



EASE

2004223137

18 PGS

**CONSERVATION EASEMENT
TO RESTRICT IMPERVIOUS COVER**

BETWEEN

CITY OF AUSTIN

AND

BANK OF AMERICA, N.A.

Effective as of _____, 2004

CONSERVATION EASEMENT
TO RESTRICT IMPERVIOUS COVER

THIS CONSERVATION EASEMENT TO RESTRICT IMPERVIOUS COVER (this "Easement Agreement" or this "Agreement") is made effective as of the ____ day of November, 2004, by and between BANK OF AMERICA, N.A., a national banking association ("Grantor"), and THE CITY OF AUSTIN, a municipal corporation situated in the Counties of Travis, Hays and Williamson, Texas ("City").

RECITALS

A. Grantor is sole owner in fee simple of that certain real property consisting of approximately 2.54 acres of land in Travis County, Texas, more particularly described as Lot 2, Block A, Attal Subdivision, according to that map or plat thereof recorded under document number 200400348 of the Official Public Records of Travis County, Texas (the "Land").

B. The Land is a significant natural area that qualifies as a "...relatively natural habitat of fish, wildlife, or plants, or similar ecosystem," as that phrase is used in Section 170(h)(4)(A)(ii) of the Internal Revenue Code of 1986, as amended, and in regulations promulgated thereunder. In particular, the Land:

- (1) is located over the Edwards Aquifer Recharge Zone according to the City of Austin. The Edwards Aquifer provides water for thousands of central Texans and wildlife populations including the endangered Barton Springs Salamander (*Eurycea sosorum*);
- (2) contains significant open space and significant scenic qualities;
- (3) provides habitat for a wide variety of native wildlife and plant communities; and

The above characteristics, features, and qualities of the Land are collectively referred to herein as the "Conservation Values".

C. Grantor further intends to convey to City the right to preserve and protect the Conservation Values of the Land in perpetuity by limiting the amount of Impervious Cover on the Land.

D. City is a municipal corporation established under and through the laws of the State of Texas and, as such, is empowered to hold interests in real property.

E. Grantor is also the owner of that certain other real property located in the vicinity of the Land, which property is known as Lot 1, Block A, Jack Brown Subdivision, according to the map or plat thereof recorded under document number 200400348 of the Official Public

Records of Travis County, Texas, which real property will benefit from the limitations placed against the Land pursuant to the terms of this Easement Agreement.

F. Grantor and City acknowledge that this Conservation Easement is being executed and the Conservation Easement being conveyed in perpetuity pursuant to Texas Natural Resource Code Chapter 183 and the parties wish to avail themselves of the provisions of that law.

NOW, THEREFORE, in consideration of the above, Ten and No/100 Dollars and other good and valuable consideration and the mutual covenants, terms, conditions, and restrictions contained herein, and pursuant to the laws of the State of Texas, including (but not limited to) Texas Natural Resources Code Chapter 183, Grantor does hereby voluntarily GRANT, TRANSFER, ASSIGN AND CONVEY to City a conservation easement in perpetuity over the Land, such easement to be of the nature and character and to the extent hereinafter set forth (referred to herein as the "Conservation Easement").

TO HAVE AND TO HOLD the Easement unto City in perpetuity, together with all and singular the appurtenances and privileges belonging or any way pertaining thereto, either at law or in equity, either in possession or expectancy, for the use and benefit of City, its successors and assigns, forever, and Grantor does hereby bind itself, its successors, and assigns to WARRANT and DEFEND the Easement granted by Grantor hereunder and conveyed to City against every person whomsoever lawfully claiming or to claim the same or any part thereof, except for those items set forth on **Exhibit "A"** attached hereto (the "**Permitted Exceptions**").

I. **DEFINITIONS**

For purposes hereof, the following terms shall be defined as set forth in this Article I:

"**Austin City Code**" means the Austin City Code of 1992, together with all its related technical criteria manuals, as existing and in effect on the date of this Easement Agreement, and shall not mean the Austin City Code or criteria manuals as amended or replaced after the date of this Easement Agreement, unless expressly so stated in this Easement Agreement.

"**Conservation Values**" has the meaning set forth in Recital B of this Agreement.

"**Development**" has the meaning ascribed to it in Section 25-1-21 (27) of the Austin City Code.

"**Grantor**" has the meaning set forth in the first paragraph hereof.

"**Impervious Cover**" has the meaning set forth in Section 25-8-1 of the Austin City Code.

"**Land**" has the meaning set forth in Recital A of this Agreement.

"Landowner" means the owner of a portion of the Land.

"Net Site Area", as to any portion of the Land, has the meaning ascribed to it, and shall be calculated pursuant to the formula set forth, in Section 25-8-62 of the Austin City Code.

"Notice" has the meaning set forth in Article XII of this Agreement.

"Parcel" shall mean a portion of land out of the Land.

"Permitted Exceptions" has the meaning set forth in the habendum paragraph set forth above.

II.

PURPOSE

The purposes of this Easement Agreement are to (a) maintain the natural hydrological processes and land health that currently exist on the Land; (b) provide for the conservation, maintenance and enhancement of the quality and quantity of the Edwards Aquifer and the Bull Creek Watershed, including without limitation, pollution avoidance, recharge and watershed protection and preservation and enhancement of base flow (this natural , scenic and open space condition); (c) ensure the Land will be retained forever predominantly in its natural, scenic and open space condition; (d) protect native plants, animals and plant communities on the Land, (e) prevent any use of the Land that will significantly impair or interfere with the Conservation Values of the Land described above and (f) otherwise implement the mutual intentions conflict with the limitations on Impervious Cover on the Land hereinafter set forth. Grantor intends that this Easement Agreement will confine the development of the Land to such activities, as are consistent with the limitations on Impervious Cover established in this Easement Agreement.

III.

IMPERVIOUS COVER

3.1 GENERAL.

To protect the Conservation Values of the Land, Grantor has agreed to restrict the Impervious Cover available for development of the Land such that no Impervious Cover may exist, be developed, be constructed or be placed on the Land.

3.2 NOTICE TO PURCHASERS.

ANY PROSPECTIVE PURCHASER OR OTHER ASSIGNEE OF ANY PORTION OF THE LAND IS HEREBY ADVISED THAT THE FOREGOING LIMITATIONS WILL RESULT IN NO IMPERVIOUS COVER BEING PERMITTED ON ANY PORTION OF THE LAND.

IV.
RIGHTS OF CITY

To accomplish the purposes of this Easement Agreement the following rights are conveyed to City by Grantor with respect to the Land, which rights shall be in addition to all other rights which City may have at law or in equity:

- A. To preserve and protect the Conservation Values of the Land by limiting Impervious Cover as provided herein;
- B. To enter upon the Land, by and through its authorized employees and enforcement agents, at reasonable times in order to monitor compliance with and otherwise enforce the terms of this Easement Agreement; provided that, except in cases where City reasonably determines that immediate entry is required to prevent, terminate, or mitigate a violation of this Easement Agreement causing immediate and irreparable harm, such entry shall be upon written notice delivered to the Landowner of the portion of the Land to be entered no later than thirty days prior to the City's entry upon the Land. Said notice shall identify the portion of the Land upon which City is to enter, and City shall not in any case unreasonably interfere with such Landowner's use and quiet enjoyment of such portion of the Land. The foregoing notwithstanding, no entry onto a platted single family or duplex residential lot shall be authorized by this Subsection which is not otherwise authorized by law; and
- C. To prevent any activity on or use of the Land that is in violation of the terms and provisions of this Easement Agreement and to require the restoration of such areas or features of the Land that may be damaged by any such violation, pursuant to the remedies set forth herein.

V.
PROHIBITED USES

Any activity on or use or development of the Land inconsistent with the terms of this Easement Agreement is prohibited. Without limiting the generality of the foregoing, the following activities, development and uses are expressly prohibited:

5.1 CONSTRUCTION OF IMPERVIOUS COVER.

There shall be no development, existence, placement or construction of Impervious Cover (including, without limitation, wastewater irrigation) on any portion of the Land. The Land Owner of the Land shall be responsible for complying with this Easement Agreement.

5.2 RIGHTS RESERVED.

Grantor reserves all rights accruing from Grantor's ownership of the Land, including the right to engage in or permit or invite others to engage in, all uses of the Land that are not expressly prohibited herein or in the Restrictive Covenant or the Plat and are not inconsistent with the requirements and/or intent of this Easement Agreement, the Restrictive Covenant, and the Plat.

**VI.
DEFAULT AND REMEDIES**

**6.1 NOTICE OF VIOLATION; CORRECTIVE ACTION; LITIGATION REMEDIES;
ARBITRATION REMEDIES.**

- A. If City becomes aware of a violation of the terms of this Easement Agreement by any Landowner or otherwise affecting any portion of the Land, City shall, except as expressly set forth herein, notify the Landowner(s) of the portions of the Land involved in such violation and request corrective action sufficient to abate such violation and restore the surface of the affected portions of the Land in order to come into compliance with this Easement Agreement. Failure by such Landowner(s) to abate the violation and take such other corrective action as may be required to cure the violation within thirty (30) days after the giving of such notice, or such longer period of time as may be reasonably necessary to cure the violation in question so long as the cure is commenced within said thirty (30) day period and prosecuted until completion with all reasonable diligence no later than ninety (90) days from the date of such notice, will entitle the City to exercise any and all rights and remedies available to it at law or in equity as a result of such failure. The City's remedies shall include, without limitation any one or more of the following remedies:
- i. bring an action at law or in equity to enforce the terms of this Easement Agreement, including seeking a temporary restraining order, temporary injunction and/or permanent injunction to enjoin the non-compliance;
 - ii. bring an action to require the restoration of the surface of the affected Land to a condition that complies with the terms of this Easement Agreement;
 - iii. bring an action for specific enforcement of this Easement Agreement; and/or
 - iv. subject to the limitation on damages set forth in Section 6.9 of this Easement Agreement, recover any damages arising from the non-compliance.

- B. With respect to all the remedies described in this section, the City's rights under this Easement Agreement apply equally in the event of either actual or threatened violations of the terms of this Easement Agreement. Grantor, and any and all successor Landowners, agree that the City's remedies at law with respect to an alleged or threatened violation of the terms of this Easement Agreement are inadequate, and that the City shall be entitled to injunctive relief, both prohibitive and mandatory, in addition to such other relief to which the City may be entitled, including specific performance of the terms of this Easement Agreement. The City's remedies described in this section shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

6.2 FAILURE TO ACT OR DELAY.

No covenant, term, condition or restriction of this Easement Agreement or the breach thereof by any Grantor or Landowner will be deemed waived, except by written consent of City, and any waiver of the breach of any such covenant, term, condition or restriction will not be deemed or construed to be a waiver of any preceding or succeeding breach of the same or any other covenant, term, condition or restriction. City shall retain the right to take any action as may be necessary to ensure compliance with this Easement Agreement notwithstanding any prior failure to act.

6.3 EMERGENCY ENFORCEMENT.

If City, in its reasonable discretion, determines that circumstances require immediate action to prevent or mitigate a violation of the terms of this Easement Agreement causing or which may cause immediate and irreparable harm, City may pursue its remedies under this Easement Agreement without prior notice to Grantor or any Landowner or without waiting for the period provided for cure to expire; provided that City will make good faith efforts to promptly notify the applicable Landowner of the alleged violation in writing specifically setting forth the alleged violation and the nature of the emergency. The foregoing notwithstanding, the City's rights under this paragraph may not be exercised with regard to platted single family or duplex residential lots or against the Landowners thereof.

6.4 FORBEARANCE.

Forbearance by City to exercise any of its rights under this Easement Agreement in the event of any breach of any term of this Easement Agreement by Grantor or any Landowner shall not be deemed or construed to be a waiver by City of such term or of any subsequent breach of the same or any other term of this Easement Agreement or of any of City's rights under this Easement Agreement. No delay or omission by City in the exercise of any right or remedy upon any breach by Grantor or any Landowner shall impair such right or remedy or be construed as a waiver.

6.5 WAIVER OF CERTAIN DEFENSES.

Each Grantor hereby waives any defense of laches, estoppel, or prescription.

6.6 LIABILITY FOR ACTION OF OTHERS.

Notwithstanding any provision of this Easement Agreement to the contrary, it is agreed and understood that: (a) the liabilities, obligations and responsibilities of each Landowner under this Easement Agreement are several, and not joint; (b) no Landowner will be in default under this Easement 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 Landowner except for a Continuing Violation (as defined herein). For purposes hereof, a "Continuing Violation" shall mean any violation of this Easement Agreement with regard to any Parcel arising prior to the transfer of title to such Parcel to the Landowner in question and which continues uncured after such transfer of title.

6.7 GRANTORS' REMEDIES.

A. **Grantors' Remedies / Notice to City.** The remedies of an aggrieved Landowner (including Grantor) for a breach of this Easement Agreement by City, include but are not limited to, the following:

- (i) specific performance and/or writ of mandamus for the enforcement of the City's obligations and agreements in this Easement Agreement; and
- (ii) subject to the limitation on damages set forth in Section 6.9 of this Easement Agreement, recovery of damages arising out of non-compliance of this Easement Agreement.

B. **Failure to Act or Delay.**

Forbearance by any Landowner to exercise any of its rights under this Agreement in the event of any breach of any term of this Agreement by City shall not be deemed or construed to be a waiver by the Landowner of such term or of any subsequent breach of the same or any other term of this Agreement or of any of such Landowner's rights under this Agreement. No delay or omission by a Landowner in the exercise of any right or remedy upon any breach by the City of any obligation it may have under this Agreement shall impair such right or remedy or be construed as a waiver.

6.8 OVERRIDING LIMITATION ON REMEDIES.

Notwithstanding anything contained herein to the contrary, in no event shall City, Grantor or any Landowner ever have any right to terminate this Easement Agreement as a result of the default hereunder by any other party hereto and to the extent any such right would exist at law, in equity or otherwise, same is hereby RELEASED, WAIVED and FOREVER RELINQUISHED by each of the City and Grantor and Landowner on behalf of themselves and their respective successors and assigns, if any, including, without limitation, any successor Landowner.

VII.
ACCESS

No right of access by the general public to any portion of the Land is conveyed by this Easement Agreement.

VIII.
COSTS, LIABILITIES, TAXES AND CONTROL

8.1 COSTS AND LIABILITIES.

Grantor and each Landowner retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of their respective portions of the Land.

8.2 TAXES.

Each Landowner shall pay before delinquency all taxes, assessments, fees, and charges of whatever description levied on or assessed against the portion of the Land owned by such Landowner by competent authority for the tax year 2004 (collectively, "Taxes"), and shall furnish City with satisfactory evidence of payment upon written request of City from time to time. The taxes may be paid "under protest" by a Landowner so long as they are paid prior to delinquency.

8.3 CONTROL.

Nothing in this Easement Agreement shall be construed as giving rise, in the absence of a judicial decree, to any right or ability in City to exercise physical or managerial control over the day-to-day operations of the Land, or any of a Landowner's activities on the Land, or otherwise to become an operator with respect to the Land or any portion thereof within the meaning of The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA").

IX.
EXTINGUISHMENT AND CONDEMNATION

9.1 EXTINGUISHMENT.

If circumstances arise in the future that render the purpose of this Easement Agreement impossible to accomplish as to any portion of the Land, this Easement Agreement and the Easement can only be terminated or extinguished, whether in whole or in part as to any portion of the Land, by judicial proceedings in a court of competent jurisdiction, or on written agreement of the City and all Landowners then bound hereto with respect to such portion of the Land.

9.2 CONDEMNATION.

If all or any part of the Land is taken by exercise of the power of eminent domain or acquired by purchase in lieu of condemnation, whether by public, corporate, or other authority, so as to terminate this Easement Agreement and the Easement, in whole or in part, the Landowner whose portion of the Land is so taken or acquired and City shall each be entitled to seek recovery for the full value of their respective interests in the portion of the Land subject to the taking and all direct or incidental damages resulting therefrom. All expenses incurred by such Landowner or City in connection with the taking or purchase in lieu thereof shall be paid by the party that incurred the expense. All compensation awarded for any taking (or the proceeds of any sale in lieu thereof) of any portion of the Land shall be the property of the Landowner of the portion so taken and City, as their interests may appear.

X. ASSIGNMENT

This Easement Agreement is not transferable or assignable by City.

XI. SUBSEQUENT TRANSFERS

Grantor agrees (1) that the terms, conditions, restrictions, and purposes of this Easement Agreement or reference thereto will be binding upon all subsequent owners of all or any part of the Land; and (2) to incorporate the terms of this Easement Agreement by reference in any deed or other legal instrument by which Grantor is divested of any interest in all of the Land. The failure of Grantor to perform any act required by this paragraph shall not impair the validity of this Easement Agreement or limit its enforceability in any way.

XII. ESTOPPEL CERTIFICATES

Upon a written request by any Landowner, City shall within ten (10) business days after the City's Department of Watershed Protection and Development Review (or its successor) receives same, execute and deliver to such Landowner, or to any party designated by Landowner, an estoppel certificate in form and content substantially similar to that attached hereto as **Exhibit "B"**, which certifies with respect to the portion of the Land or a tract encompassing a portion of the Land owned by such Landowner and which is the subject of the request. Such certification shall be limited to information contained in City's records with respect to this Easement Agreement and the condition of such Parcel or portion thereof as of City's most recent inspection, with the understanding that the Records are controlling with regards to allocations of Allowable Impervious Cover. If Landowner requests more current documentation, City shall conduct an inspection, at Landowner's expense, within thirty (30) days of receipt of Landowner's written request therefor.

XIII.
NOTICES

Any notice, communication, request, reply or advice (severally and collectively referred to as "Notice") in this Easement Agreement provided or permitted to be given, made or accepted by any party to the other(s) must be in writing. Notice shall, unless otherwise provided herein, be given or served (1) by depositing the same in the United States mail, postage paid, certified mail, and addressed to the party to be notified at the last address for which the sender has at the time of mailing, with return receipt requested, or (2) by hand delivering the same to such party. Notice to a Landowner or City deposited in the mail in the manner herein above described shall be effective two days after such deposit. Notice given to a Landowner or City 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:

Landowner(s): Bank of America, N.A.
 525 N. Tryon St., 3rd Floor
 Charlotte, NC 28255
 Attn: NC1-023-03-03
 Telephone: (704) 388-4433
 Fax: (704) 386-7339

with a copy to: Bank of America, N.A.
 400 S. Zang Blvd., 11th Floor
 Dallas, Texas 75208-6601
 Attn: Corporate Real Estate
 Telephone: (214) 948-2296
 Fax: (214) 948-2272

City: City of Austin
 Attn: City Manager
 P.O. Box 1088
 Austin, Texas 78767-8839
 Telephone: (512) 499-2200
 Fax: (512) 499-2832

with a copy to: City of Austin
 Attn: Director of the Watershed Protection and Development Review
 Department
 P.O. Box 1088
 Austin, Texas 78767-8839
 Telephone: (512) 974-3433
 Fax: (512) 974-2859

provided that both City and Landowner may change their addresses from time to time by filing such designation in the Real Property Records of Travis County, Texas, and

sending notice thereof to the other party.

XIV.
RECORDATION

City shall record this instrument and any written amendment hereof in the Real Property Records of Travis County, Texas.

XV.
GENERAL PROVISION

15.1 CONTROLLING LAW.

The interpretation and performance of this Easement Agreement shall be governed by the laws of the State of Texas.

15.2 LIBERAL CONSTRUCTION.

Any general rule of construction to the contrary notwithstanding, this Easement Agreement shall be liberally construed in favor of the grant to effect the purpose of this Easement Agreement and the policy and purpose of Texas Natural Resources Code Chapter 183. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purpose of this Easement Agreement that would render the provision valid shall be favored over any interpretation that would render it invalid.

15.3 SEVERABILITY.

If any provision of this Easement Agreement, or the application of this Easement Agreement to any person or circumstance or portion of the Land, is found to be invalid, the remainder of the provisions of this Easement Agreement, or the application of this Easement Agreement to persons or circumstances or portion of the Land other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.

15.4 ENTIRE AGREEMENT.

This instrument sets forth the entire agreement of the parties with respect to the Easement and the other matters set forth herein and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Easement and the other matters set forth herein, all of which are merged herein.

15.5 NO FORFEITURE.

Nothing contained herein will result in a forfeiture or reversion of Grantor's title in any respect.

15.6 SUCCESSORS AND ASSIGNS.

The covenants, terms, conditions, and restrictions of this Easement Agreement shall be binding upon, and inure to the benefit of, Grantor and Grantor's personal representatives, heirs, successors, and assigns and shall continue as a servitude running in perpetuity with the Land. The terms "Grantor", wherever used herein, and any pronouns used in place thereof, shall include the above-named Grantor and Grantor's personal representatives, heirs, successors, and assigns. This Easement Agreement shall be binding on and shall inure to the benefit of City, and any governmental entity which may succeed to the powers and duties of City.

15.7 CAPTIONS.

The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.

15.8 AMENDMENT.

Any Landowner and City may amend this Easement Agreement as it relates solely to such Landowner's Parcel or Parcels without the joinder of any other Landowner. Such amendment must be in writing, signed by such Landowner and City and recorded in the Real Property Records of Travis County, Texas.

15.9 COUNTERPART EXECUTION.

This Easement 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.

15.10 VENUE.

It is expressly agreed that the exclusive, mandatory venue for any litigation arising under or related to the Easement or this Easement Agreement is the State District Courts of Travis County, Texas. Grantor on behalf of itself and its successors and assigns specifically waive any rights it may have to challenge the personal jurisdiction of the Travis County District Courts, and also specifically waive any rights it may have to challenge venue in Travis County, including any rights Grantor or its successors or assigns may have to challenge venue in Travis County on the basis that Travis County is not a convenient forum for Grantor or any of its successors or assigns. Grantor on behalf of itself and its successors and assigns specifically and intentionally waive any right, argument or contention that the venue for any litigation arising under or relevant to the Easement or this Easement Agreement is in other than Travis County but instead acknowledge and agree that the exclusive venue for any such action is in Travis County, Texas.

15.11 NO THIRD PARTY BENEFICIARIES.

Nothing in this Easement Agreement or in the recitals to this Easement Agreement, express or implied, is intended to confer upon any person or entity, other than to the parties hereto and their successors and assigns, any rights, benefits, or remedies under or by reason of this Easement Agreement.

IN WITNESS WHEREOF Grantor and City have executed this Easement Agreement as of the date set forth above.

CITY:

CITY OF AUSTIN, a home rule city and
municipal corporation

By: _____

Printed Name: Joe Arriaga

Title: Planner

Date: 11/30/08

GRANTOR:

BANK OF AMERICA, N.A., a national banking
association

By: _____

Printed Name: Jay Taylor

Title: Senior Vice President

Date: 11-5-08

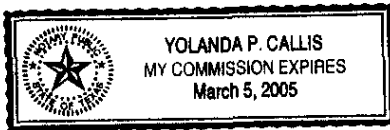
EXHIBITS:

EXHIBIT "A" – PERMITTED EXCEPTIONS

EXHIBIT "B" – ESTOPPEL CERTIFICATE

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

This instrument was acknowledged before me on the 30th day of November, 2004,
by JOE ARRIAGA,
of The City of Austin, a Texas municipal corporation, on behalf of said municipal corporation.

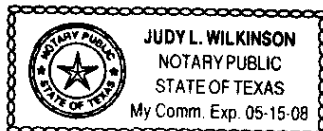


Yolanda P. Callis
Notary Public, State of Texas
My commission expires: _____

STATE OF Texas §
 §
COUNTY OF Dallas §

Before me, undersigned, Notary Public, State of Texas, on this day personally
appeared Gay Taylor, SVP of Bank of America, N.A., a national
banking association, known to me to be the person whose name is subscribed to the foregoing
instrument and acknowledged to me that he/she executed the same for the purposes and
consideration therein expressed.

Given under my hand and seal of office this 5th day of November, 2004.



Judy L. Wilkinson
Notary Public, State of Texas
My commission expires: May 15, 2008

AUS:2514860.3
49951.2

Exhibit "A"

1. Restrictive Covenants recorded in Volume 3718, Page 2347 of the Deed Records of Travis County, Texas.
2. Standby fees, taxes and assessments by any taxing authority for the year 2004 and subsequent tax years, and subsequent taxes and assessments by any taxing authority for prior years due to change in land usage or ownership.
3. Building setback line as set forth in that certain Deed dated August 12, 1969, from Arthur L. Zimmerman to Wolfred C. Attal and Martha M. Attal recorded in Volume 3718, Page 2347 of the Deed Records of Travis County, Texas.
4. Underground water transmission tunnel easement granted to the City of Austin, by instrument dated August 20, 1986, recorded in Volume 9875, Page 183 of the Real Property Records of Travis County, Texas.
5. The terms, conditions and stipulations set out in that certain Temporary Access Easement Agreement dated January 10, 2001, recorded under document number 2001026734 of the Official Public Records of Travis County, Texas.

Exhibit "B"

FORM OF ESTOPPEL CERTIFICATE

Date: _____, 20____

To: _____

Re: Conservation Easement To Restrict Impervious Cover dated effective _____ between Bank of America, N.A. ("BOA") and the City of Austin, Texas (the "City") and recorded under document number _____ of the Official Public Records of Travis County, Texas.

Ladies/Gentlemen:

In accordance with the Conservation Easement, the City is the holder of the Development Allocation Records and the Records contemplated thereby and has the authority to certify, as of the date hereof, the following. Capitalized terms herein will have the meanings assigned to them in the Conservation Easement unless otherwise defined herein:

1. The parcel covered by this Estoppel Certificate is attached hereto as Exhibit "A" and is referred to herein as the "Parcel".

2. The amount of Allowable Impervious Cover allocated to the Parcel is _____.

3. The Conservation Easement is in full force and effect and has not been amended, modified or supplemented in any way except as specified herein.

4. The City has not sent any notices of default to the Landowner of the Parcel under the Conservation easement which remain uncured except as follows: (if none, so indicate)

_____.

This Estoppel Certificate is made by the City based on the official records of the City, which records are determinative with regard to Allowable Impervious Cover. This Estoppel Certificate may be relied upon by the addressee in its capacity of a lender related to or secured by the Parcel or of a purchaser or lessee of the Parcel, as applicable. The undersigned has authority to execute this Estoppel Certificate on behalf of the City.

Respectfully,

THE CITY OF AUSTIN

By: _____
Name: _____
Title: _____

FILED AND RECORDED

OFFICIAL PUBLIC RECORDS

Dana DeBeauvoir

2004 Dec 01 01:40 PM

2004223137

HAYWOODK \$48.00

DANA DEBEAUVOIR COUNTY CLERK

TRAVIS COUNTY TEXAS