

TRAIL ACCESS AND USE AGREEMENT

This Trail Access and Use Agreement (“Agreement”) is between **Williamson County, Texas** (“County”), being a political subdivision of the State of Texas, and the Trails at Shady Oak Residential Community, Inc., a Texas nonprofit corporation (“**Property Owner**”) named on the signature page herein below (“Property Owner”), which are both adjoining real property owners. For purposes of this Agreement, County and Property Owner may be individually referred to herein as the “Party” and collectively referred to as the “Parties”. The purpose of this Agreement is to establish an agreement which is acceptable to both Parties for the public’s restricted access to and use of the County’s sidewalk, road and trail systems within the Southwest Williamson County Regional Park and the Property Owner’s sidewalk, road and trail systems, as depicted in the enclosed **Exhibit “A”**. Each Party’s respective sidewalk, road and trail systems may be individually referred to as either County’s Trails or Property Owner’s Trails; and both Parties’ sidewalk, road and trail systems may be collectively referred to herein as the “Parties’ Trails”.

AGREEMENT

For and in consideration of the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

A. Agreements, Obligations and Understandings of Both Parties:

1. Access between the Parties’ Trails shall be open for public use.
2. The conditions of this Agreement can be changed in writing at any time by either Party upon the written consent of both Parties.
3. The Parties’ Trails shall be used by the public only for hiking and biking.
4. No fee will be charged for the public’s access to or use of either Party’s Trails in accordance with the terms of this Agreement.
5. Each respective Party’s Trails shall be maintained separately by each respective Party.
6. Each respective Party’s Trails will be kept clear, marked and clean by each respective Party.
7. Respective trailhead markers, private property courtesy signs, undesired or prohibited uses signs (e.g. motorized travel, horses, hunting, etc.) and trail etiquette signs may be installed in pertinent locations by each respective Party in relation to such Party’s Trail.
8. The Parties’ Trails will remain accessible to the public except during special events and trail closure events. Trail closure notices will be posted at information kiosks located at designated intersection of each Party’s respective Trails access point and will be removed by the Party who posted the Trail closure notice upon conclusion of Trail closure. Possible Trail closing scenarios are listed in the Trail Closure Section herein below.
9. Neither Party may, without written consent of the other Party, install any signs, facilities or other types of improvements on, along or next to the Trails of the other Party.
10. At a minimum, each Party’s representatives will meet annually (February) to discuss any possible additional opportunities or concerns.
11. Both Parties will work cooperatively and in good faith to address topics identified herein.
12. Both Parties hereby agree and acknowledge this Agreement does not transfer, convey or grant any right, title or interest in the other Party’s real property. This Agreement is intended as a

mutual grant of a revocable and non-exclusive license between the Parties in order to allow the public to access and use each respective Party's Trails for the limited use and purpose of hiking and biking only.

B. Liability, Immunity and Assumption of Risk:

The Parties acknowledge that each Party may be able to assert defenses to various types of liability claims under Texas laws relating to recreational use of property, including but not limited to the Texas Tort Claims Act and Chapter 75 of the Texas Civil Practice and Remedies Code.

Nothing in this Agreement shall be deemed to waive, modify or amend any legal defense available at law or in equity to either Party, its past or present officers, employees, or agents, nor to create any legal rights or claim on behalf of any third party. Neither Party waives, modifies, or alters to any extent whatsoever the availability of the defense of governmental immunity under the laws of the State of Texas and of the United States.

Access and use of any portion of either Party's Trails by members of the public is at their own risk. Neither Party by entering into this Agreement assumes any duty to or for the benefit of the general public for defects in the location, design, installation, repair or maintenance of either Party's Trails, for any unsafe conditions that may exist, from time to time, on, near or adjacent to either Party's Trails; or for the failure of either Party to inspect for or warn against possibly unsafe conditions; or to close a Party's Trails to public access if unsafe conditions may be present.

C. Agreements and Obligations of County:

County hereby agrees, at its sole cost, to:

1. Provide design concept information for an Entrance Arch structure to be located on property owned by the County at a designated intersection of each Party's Trails' access point.
2. Provide design concept information for a Trailhead Kiosk structure to be located on property owned by the County at a designated intersection of each Party's Trails' access point.
3. Provide "Trail Etiquette" signage for the Trailhead Kiosk structure to be located at a designated intersection of each Party's Trails' access point.
4. Maintain the Entrance Arch and Trail Kiosk following completion of construction.

D. Agreements and Obligations of Property Owner:

Property Owner hereby agrees, at its sole cost, to:

1. Construct an Entrance Arch structure at a designated intersection of each Party's Trails' access point utilizing County's design concept information.
2. Construct a Trailhead Kiosk structure at a designated intersection of each Party's Trails access point utilizing Williamson County's design concept information.

E. Trail Closure Section:

Actions to close public access to either Party's Trails or segments of either Party's Trails due to trail related events, issues, concerns or emergencies will be based on the following grades of closure, as determined by the respective Party that owns the Trails in question:

High – immediate life threatening or threat to public safety; requires immediate closure until resolved.

Moderate – potential threat to public safety; requires immediate notification to users; to be addressed as soon as conditions allow.

Low – routine trail maintenance; public notification at all public access points and notification to the other Party within 24 hours prior to such closure; to be addressed as necessary.

Special Events – public notification at all public access points and notification to the other Party within 24 hours prior to such closure in order to avoid user conflicts; closure must be lifted upon conclusion of special event.

F. Term and Termination:

The term of this Agreement shall commence upon the last party's execution hereof and shall continue thereafter in full force and effect until terminated by either party. Either Party may terminate this Agreement in writing at any time for any reason (with or without cause) upon thirty (30) calendar day's notice to the other Party.

G. Miscellaneous:

1. Notice. Any notice to be given hereunder shall be in writing and may be affected by personal delivery, in writing or by registered or certified mail, return receipt requested, addressed to the proper party, at the address set out in the signature page herein below.
2. Venue and Governing Law. Each Party to this Agreement hereby agrees and acknowledges that venue and jurisdiction of any suit, right, or cause of action arising out of or in connection with this Agreement shall lie exclusively in Williamson County, Texas, and the parties hereto expressly consent and submit to such jurisdiction. Furthermore, except to the extent that this Agreement is governed by the laws of the United States, this Agreement shall be governed by and construed in accordance with the laws of the State of Texas, excluding, however, its choice of law rules.
3. Assignment. No Party to this Agreement may assign or transfer its interest in or obligations under this Agreement without the prior written consent of all Parties to this Agreement.
4. Incorporation of Exhibits and Attachments. All of the Exhibits and Attachments, and Appendices referred to in this Agreement are incorporated by reference as if set forth verbatim herein.
5. Relationship of the Parties. Each Party to this Agreement, in the performance of this Agreement, shall act in an individual capacity and not as agents, employees, partners, joint ventures or associates of one another. The employees or agents of one Party shall not be

deemed or construed to be the employees or agents of the other Party for any purposes whatsoever.

6. Entire Agreement. This Agreement represents the entire and integrated agreement between the Parties hereto and supersedes all prior negotiations, representations, or agreements, either oral or written. This Agreement may be amended only by written instrument signed by each Party to this Agreement.

IN WITNESS WHEREOF, the Parties have duly executed this Agreement to be effective as of the date of the last Party's execution hereof.

COUNTY:

WILLIAMSON COUNTY, TEXAS

Signature: _____

Printed Name: _____

Title: _____

Date: _____

Contact Name: _____

Contact Address: _____

Contact Phone: _____

PROPERTY OWNER:

Trails at Shady Oak Residential Community Inc.
(Name of Property Owner)

Signature: 

Printed Name: BRYAN BEIL

Title: PRESIDENT

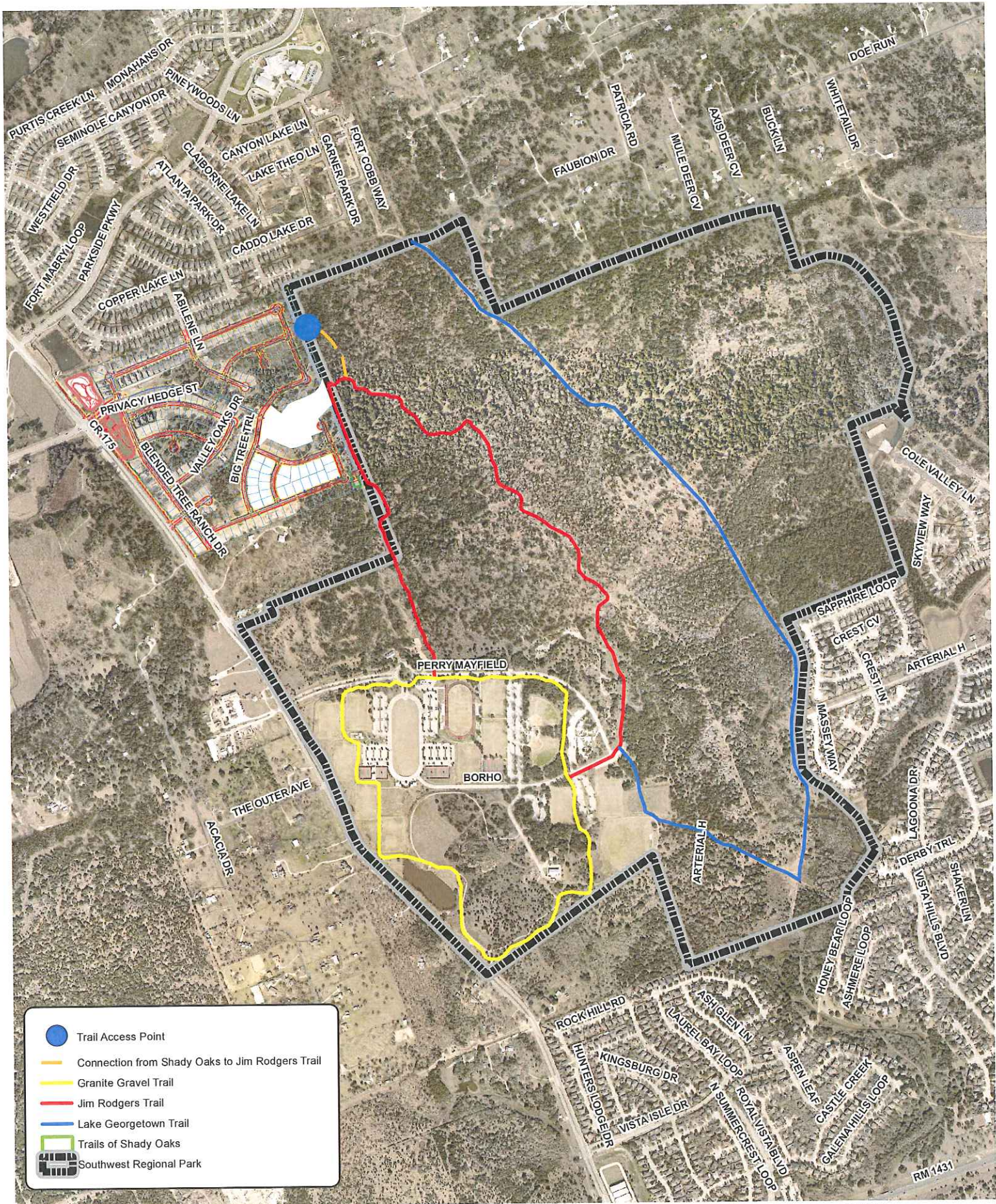
Date: 10.14.15

Contact Name: JAVIER CAUSINO

Contact Address: 115 WILDBASIN RD #308
AUSTIN, TX 78746

Contact Phone: 512.347.2876

Exhibit A



BORHO TRACT

