached hereto and incorporated herein by reference.
11. **Transfer Rights.** Grantor has the right to sell, gift, mortgage, lease, or otherwise convey the Preserve Tract, provided such conveyance is subject to the terms of this Agreement and the Site Permit.

12. **Exceptions to Conveyance Warranties.** The Conservation Easement is conveyed by Grantor hereunder and accepted by Grantee hereunder subject to: all easements, rights of way, reservations, mineral severances, covenants, conditions, restrictions and other title exceptions of record which affect the Preserve Tract.
13. **Compliance with Laws.** Grantor agrees to comply at all times at Grantor's sole cost with all applicable federal, state and local laws, rules, regulations and safety standards in connection with Grantor's activities upon, within or in connection with the Preserve Tract. Grantee agrees to comply at all times, at Grantee's sole cost, with all applicable federal, state and local laws, rules, regulations and safety standards in connection with Grantee's activities upon, within or in connection with the Preserve Tract.
14. **INDEMNITY OBLIGATIONS. GRANTOR SHALL AND HEREBY AGREE TO INDEMNIFY AND HOLD GRANTEE AND GRANTEE'S ADMINISTRATORS, SUCCESSORS AND ASSIGNS HARMLESS FROM AND AGAINST ALL LIABILITIES, DAMAGES, SUITS, ACTIONS, COSTS AND EXPENSES OF WHATSOEVER NATURE (INCLUDING REASONABLE ATTORNEYS' FEES) WHETHER ARISING OUT OF INJURY TO PERSONS OR PROPERTY OR OTHERWISE, CAUSED BY OR ARISING OUT OF ANY OF GRANTOR'S OPERATIONS OR ACTIVITIES UPON, OR IN CONNECTION WITH THE PRESERVE TRACT, INCLUDING ANY HARM WHICH COULD OCCUR TO GRANTOR OR ITS INVITEES WHILE ENTERING ONTO THE PRESERVE TRACT WHETHER OR NOT PERMISSION WAS GRANTED BY GRANTEE FOR THE ACCESS UNLESS CAUSED BY THE NEGLIGENCE OR WILLFUL MISCONDUCT OF GRANTEE, ITS EMPLOYEES, AGENTS OR CONTRACTORS.**
15. **Entirety of Agreement and Modification.** This instrument contains the entire agreement between the parties relating to the rights herein granted and the obligations herein assumed. Any prior agreements, promises, negotiations, or representations not expressly set forth in this Agreement are of no force or effect. Any oral representations or modifications concerning this Agreement shall be of no force or effect, excepting a subsequent modification in writing signed by the party to be charged and expressly approved by an authorized representative of such party. No official, representative, employee, or agent of Grantee has any authority to modify or amend this Agreement except pursuant to specific authority to do so granted by Grantee. No official,

representative, employee or agent of any of Grantor has any authority to modify or amend this Agreement except pursuant to specific authority to do so granted by Grantor.

16. **Successor and Assigns.** This Agreement and its covenants and restrictions shall run with the land and: (a) shall be binding upon Grantor and all future owners of the Permitted Tract and Grantee and Grantee's successors and assigns; and (b) shall inure to the benefit of Grantor and Grantor's successors and "**Designated Assignees**" and Grantee and Grantee's successors and "**Designated Assignees**". For purposes of this Agreement the term "**Designated Assignees**" shall mean and refer to the assignees of either party to this Agreement which are specifically referenced as the assignees of the rights of such party under this Agreement in a written instrument which is executed and acknowledged by Grantor or Grantee, as applicable, and recorded in the Official Public Records of Travis County, Texas. The mere conveyance of real property will not qualify the transferee of such real property as one of the "**Designated Assignees**" of either party hereunder unless the specific provisions of the immediately preceding sentence are strictly complied with.

17. **Remedies.**

- a. Enforcement. Each party has the right to enforce its rights under this Agreement and to enforce the duties and obligations of the other parties under this Agreement.
- b. Relief. If any party fails to cure a violation under this Agreement within thirty (30) days after receipt of written notice thereof, or under circumstances where the violation cannot reasonably be cured within a thirty (30) day period, fails to begin curing such violation within the thirty (30) day period, or fails to continue diligently to cure such violation until finally cured, the other parties may utilize all legal remedies available to that party.
- c. Scope of Relief. The rights under this **Paragraph 17** apply equally in the event of either actual or threatened violations of the terms of this Agreement. The remedies described in this **Paragraph 17** shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.
- d. Forbearance. Forbearance by any party to exercise its rights under this Agreement in the event of any breach of any term of this Agreement shall not be deemed or construed to be a waiver of such term or of any subsequent breach of

the same or any other term of this Agreement or of any rights under this Agreement. No delay or omission in the exercise of any right or remedy upon any breach by either party shall impair such right or remedy or be construed as a waiver.

- e. Acts Beyond Either Party's Control. Nothing contained in this Agreement shall be construed to entitle any party to bring any action against any other party for any injury to or change in the Preserve Tract resulting from causes beyond such other party's control, including, without limitation, fire, flood, storm, acts of God and earth movement, or from any prudent action taken by such other party under emergency conditions to prevent, abate, or mitigate significant injury to the Preserve Tract resulting from such causes.
- f. Mediation. When mediation is acceptable to both parties in resolving a dispute arising under this Contract, the parties agree to use the Dispute Resolution Center of Austin, Texas as the provider of mediators for mediation as described in Section 154.023 of the Texas Civil Practice and Remedies Code. Unless both parties are satisfied with the result of the mediation, the mediation will not constitute a final and binding resolution of the dispute. All communications within the scope of the mediation shall remain confidential as described in Section 154.073 of the Texas Civil Practice and Remedies Code, unless both parties agree, in writing, to waive the confidentiality.

18. **Notice.** Any notice, approval, consent or other required communication to be given hereunder by either party to the other shall be in writing and may be effected by personal delivery in writing, or registered or certified mail, return receipt requested, when mailed by U.S. mail to the proper party, at the following addresses:

**GRANTOR:**

Concordia University at Austin  
Attn: Rev. Dr. David Kluth, VP University Services  
3400 IH 35 North  
Austin, Texas 78705

GRANTEE:

Travis County Transportation and Natural Resources  
Attn: Mr. John Kuhl, Division Director  
Natural Resources and Environmental Quality  
P.O. Box 1748  
Austin, Texas 78767

with copies to:

Honorable David Escamilla (or his successor in office)  
Travis County Attorney  
P.O. Box 1748  
Austin, Texas 78767  
Attn: File No. 163.1930

Each party may change the address for notice to it by giving notice of such change in accordance with the provisions of this paragraph.

19. **Headings.** The headings at the beginning of the various provisions of this Agreement have been included only in order to make it easier to locate the subject covered by each provision and are not to be used in construing this Agreement.
20. **Number and Gender Defined.** As used in this Agreement, whenever the context so indicates, the masculine, feminine, or neuter gender and the singular or plural number shall each be deemed to include the others.
21. **Assignment.** Grantee may, without necessity of obtaining the consent of Grantor, assign Grantee's rights and obligations under this Agreement to any other governmental entity which: (a) has the financial capability of fulfilling all of the obligations of Grantee under this Agreement; and (b) has been approved by the USFWS. Otherwise, Grantee may not assign its rights and obligations under this Agreement without the prior written approval of Grantor. Grantor may assign Grantor's rights and obligations under this Agreement to any third party to whom fee title to the Preserve Tract (or a portion thereof) is conveyed, provided such party assumes in writing Grantor's obligations hereunder. In such event, Grantor may request to be released from its obligations hereunder and Grantee agrees that such request shall not be unreasonably denied, conditioned or delayed. Grantor shall be released from its obligations under this Agreement at such time that any approved assignee executes a written agreement assuming Grantor's obligations hereunder.



Otherwise, Grantor may not assign its rights, powers, responsibilities and/or obligations under this Agreement in whole or in part at any time without the written approval from Grantee, which approval shall not be unreasonably withheld, conditioned or delayed.

22. **Amendment.** Grantor and Grantee may amend this Agreement provided such amendment will not (a) be contrary to or conflict with the purposes of the Conservation Easement, (b) result in a termination of this Agreement or the Conservation Easement, or (c) affect in any way the qualification of the Conservation Easement or the status of Grantee under any applicable laws, including without limitation, Section 170(h) of the Internal Revenue Code. Such amendment must be in writing, signed by Grantor and Grantee and recorded in the Official Public Property Records, Travis County, Texas.
23. **Multiple Counterparts.** This Agreement may be executed in multiple counterparts each of which shall constitute a duplicate original hereof, but all of which together shall constitute one and the same instrument.
24. **Due Authorization.** The person or persons executing this Agreement on behalf of Grantee hereby represent to Grantor that the Commissioners Court of Travis County has approved this Agreement and that such person or persons have the power and authority to execute this Agreement on behalf of Grantee and to bind Grantee to the terms hereof. The person or persons executing this Agreement on behalf of Grantor hereby warrant and represent to Grantee that Grantor has approved this Agreement and that such person or persons have the power and authority to execute this agreement on behalf of Grantor and to bind Grantor to the terms hereof.
25. **USFWS Matters.** Grantor and Grantee both agree to operate in good faith under the terms of this Agreement and each party agrees that it will not unreasonably withhold or unduly delay any requested approval or other action under the terms of this Agreement. Notwithstanding the foregoing, however, Grantor expressly agrees that, notwithstanding any provision in this Agreement to the contrary, Grantee will not be liable for monetary damages arising out of any denial of approval or any action taken by Grantee based upon written instructions which have been received by Grantee from the USFWS. Additionally, the USFWS is a third party beneficiary of the rights of Grantee under this Agreement and has the right to enforce compliance by Grantor and Grantee with the terms and provisions of this Agreement.

26. **Review by Counsel.** Grantor and Grantee represent to each other that it has read and consents to the terms and conditions of this Agreement. Grantor and Grantee have each had the opportunity to discuss the terms and conditions of this Agreement with their respective attorney. Grantor acknowledges that the Travis County Attorney's Office does not, and has not, represented Grantor in the preparation and execution of this Agreement.

[Signatures on following page]

Executed to be effective as of the date of final execution of the parties set out herein below (the "Effective Date").

**GRANTOR:**

CONCORDIA UNIVERSITY AT AUSTIN,  
a Texas non-profit corporation

By: David Kluth  
Name: DAVID KLUTH  
Title: VP - University Services  
Date: 5/23/07

**GRANTEE:**

TRAVIS COUNTY,  
a political subdivision of the State of Texas

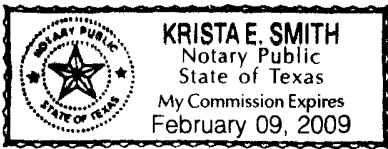
By: Samuel T. Biscoe  
Samuel T. Biscoe, County Judge  
Date: 4-17-07 (CC)

THE STATE OF TEXAS §  
  §  
COUNTY OF TRAVIS §

This instrument was acknowledged before me on the 23<sup>rd</sup> day of May, 2007, by David Kluth, VP-University Services of Concordia University at Austin, a Texas non-profit corporation, on behalf of such corporation.

Krista E. Smith  
Notary Public Signature

(SEAL)



THE STATE OF TEXAS §  
COUNTY OF TRAVIS §

This instrument was acknowledged before me on this 31 day of May, 2007 by Samuel T. Biscoe, County Judge of Travis County, a political subdivision of the State of Texas, on behalf of said County.



Melissa Velasquez  
Notary Public Signature

(SEAL)

**EXHIBIT "A"**

The Metes and Bounds Description of the Preserve Tract and Map

FIELD NOTES  
FOR

10 A PERMIT AREA NO. 1 – 19.97 ACRES

ALL OF THAT CERTAIN TRACT OR PARCEL OF LAND BEING A PORTION OF LOTS 1 AND 2, SCHLUMBERGER SUBDIVISION, A SUBDIVISION IN TRAVIS COUNTY, TEXAS, AS RECORDED IN DOCUMENT NO. 200000066 OF THE OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY, TEXAS, THE HEREIN DESCRIBED TRACT BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING FOR REFERENCE at a 1/2 inch iron pin at the most Northwesterly corner of said Lot 1 and being in the East r.o.w. line of R.M. 620 North, a publicly dedicated right-of-way;

THENCE along a Northerly line of said Lot 1 and the South line of a tract of land conveyed to Northwest Austin M.U.D. No. 1 by Volume 12847, Page 378, S 84°57'00" E for a distance of 1532.25 feet to a ½ inch iron pin at the Southeast corner of said M.U.D. No. 1 Tract and a Westerly corner of said Lot 1, for the PLACE OF BEGINNING hereof;

THENCE along a Westerly line of said Lot 1 and the Easterly line of said M.U.D. No. 1 tract, N 20°31'27" E for a distance of 1540.04 feet to a ½ inch iron pin at a Northerly corner of said Lot 1 and in a South line of a tract of land conveyed to the City of Austin in Volume 15927, Page 146 of the Real Property Records of Travis County, Texas;

THENCE along a North line of said Lot 1 and a South line of said City of Austin Tract for the following courses:

S 72°07'49" E for a distance of 228.08 feet to a ½ inch iron pin at a point of curve

Along a curve to the left whose radius is 2000.0 feet and whose chord bears S 77°36'49" E for a distance of 382.46 feet to a ½ inch iron pin;

THENCE continuing along the Northerly line of said Lot 1, S 83°06'09" E for a distance of 95.68 feet to a point;

THENCE S 16°26'45" W for a distance of 221.66 feet to a ½ inch iron pin at a Southerly corner of Lot 1 and a Northerly corner of Lot 2;

THENCE along a South line of Lot 1 and a North line of Lot 2, S 70°34'04" E for a distance of 188.64 feet to a point;

THENCE along a Southeasterly line of the herein described tract for the following courses:

S 31°15'52" W for a distance of 389.21 feet to a point

S 49°08'33" W for a distance of 235.30 feet to a point of curve

FIELD NOTES  
FOR

10 A PERMIT AREA NO. 1 - 19.97 ACRES - Page Two

Along a curve to the left whose radius is 103.42 feet whose arc is 88.90 feet and whose chord bears S 24°28'59" W for a distance of 85.19 feet to a point

S 68°07'51" W for a distance of 35.36 feet to a point

S 73°23'26" W for a distance of 283.06 feet to a point

S 72°23'05" W for a distance of 448.93 feet to a point

S 59°17'01" W for a distance of 115.91 feet to a point

S 32°20'14" W for a distance of 175.26 feet to the PLACE OF BEGINNING and containing 19.97 acres of land, more or less.

PREPARED BY:  
Roy D. Smith Surveyors, P.C.

Permit Area No. 1

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FIELD NOTES  
FOR

10 A PERMIT AREA NO. 2 -- 230.68 ACRES

ALL OF THAT CERTAIN TRACT OR PARCEL OF LAND BEING A PORTION OF LOT 2, SCHLUMBERGER SUBDIVISION, A SUBDIVISION IN TRAVIS COUNTY, TEXAS. AS RECORDED IN DOCUMENT NO. 200000066 OF THE OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY, TEXAS. THE HEREIN DESCRIBED TRACT BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING at a ½ inch iron pin at the Northeasterly corner of said Lot 2, being at an angle point in the Easterly line of Lot 1 of said Schlumberger Subdivision, for the PLACE OF BEGINNING hereof:

THENCE along the Northeasterly line of said Lot 2, S 47°48'57" E for a distance of 2774.98 feet to a ½ inch iron pin at the most Easterly corner of said Lot 2.;

THENCE along the Easterly line of said Lot 2 for the following courses:

S 43°57'21" W for a distance of 66.67 feet to a ½ inch iron pin

N 44°00'25" W for a distance of 27.57 feet to a ½ inch iron pin

S 36°48'18" W for a distance of 301.07 feet to a ½ inch iron pin

S 38°05'14" W for a distance of 208.92 feet to a ½ inch iron pin

S 53°57'33" W for a distance of 335.86 feet to a ½ inch iron pin

S 49°19'56" E for a distance of 68.42 feet to a ½ inch iron pin

S 25°54'12" E for a distance of 341.48 feet to a ½ inch iron pin at the Southeasterly corner of said Lot 2;

THENCE along the Southerly line of said Lot 2 for the following courses:

S 76°28'42" W for a distance of 352.98 feet to a ½ inch iron pin

N 77°00'42" W for a distance of 1147.39 feet to a ½ inch iron pin

N 74°16'10" W for a distance of 30.61 feet to a ½ inch iron pin

N 59°17'10" W for a distance of 393.20 feet to a ½ inch iron pin

N 60°57'10" W for a distance of 266.72 feet to a ½ inch iron pin

FIELD NOTES  
FOR

10 A PERMIT AREA NO. 2 – 230.68 ACRES – Page Two

N 59°55'10" W for a distance of 294.01 feet to a ½ inch iron pin

N 58°25'10" W for a distance of 253.60 feet to a ½ inch iron pin

N 60°08'34" W for a distance of 350.14 feet to a ½ inch iron pin

S 65°35'43" W for a distance of 66.77 feet to a ½ inch iron pin

S 30°10'39" W for a distance of 564.46 feet to a ½ inch iron pin

S 30°24'00" W for a distance of 99.67 feet to a ½ inch iron pin

S 75°15'41" W for a distance of 496.66 feet to a ½ inch iron pin

S 69°19'11" W for a distance of 301.11 feet to a ½ inch iron pin at the Southeasterly corner of Lot 4 of said Schlumberger Subdivision;

THENCE along the common line of said Lots 2 and 4 for the following courses:

N 51°13'57" E for a distance of 276.09 feet to a ½ inch iron pin

N 08°50'14" E for a distance of 156.84 feet to a ½ inch iron pin

N 21°37'45" E for a distance of 402.12 feet to a ½ inch iron pin

N 11° 05'29" E for a distance of 178.98 feet to a ½ inch iron pin

N 01°14'35" W for a distance of 482.23 feet to a ½ inch iron pin

N 27°51'51" W for a distance of 140.22 feet to a ½ inch iron pin

S 35°00'26" W for a distance of 126.15 feet to a ½ inch iron pin

S 30°19'28" W for a distance of 259.36 feet to a ½ inch iron pin

S 11°18'28" W for a distance of 210.73 feet to a ½ inch iron pin

S 27°22'09" W for a distance of 338.96 feet to a ½ inch iron pin

S 43°28'08" W for a distance of 180.36 feet to a ½ inch iron pin



FIELD NOTES  
FOR

10 A PERMIT AREA NO. 2 – 230.68 ACRES – Page Three

S 58°00'31" W for a distance of 97.54 feet to a ½ inch iron pin

S 54°18'32" W for a distance of 135.81 feet to a ½ inch iron pin

S 46°20'58" W for a distance of 104.80 feet to a ½ inch iron pin

S 86°24'09" W for a distance of 66.74 feet to a ½ inch iron pin

N 09°11'11" W for a distance of 108.14 feet to a ½ inch iron pin

N 87°37'51" W for a distance of 165.62 feet to a ½ inch iron pin

S 43°57'46" W for a distance of 397.20 feet to a ½ inch iron pin

S 54°28'40" W for a distance of 177.87 feet to a ½ inch iron pin

S 70°58'46" W for a distance of 211.49 feet to a ½ inch iron pin

S 55°22'27" W for a distance of 230.39 feet to a ½ inch iron pin

S 67°50'29" W for a distance of 100.50 feet to a ½ inch iron pin

S 68°12'22" W for a distance of 167.06 feet to a ½ inch iron pin

N 75°59'34" W for a distance of 241.63 feet to a ½ inch iron pin at the Southwesterly corner of said Lot 2;

THENCE continuing along the common line of said Lots 2 and 4 for the following courses:

N 28°32'07" E for a distance of 167.86 feet to a ½ inch iron pin

S 85°02'18" E for a distance of 238.15 feet to a ½ inch iron pin

N 57°58'19" E for a distance of 595.87 feet to a ½ inch iron pin

N 27°50'52" E for a distance of 330.71 feet to a ½ inch iron pin

N 52°27'11" E for a distance of 190.58 feet to a ½ inch iron pin at the Southeasterly corner of Lot 3 of said Schlumberger Subdivision:

THENCE along the common line of said Lots 2 and 3 for the following courses:

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FIELD NOTES  
FOR

10 A PERMIT AREA NO. 2 – 230.68 ACRES – Page Four

N 80°15'22" E for a distance of 220.92 feet to a ½ inch iron pin

N 47°25'42" E for a distance of 271.69 feet to a ½ inch iron pin

N 33°51'41" E for a distance of 240.27 feet to a ½ inch iron pin

N 26°51'14" E for a distance of 200.30 feet to a ½ inch iron pin

N 63°08'46" W for a distance of 50.24 feet to a ½ inch iron pin

N 21°16'22" E for a distance of 94.12 feet to a ½ inch iron pin at the Northeasterly corner of said Lot 3;

THENCE along a Westerly line of the herein described tract for the following courses:

N 19°27'12" E for a distance of 333.80 feet to an angle point

N 27°29'55" E for a distance of 107.40 feet to an angle point

N 11°19'17" E for a distance of 136.02 feet to an angle point

N 42°10'01" E for a distance of 107.97 feet to an angle point

N 90°00'00" E for a distance of 83.92 feet to an angle point

S 85°42'55" E for a distance of 153.01 feet to an angle point

N 49°06'54" E for a distance of 75.69 feet to an angle point

N 33°43'03" E for a distance of 109.95 feet to an angle point

N 05°29'53" E for a distance of 199.07 feet to an angle point

N 00°00'00" E for a distance of 141.00 feet to an angle point

N 17°25'59" W for a distance of 273.86 feet to an angle point

N 29°17'01" W for a distance of 151.23 feet to an angle point

N 54°13'03" W for a distance of 295.53 feet to an angle point

FIELD NOTES  
FOR

10 A PERMIT AREA NO. 2 – 230.68 ACRES – Page Five

N 66°33'30" W for a distance of 81.59 feet to an angle point

N 81°11'51" W for a distance of 45.10 feet to an angle point

N 49°06'33" E for a distance of 197.80 feet to an angle point

N 28°53'57" E for a distance of 341.73 feet to an angle point

N 71°31'19" E for a distance of 143.18 feet to a point in the Southerly line of Lot 1 of said Schlumberger Subdivision, being in the Northerly line of said Lot 2;

THENCE along the common line of said Lots 1 and 2 for the following courses:

S 53°09'42" E for a distance of 447.00 feet to a ½ inch iron pin

S 34°01'30" E for a distance of 448.70 feet to a ½ inch iron pin

S 15°16'08" E for a distance of 429.35 feet to a ½ inch iron pin

S 00°44'56" W for a distance of 103.62 feet to a ½ inch iron pin

S 89°15'04" E for a distance of 391.70 feet to a ½ inch iron pin

N 16°42'05" E for a distance of 127.28 feet to a ½ inch iron pin

N 87°23'09" E for a distance of 154.37 feet to a ½ inch iron pin

S 32°39'37" E for a distance of 181.85 feet to a ½ inch iron pin

N 86°58'34" E for a distance of 222.98 feet to a ½ inch iron pin

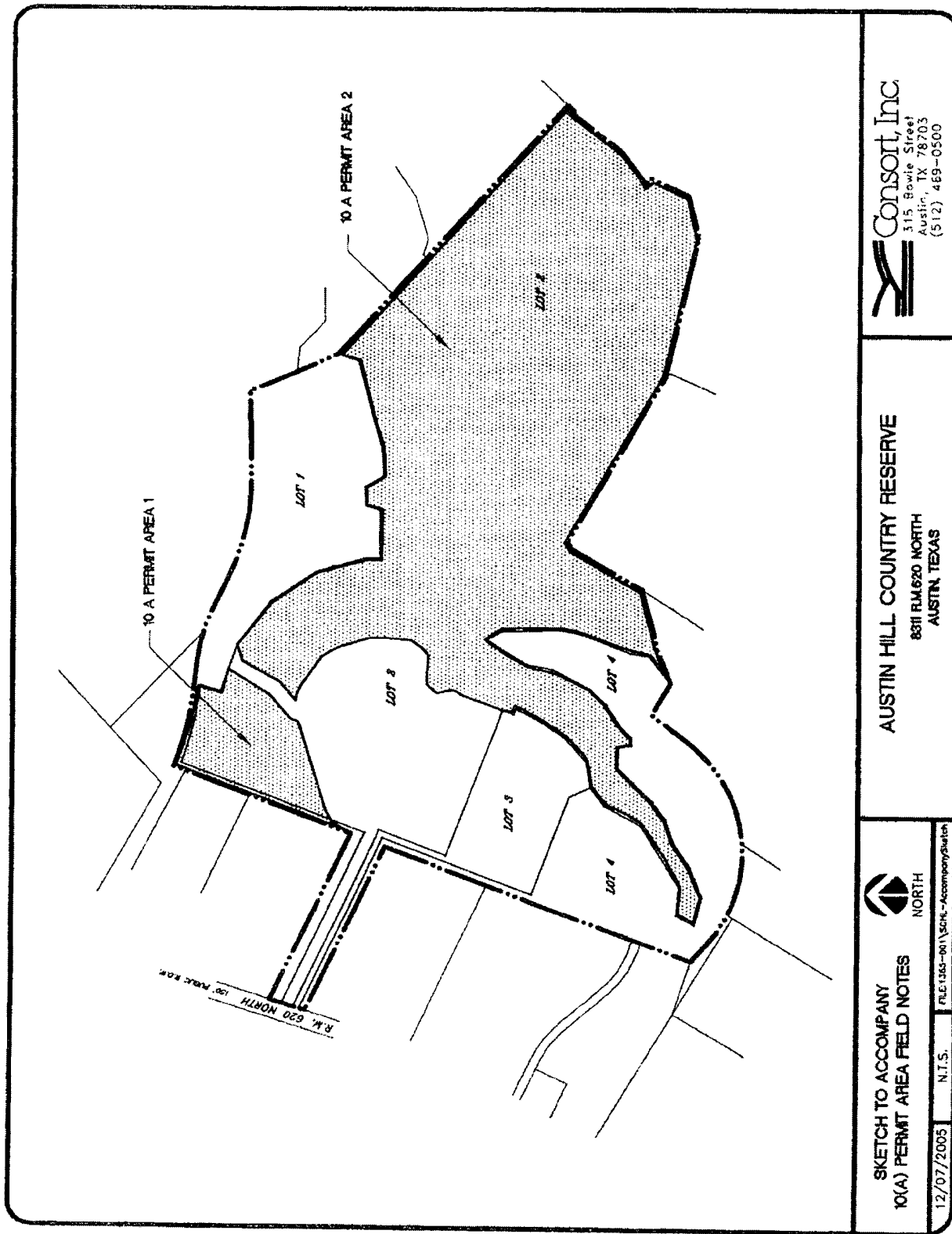
N 74°03'22" E for a distance of 266.36 feet to a ½ inch iron pin

N 75°15'25" E for a distance of 473.18 feet to a ½ inch iron pin

N 18°54'36" E for a distance of 177.25 feet to the PLACE OF BEGINNING and containing 230.68 acres of land, more or less.

PREPARED BY:  
Roy D. Smith Surveyors, P.C.  
December 2, 2005

Permit Area No. 2



**EXHIBIT "B"**  
**SIGNAGE**

Signage will be posted at regular intervals of not less than 100 feet. Additional signage may be allowed upon prior written approval by Grantor and Grantee. The signs will not exceed 24" x 24" in size, unless Grantee can reasonably demonstrate a safety requirement for a larger sign. In any event, such signage shall not be larger than is necessary to satisfy such safety requirements unless otherwise approved by Grantor and Grantee in writing. The signs will be construed of metal or some other suitable weather resistant material. The signs will be exclusively for identification of the Preserve Tract as a wildlife preserve and warning against trespassers, unless otherwise approved by Grantor and Grantee in writing.

**EXHIBIT "C"**  
**USAGE REGULATIONS**

**1. Preserve Tract Management.**

- a) Grantee shall maintain the Preserve Tract predominately in its natural and open space condition in perpetuity or until this Agreement and the Conservation Easement are terminated as provided herein, except as is necessary for Grantee to accommodate the Reserved Rights or to establish, develop, or maintain habitat for the identified endangered species or as otherwise provided in this Agreement.
- b) No trails, paths, jeep trails or roads shall be cleared or added within the Preserve Tract without prior approval of Grantee. Grantor shall not clear any land within the Preserve Tract or trim or prune any vegetation or clear any underbrush within the Preserve Tract except as may be required in connection with its activities pursuant to **Section 7** of this Agreement and then only with Grantee's prior written consent. Additionally, no planting of vegetation will be permitted within the Preserve Tract unless the same is approved by Grantee. Cattle, horses and other domestic livestock will not be allowed in the Preserve Tract without the prior approval of Grantee. Grantor will use its reasonable efforts to control noxious and invasive species of plants located on Grantor's property adjoining the Preserve Tract.

- 2. Fencing.** Grantor, at Grantor's option and expense, shall install fencing along the rear lot lines of any residential lots which are adjacent to the Preserve Tract (if Grantor's development plan changes to a residential mix) or the other fencing required to be constructed under the terms of this Agreement. Such rear lot fencing shall not include any gates providing access into the Preserve Tract. Grantor shall also install and maintain fencing on the boundary of the Preserve Tract in the locations shown on **Exhibit "C-1"** attached hereto, which fencing will be, at a minimum, four feet (4') in height and include hog fence panels in the lower three feet (3') and two (2) strands of barbed wire on the top ("***Preserve Boundary Fence***"). Notwithstanding anything herein to the contrary, Grantor shall not be required to install or construct any fencing in those locations where fencing is not necessary to restrict access from the Development Tract into the Preserve Tract as reasonably determined by Grantee (e.g. in those locations where cliffs or steep terrain exists along the boundary of the Preserve Tract). Grantor may install the Preserve Boundary Fence in phases as necessary to separate those portions of the Development Tract with new improvements from the adjoining areas of the Preserve Tract. However, such phased fence construction shall occur while construction of improvements on the applicable portion of the Development Tract is occurring and must be completed before residents or occupants may occupy and use

such improvements. Notwithstanding anything herein to the contrary, fencing otherwise required herein to be placed between the Preserve Tract and those improvements on Lot 2 existing as of the Effective Date, does not have to be completed until such time as construction of all improvements on Lot 2 and Lot 3 of the Development Tract have been completed. Grantor, at Grantor's option, may also elect at any time to have Grantee install the Preserve Boundary Fence at Grantor's cost and expense; however, in such event, Grantee reserves the right to install the Preserve Boundary Fence at one time rather than in phases. Grantee may also install, at Grantee's expense, any additional fencing on the Preserve Tract as reasonably necessary for its protection. Grantee may also install such gates as may be required to reasonably control access to the Preserve Tract.

### **3. Trail Usage Regulations.**

- a) Notwithstanding the foregoing, Grantor shall not be permitted to traverse or use any part of the Preserve Tract other than by guided tours provided by Grantee, or for scientific research by permit, or as expressly provided below. So long as the Preserve Tract is owned or controlled by Concordia University at Austin or any successor-in-interest which is a college, university or other institute of higher learning (each referred to in this Paragraph 3 as the "*University*"), in the interest of security and preservation of the integrity of the Preserve or in the event of emergency, the Vice-President of University Services, the Director of Facilities Management, University Security, and Science faculty (or University personnel with equivalent titles or responsibilities) as permitted in subsection (c) below, are permitted to have access to the Preserve Tract at all times, subject to the requirements described in subsection g below. The list of approved individuals will be updated by the University to Grantee each semester.
- b) Trails are intended for the sole use of Grantee, its employees and its invitees, and those individuals mentioned in subsection (a) above.
- c) The access will be allowed during sunrise to sunset. Scientific research permits will be provided by Grantee, upon showing of educational or scientific merit. The University may make application each semester for a permit for those uses contemplated that semester, at the Travis County Transportation and Natural Resources Department. Each year, any research or investigation report prepared utilizing or regarding the Preserve Tract in the previous twelve (12) months by the University, which is reduced to writing, shall be provided to Grantee. Any published work regarding the Preserve Tract shall be provided to Grantee.

- d) Pets, sound recording and playing devices (including bird call “playback” tapes), fireworks and firearms are not allowed on trails except by Grantee in conjunction with management activities. The University Security and Grantee may carry firearms during security responsibilities.
- e) Motorized vehicles are not allowed on trails except in the event of emergencies or management activities by Grantee.
- f) Trails are not intended for use by the general public, and such use may result in County-imposed limitations or complete closure of the mitigation area trails.
- g) In consultation with USFW and Grantor, Grantee reserves the right to limit or close access to the Preserve Tract at any time in order to protect, manage or enhance the habitat or populations of protected species. This may require limiting access or closing trails during the breeding season for the Golden-cheeked warbler and the Black-capped Vireo (March 01 through August 31).
- h) The Grantee may allow additional controlled access to researchers, land managers, or other parties in order to further the goals of the BCCP, or the Site Permit.

**4. Removal of Trash; Revegetation.** Grantor shall keep construction trash out of the Preserve Tract during construction contemplated adjacent to the Preserve Tract through the use of temporary construction fencing. Grantor will clean up any construction materials, debris, trash and other solid waste from the Preserve Tract, which has occurred or may occur during the development and is granted limited access to enter the Preserve Tract as needed to perform its obligations hereunder. Upon completion of the construction in areas of the Development Tract adjoining the Preserve Tract, Grantor shall remove all construction materials, debris, trash and other solid waste from the Preserve Tract. Disturbed areas shall be revegetated, at the direction of Grantee, to return the Preserve Tract to its natural state. It is agreed and understood that the entry into the Preserve Tract will be subject to all of the provisions of this Agreement and that any terms, provisions, requirements or conditions imposed on such usage by Grantee and assigns will not modify or affect this Agreement, but rather will be applied in addition to the provisions set out in this Agreement.

**5. Feeders and Strays.** Grantor will prohibit the use of deer feeders and birdseed feeders and will prohibit free roaming cats and dogs within the Development Tract and Preserve Tract; however, hummingbird feeders and thistle seed feeders are permitted.

**6. Meeting.** Grantor and Grantee shall meet annually to communicate goals and concerns, including the following:



- a) Research plans for coming year;
- b) Preview year research results; and
- c) Impact of living classroom.

7. **Feral Hogs and Invasive Species**. Grantee will coordinate with Grantor in Grantee's plans for feral hog and invasive species control on the Preserve Tract

**EXHIBIT "C-1"**  
**FENCING LOCATIONS**

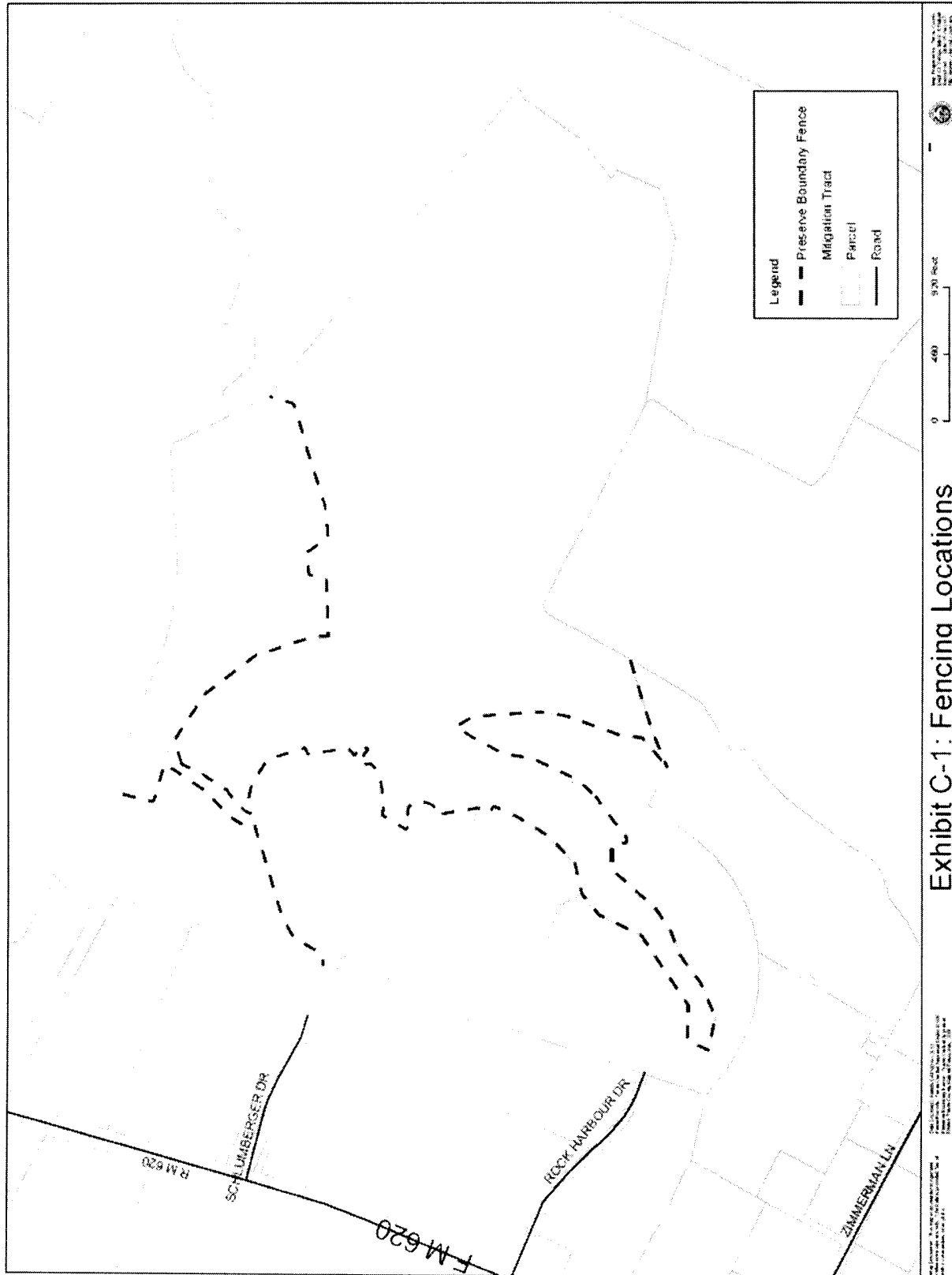


Exhibit C-1: Fencing Locations

**EXHIBIT "D"**  
**COSTS, EXPENSES AND LIABILITIES**

1. Within sixty (60) days after the Effective Date, Grantor agrees to pay to Grantee the following amounts:
  - a. a one time fee in the amount of \$11,050.00 for equipment necessary to maintain the Preserve Tract.
  - b. an initial annual payment in the amount of \$ 34,231.50 for maintenance and operation of the Preserve Tract (the "**O&M Fee**").

2. Grantee shall pay the O&M Fee each subsequent year within thirty (30) days after the anniversary of the Effective Date through the ninth (9<sup>th</sup>) year after the Effective Date, making for a total of ten (10) annual payment of the O&M Fee. The O&M Fee may increase each year as necessary to reflect increases in the "Consumer Price Index." The O&M Fee shall be adjusted each year to equal the product obtained by multiplying \$34,231.50 by a fraction, the numerator of which is the "Consumer Price Index - Seasonally Adjusted U.S. City Average For All Items For All Urban Consumers (1982-84 = 100)," published monthly in the "Monthly Labor Review" of the Bureau of Labor Statistics of the United States Department of Labor ("**CPI-U**"), for March of the applicable year for which the O&M Fee is being calculated ("**New CPI-U**"), and the denominator of which is the CPI-U for March 2006 ("**Base CPI-U**"). If the CPI-U is discontinued, the "Consumer Price Index - Seasonally Adjusted U.S. City Average For All Items For Urban Wage Earners and Clerical Workers (1982-84=100)," published monthly in the "Monthly Labor Review" by the Bureau of Labor Statistics of the United States Department of Labor ("**CPI-W**"), shall be used for computing the annual adjustment of the O&M Fee. If the base year "(1982-84=100)" or other base year used in computing the CPI-U (or CPI-W, if applicable) is changed, the figures used in making the adjustment shall be changed accordingly, so that all increases in the CPI-U (or CPI-W, if applicable) are taken into account notwithstanding any such change in the base year.

Grantee will notify Grantor of the annual O&M Fee for each subsequent year within ninety (90) days prior to the date such O&M Fee is due and shall include Grantor's calculations for determining the adjustment to the O&M Fee.

3. Should Grantor fail to forward an annual payment of the O&M Fee, Grantee reserves the right to use remedies outlined in **Paragraph 17** of this Agreement.

**EXHIBIT "E"**  
**BASELINE CONDITION OF THE PRESERVE TRACT**

1. The following materials will be furnished by Grantor to establish the baseline condition of the Preserve Tract at or near the time of execution of this Easement Agreement:
  - Aerial photos of the Property not predating 2004
  - Satellite location coordinates of key land survey points referenced as Texas state plane coordinates or latitude and longitude.
2. In addition, both Grantor and Grantee will deliver to each other copies of any photographic or video materials produced and in their respective control which illustrate the condition of the Preserve Tract within 6 months after the date of this Agreement.
3. Grantor will provide to Grantee all surveys, title commitments, description of easements, etc. in Grantor's possession.

Please Recd and return:

Gill Porter

Commissioners Court Specialist

Rm 222

Travis County

Austin, TX

Castroville  
78701

**Recorders Memorandum**-At the time of recordation this instrument was found to be inadequate for the best reproduction, because of illegibility, carbon or photocopy, discolored paper, etc. All blockouts, additions and changes were present at the time the instrument was filed and recorded.

## FILED AND RECORDED

OFFICIAL PUBLIC RECORDS

*Dana DeBeauvoir*

2007 Jun 12 09:15 AM 2007106613

BENAVIDESV \$0.00

DANA DEBEAUVOIR COUNTY CLERK

TRAVIS COUNTY TEXAS