



CONSERVATION EASEMENT

THIS CONSERVATION EASEMENT (this "Conservation Easement") executed to be effective as of November 23, 2004, by Elmer L. McLester, Trustee, _____ (the "Grantor"), as Grantor, and Brushy Creek Municipal Utility District, 16318 Great Oaks Drive, Round Rock, Williamson County, Texas 78681 (the "Grantee"), as Grantee.

Background

A. The Grantor is the owner in fee simple of certain tract or parcel of real property located in Williamson County, Texas, comprising 1.343 acre tract, more or less, as more particularly described on the attached Exhibit A (the "Parcel").

B. Pursuant to and in consideration of this Conservation Easement, the Grantor and the Grantee intend that the conservation values of the Parcel be preserved and be maintained in perpetuity for the benefit of the native plants and wildlife.

C. Grantor and Grantee have the common purpose of conserving the Parcel and acknowledge that this Conservation Easement is being executed and conveyed in perpetuity pursuant to the Texas Natural Resource Code Chapter 183.

D. Grantee has determined that the Parcel is a significant natural area that supports habitat important for all of the life cycle requirements.

Transfer

IN CONSIDERATION OF TEN and NO/100 Dollars (\$10.00) and the mutual covenants, terms, conditions, and restrictions contained herein, the Grantor hereby GRANTS, BARGAINS, SELLS, and CONVEYS to the Grantee a conservation easement which shall run with the Parcel in perpetuity and shall encumber the Parcel only to the extent set forth in this Conservation Easement.

The grant of this Conservation Easement is subject to all restrictions, covenants, conditions and easements of record, or visible and apparent on the ground (Title Exceptions) to the extent valid and subsisting and covering and affecting all or a portion of the Parcel.

1. **Purpose.** The purpose of this Conservation Easement is to (i) ensure that the Parcel will be retained forever in its natural and scenic condition; (ii) preserve the wildlife habitat, especially

endangered species habitat of the Bone Cave Harvestman, *Texella reyesi*, including native and/or rare flora and fauna and animals on the Parcel; and (iii) prevent any use of the Parcel that will significantly impair or interfere with the conservation values of the Parcel described above. The Grantor intends that this Conservation Easement will restrict the use of the Parcel only to the extent inconsistent with the purposes of this Conservation Easement.

2. Prohibited Uses. Except as otherwise provided in this Conservation Easement to the contrary or with the prior written approval of the Grantee, the following are prohibited:

2.1 Any activity on or use of the Parcel that is inconsistent with the purpose of this Conservation Easement, including the following:

A. Pesticides. There shall be no use of fertilizers, pesticides, or biocides, including but not limited to insecticides, fungicides, rodenticides, and herbicides.

B. Dumping. There shall be no storage or dumping of ashes, trash, garbage, hazardous or toxic materials or any other unsightly or offensive materials on the Parcel.

C. Storage Tanks. There shall be no placement or use of any underground storage tanks on the Parcel.

D. Surface Alteration. There shall be no ditching, draining, diking, filling, excavating, dredging, mining, drilling, or other alteration of the surface of the Parcel.

E. Soil, Water or Vegetation Degradation. Any use or activity that causes or is likely to cause soil degradation, vegetation degradation, erosion, or siltation, or depletion or pollution of any surface or subsurface waters.

F. Construction. There shall be no placement or construction of new structures or other improvements on the Parcel, including any roadway. The foregoing shall not be deemed to prohibit the installation of a gate to restrict access to any cave on the parcel.

G. Commercial Activities. There shall be no commercial or industrial use of or activity on the Parcel.

H. Agricultural Activities. There shall be no farming or other agricultural activities on the Parcel.

I. No Public Access. The general public shall not be allowed access to the Parcel except pursuant to an approved Wildlife Management Plan.

3. Grantor Reserved Rights. The Grantor reserves to itself and its representatives, successors, and assigns, all rights accruing by virtue of owning the Parcel, including the following rights:

3.1 The right to undertake or continue any activity or use of the Parcel not prohibited by nor inconsistent with this Conservation Easement.

3.2 The right to give, lease, sell, grant, or otherwise convey the underlying fee title of any part or all of the Parcel subject to this Conservation Easement.

3.3 The right to maintain, repair, and replace existing fences and to install and repair any gates.

4. Rights of the Grantee. To accomplish the purpose of this Conservation Easement, the following rights are conveyed to the Grantee:

4.1 The right of access to the Parcel as set forth above, particularly as it relates to protection of maintenance of the Parcel for protection of the karst features.

4.2 The Grantee shall have the right to fence and/or gate the Parcel and allow access pursuant to a Wildlife Management Plan.

5. Amendment. This Conservation Easement may not be amended, modified, or rescinded except upon written consent by the Grantor and the Grantee.

6. No Public Access. Nothing contained in this Conservation Easement shall give or grant to the general public any rights, titles, or interests with respect to the Parcel, including a right to enter upon or use the Parcel; in fact, the general public is specifically prohibited from entering upon or using the Parcel in any way, except the Grantee shall be allowed to grant access to appropriate governmental agencies to inspect the Parcel on reasonable notice.

7. Recordation. Grantee shall record the instrument in timely fashion in the official records of Williamson County, Texas, and shall furnish a copy of this executed and recorded Conservation Easement to Grantor. Each Party is authorized to record or file any notices or instruments appropriate to assuring the perpetual enforceability of this Conservation Easement, and the other Party agrees to execute any such instruments (reasonably acceptable to that Party) upon request.

8. General Provisions.

8.1 **Controlling Law.** The interpretation and performance of this Conservation Easement shall be governed by the laws of the State of Texas and applicable federal law and regulations.

8.2 **Severability.** If any provision of this Conservation Easement, or the application thereof to any person or circumstance is found to be invalid, the remainder of the provisions of this Conservation Easement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.

8.3 **Successors.** The covenants, terms, conditions, and restrictions of this Conservation Easement shall be binding upon, and inure to the benefit of the Parties and their respective personal representatives, heirs, successors, and assigns and shall continue as a perpetual servitude running with the Parcel.

8.4 **Use of Words.** Pronouns, nouns, and terms used in this Conservation Easement shall include the masculine, feminine, neuter, singular and plural forms wherever appropriate to the context, "including" (and "include") is used by way of example and not by way of limitation.

8.5 **Titles, Headings, and Captions.** All titles, headings, and captions used in this Conservation Easement have been inserted for reference purposes only and shall not in any way affect the meaning and interpretation of its provisions.

8.6 **Exhibits.** All Exhibits referred to in this Conservation Easement are attached to this Conservation Easement and are incorporated herein by this reference.

8.7 **Federal Appropriations.** The duties of the Grantee herein to carry out its obligations under this Conservation Easement shall be subject to the availability of appropriated funds.

8.8 **Subsequent Liens.** No provision of this Conservation Easement shall be construed as impairing the ability of Grantor or Owner to use part or all of the Parcel as collateral for subsequent borrowing, provided that any mortgage or liens arising from such loans must be subordinate to this Conservation Easement.

8.9 **Endangered Species Act.** Grantor and Grantee each acknowledge that all activities accomplished or permitted under this Conservation Easement (or in general) must comply with all appropriate local, state, and Federal statutes including but not limited to the Endangered Species Act ("ESA"). In addition to ensuring that its own actions are in full compliance with the ESA and the National Environmental Policy Act ("NEPA"), Grantee will take into account compliance with the ESA when issuing to Grantor any opinions, reviews, or

approvals of activities proposed by Grantor or Grantee on the Parcel. Grantor and Grantee acknowledge that the provisions of this Conservation Easement are intended to be in general and substantial compliance with the ESA.

8.10 Grantee's Acceptance. Grantee accepts this Conservation Easement as "Holder" under the Texas Natural Resource Code Chapter 183 and Grantee's acceptance of this Conservation Easement is evidenced by Grantee's execution of this Conservation Easement.

8.11 No Third-Party Right of Enforcement. Notwithstanding anything else to the contrary, this Conservation Easement does not create any rights of enforcement in any third-party. Only the Grantor and the Grantee shall have rights of enforcement.

8.12 Notices. All notices shall be given by each Party at the addresses shown above by regular first class mail.

8.13 Effective Date. This Conservation Easement shall not become effective and binding until fully executed by both Grantor and Grantee.

EXECUTED on November 23, 2004.

GRANTOR

Elmer L. McLester, Trustee
Elmer L. McLester, Trustee

GRANTEE

Brushy Creek Municipal Utility District

By: Mike Taylor
Mike Taylor, General Manager

Acknowledgments

THE STATE OF TEXAS

COUNTY OF WILLIAMSON

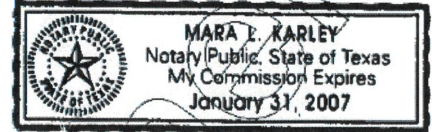
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196613-14 11/17/2004

This instrument was acknowledged before me on this the 23rd day of November, 2004, by Elmer L. McLester, Trustee.

Mara L. Karley
Notary Public, State of Texas
My Commission expires: _____



THE STATE OF TEXAS §
 §
COUNTY OF WILLIAMSON §

This instrument was acknowledged before me on this the 11 day of January, 2004, by Mike Taylor, General Manager, on behalf of Brushy Creek Municipal Utility District



Teresea Kay Schade
Notary Public, State of Texas
My Commission expires: 5/21/07

Unofficial Document

EXHIBIT "A"

Conservation Easement

**FIELD NOTE DESCRIPTION OF A
1.343 ACRE TRACT OF LAND OUT OF THE
ELMER L. MCLESTER, TRUSTEE TRACT,
LOCATED IN WILLIAMSON COUNTY, TEXAS**

BEING a 1.343 acre (58,523 square feet) tract of land situated in the James B. Allen Survey, Abstract No. 36, Williamson County, Texas; being a portion of that certain called 140.93 acre tract of land described in a Warranty Deed With Vendor's Lien from Curtis Borho to Elmer L. McLester, Trustee, executed December 6, 1979, and recorded in Volume 780, Page 58, Williamson County Deed Records (W.C.D.R.); said 1.343 acre tract being more particularly described by metes and bounds as follows with bearings based on the Texas State Plane Coordinates NAD83/93 HARN, Texas Central Zone, which is based upon the published positions of the City of Round Rock Control Monuments No. 01-005, 01-031 and 01-032:

BEGINNING at a 1/2-inch iron rod found for the northwest corner of the herein described tract and marking the common northwest corner of said 140.93 acre tract and southwest corner of Lot 19, Whitetail Subdivision, filed September 8, 1975, and recorded in Cabinet C, Slides 117 & 118, Williamson County Plat Records (W.C.P.R.), said point being on the easterly line of County Road No. 176, and also being located at Texas State Plane Coordinates grid position X=3102169.20 and Y=10186297.46;

THENCE, departing the easterly line of said County Road No. 176, and with the common southerly line of said Lot 19 and northerly line of said 140.93 acre tract, the following two (2) calls:

- 1) North 65 degrees 21 minutes 47 seconds East, a distance of 68.70 feet to an angle point for corner of the herein described tract;
- 2) North 68 degrees 11 minutes 13 seconds East, a distance of 141.48 feet to a point for the northeast corner of the herein described tract;

THENCE, departing said common line, and crossing through the interior of said 140.93 acre tract, the following two (2) calls:

- 1) South 20 degrees 48 minutes 39 seconds East, a distance of 281.07 feet to a point for the southeast corner of the herein described tract;

**Exhibit "A" continued
Description of 1.343 acre tract**

- 2) South 69 degrees 11 minutes 21 seconds West, a distance of 210.00 feet to a point for the southwest corner of the herein described tract, said point being on the common easterly line of said County Road No. 176 and westerly line of said 140.93 acre tract, and from which a 1/2-inch iron rod found marking the most westerly northwest corner of Lot 66 of said Whitetail Subdivision, same being an interior corner of said 140.93 acre tract bears South 28 degrees 05 minutes 12 East, at 1,510.78 feet;

THENCE, North 20 degrees 48 minutes 39 seconds West, with the common easterly line of said County Road No. 176 and westerly line of said 140.93 acre tract, and along the general line of an existing fence, a distance of 274.01 feet to the POINT OF BEGINNING of the herein described tract, encompassing within the metes recited 1.343 acres (58,523 square feet) of land, more or less, based on the survey and exhibit drawing made by The Wallace Group, Inc. on August 16, 2004.

An easement exhibit drawing of even survey date herewith accompanies this field note description.

I, Daniel M. Flaherty, Registered Professional Land Surveyor No. 5004, State of Texas, do hereby certify that this field note description and the easement exhibit drawing attached hereto were prepared from an actual survey of the property performed on the ground and that the same is true and correct.

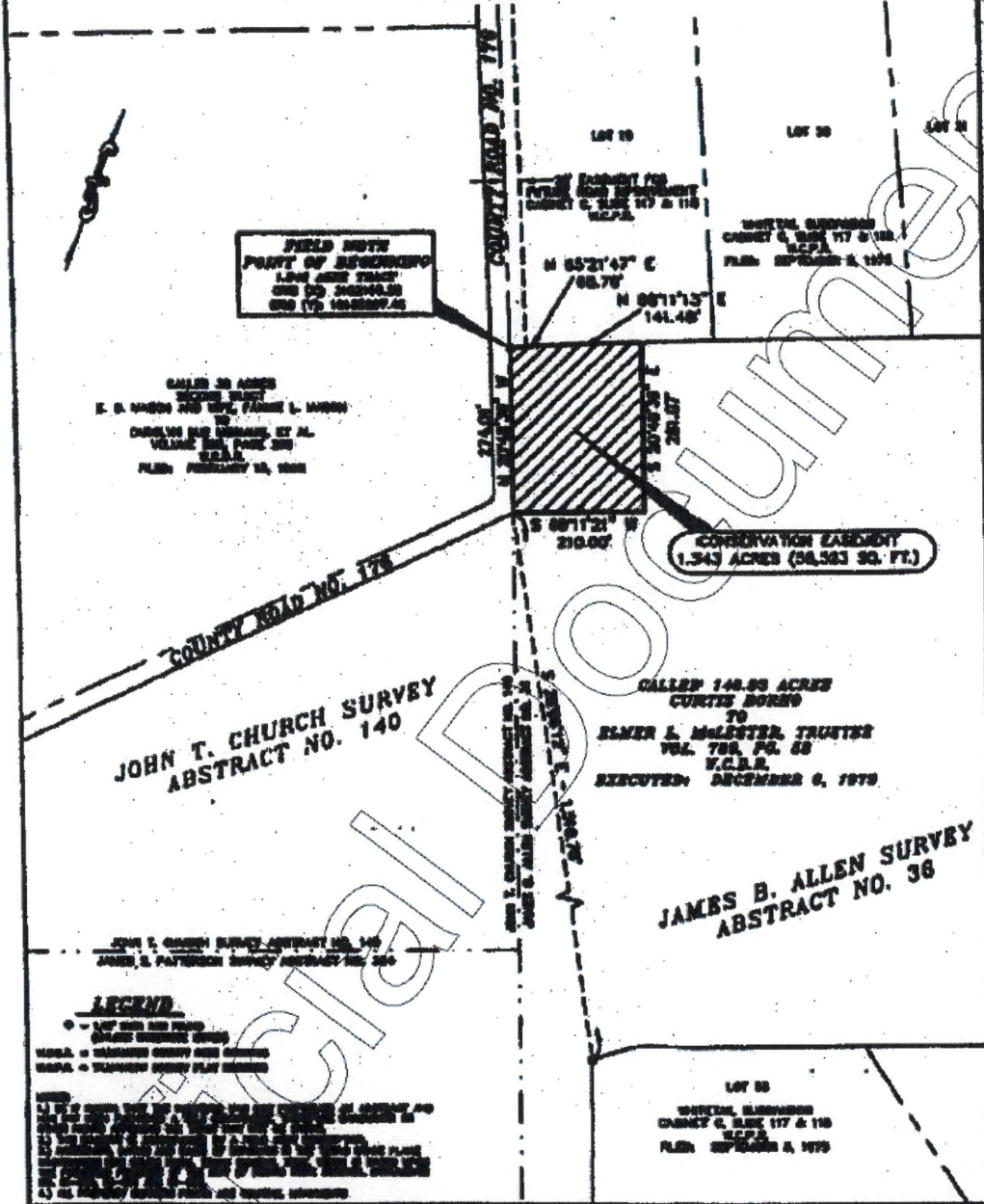


Daniel M. Flaherty
Daniel M. Flaherty, R.P.L.S. #5004
The Wallace Group, Inc.
One Chisholm Trail, Suite 130
Round Rock, Texas 78681
Ph. (512) 248-0065
Work Order No. 15641

See attached Plat No. RR E-1789
15641-PN15D.doc

08-16-04
Date

EXHIBIT "A"
DRAWING TO ACCOMPANY FIELD NOTE DESCRIPTION
OF A 1.343 ACRE CONSERVATION EASEMENT



FIELD NOTE
POINT OF BEGINNING
 LOW LINE TRACT
 ONE (1) SECTION 30
 ONE (1) TOWNSHIP 14N

CALLS 30 ACRES
 SECTION 30
 T. 14 N. R. 10 W. S. 10 E., RANGE 10, TOWNSHIP 14N
 CHARLES H. WILSON, ET AL.
 VOLUME 100, PAGE 300
 S.W.A.
 FILED: FEBRUARY 12, 1928

CONSERVATION EASEMENT
 1.343 ACRES (58,363 SQ. FT.)

JOHN T. CHURCH SURVEY
ABSTRACT NO. 140

CALLS 140.00 ACRES
CURTIS BOKER
 TO
ELMER L. WILSTER, TRUSTEE
 VOL. 789, PG. 88
 V.C.B.R.
 EXECUTED: DECEMBER 6, 1979

JAMES B. ALLEN SURVEY
ABSTRACT NO. 36

LEGEND
 * - LOT CORNER MARK
 O - SECTION CORNER MARK
 W.D.A. - WILSON DEED AND GRANT
 W.A.D. - WILSON DEED AND GRANT
 W.D.A. - WILSON DEED AND GRANT

The Wallace Group, Inc.
 3000 North Loop West Suite 120, Round Rock, Texas 78681 (512) 248-0066
 Engineers • Architects • Planners • Surveyors
 Waco • Killeen • Austin • Dallas • Round Rock

I HEREBY STATE THAT TO THE BEST OF MY PROFESSIONAL KNOWLEDGE AND BELIEF THAT THIS PLAN AND THE SURVEY UPON WHICH IT IS BASED MEETS THE REQUIREMENTS FOR LAND SURVEYS IN THE STATE OF TEXAS THIS 18TH DAY OF AUGUST, 2004.

SURVEYED: 07-17-03
 DANIEL M. FLAHERTY, R.P.S.S. NO. 5004

SCALE: 1" = 400' PLAT NO. RR E-1788 DRAFT DATE 08-18-04 DRAWN BY J.M.M.
 WORK ORDER NO. 15844 FIELDBOOK/PZ 08-28/02 TAB # E-1788
 © 2004 ALL RIGHTS RESERVED DIGITAL FILE 15844ENL.DWG P/N # 15844-01130



AFTER RECORDING RETURN TO:

Sue Brooks Littlefield
Armbrust & Brown, L.L.P.
100 Congress Ave., Ste. 1300
Austin, Texas 78701

FILED AND RECORDED
OFFICIAL PUBLIC RECORDS 2005003748

Nancy E. Rister

01/13/2005 03:28 PM

CARRILLO \$32.00

NANCY E. RISTER, COUNTY CLERK
WILLIAMSON COUNTY, TEXAS

Unofficial Document