

STATE OF TEXAS §

COUNTY OF WILLIAMSON §

OCCUPATION AND USE AGREEMENT

This Occupation and Use Agreement ("Agreement") is made and entered into by and between Williamson County, Texas, a political subdivision of the State of Texas ("County") and Leroy Smith ("Park Attendant").

County hereby agrees to allow Park Attendant to occupy and use that certain property and improvements, hereinafter called the "Premises", known as the house located at 400 Borho, Leander, Texas 78641, Williamson County, Texas, and Park Attendant hereby agrees to occupy and use said Premises subject to the following terms and conditions:

1. TERM OF AGREEMENT. The initial term of this Agreement shall be one year commencing on the _____ 1st day of October, 2011 and thereafter shall automatically be renewed on a month-to-month basis, subject to termination of this Agreement as provided herein (the "Agreement Term").

2. RENT AND TAXES. County and Park Attendant agree that Park Attendant shall occupy and use the Premises as both a convenience to County and as a condition and requirement of Park Attendant's employment with County, and as such, Park Attendant shall not be required to pay rent for his/her occupation and use of the Premises. County agrees to pay all real estate taxes assessed, if any, against the Premises.

3. EMPLOYMENT AT WILL. Nothing herein shall be construed to change Park Attendant's employment-at-will status with Williamson County.

4. USE. Except for using a portion of the Premises for purposes of a park attendant's office, Park Attendant and Park Attendant's immediate family members shall use the Premises for uses consistent with single family occupancy, and for no other purposes or use of any kind, unless first authorized in writing by the Williamson County Commissioners Court. Park Attendant's use of the Premises shall not interfere with park patrons' use and enjoyment of the park in and around the Premises. Furthermore, Park Attendant and all other persons on the premises must refrain from conducting themselves in any way that would unduly disturb park patrons or constitute a breach of the peace. Park Attendant may not permit any part of the Premises to be used for: (a) any activity which is a nuisance, offensive, noisy, or dangerous; (b) the repair of any vehicle; (c) any business of any type; (d) any illegal or unlawful activity; or (e) any other activity which will obstruct, interfere with, or infringe on the rights of other persons on or near the Premises.

5. SECURITY DEPOSIT. Park Attendant shall not be required to provide an initial Security Deposit at the beginning of this Agreement. However, in the event that Park Attendant shall at any time cause damage to the Premises, excluding ordinary wear and tear, that requires County's repair thereof, Park Attendant shall pay for all such repairs and immediately deposit

with County, a Security Deposit in the amount of \$1,000.00, as security for the faithful performance of the terms and conditions of this Agreement. In the event that County shall at any time apply any of the Security Deposit to cover any lawful deductions, then, upon the request of County to Park Attendant specifying the amount so applied, Park Attendant shall immediately deposit with County, as an additional Security Deposit, the amount so applied, so that the security deposit held by County shall at all times during the Agreement Term be equal to the aforementioned amount specified in this section. The Security Deposit shall be returned to Park Attendant, without interest and less any lawful deductions of same, upon the Park Attendant's full performance of this Agreement and on Park Attendant's surrender of the Premises.

6. INSURANCE. County shall pay for fire and extended coverage insurance on the building and other permanent improvements on the Premises and the proceeds thereof, if any, shall be payable solely to County. Park Attendant shall obtain, at its sole cost, and keep in effect a policy of renters insurance which provides coverage for damages resulting from personal injuries and/or property loss, which shall be primary as to any other existing, valid and collectible insurance that may be carried by County.

7. CONDITION OF PREMISES. PARK ATTENDANT HEREBY AGREES AND STIPULATES THAT THE PREMISES HAVE BEEN EXAMINED BY PARK ATTENDANT, INCLUDING THE GROUNDS AND ALL BUILDINGS AND IMPROVEMENTS, AND THAT AT THE TIME OF THIS AGREEMENT THEY ARE IN GOOD ORDER AND REPAIR AND IN A SAFE, CLEAN, AND TENANTABLE CONDITION. PARK ATTENDANT ACKNOWLEDGES AND AGREES THAT, OTHER THAN AS MAY BE SPECIFICALLY SET FORTH HEREIN, COUNTY HAS NOT MADE, DOES NOT MAKE AND SPECIFICALLY DISCLAIMS ANY REPRESENTATIONS, WARRANTIES, PROMISES, COVENANTS, AGREEMENTS OR GUARANTIES OF ANY KIND OR CHARACTER WHATSOEVER, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, PAST, PRESENT OR FUTURE, OF, AS TO, CONCERNING OR WITH RESPECT TO (A) THE NATURE, QUALITY OR CONDITION OF THE PREMISES, INCLUDING, WITHOUT LIMITATION, THE WATER, SOIL AND GEOLOGY, (B) THE SUITABILITY OF THE PREMISES FOR ITS INTENDED USE, (C) THE COMPLIANCE OF OR BY THE PREMISES OR ITS OPERATION WITH ANY LAWS, RULES, ORDINANCES OR REGULATIONS OF ANY APPLICABLE GOVERNMENTAL AUTHORITY OR BODY, INCLUDING, WITHOUT LIMITATION, THE AMERICANS WITH DISABILITIES ACT AND ANY RULES AND REGULATIONS PROMULGATED THEREUNDER OR IN CONNECTION THEREWITH, AND THE TEXAS ARCHITECTURAL BARRIERS ACT AND ANY RULES AND REGULATIONS PROMULGATED THEREUNDER OR IN CONNECTION THEREWITH, (D) THE HABITABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE PREMISES, OR (E) ANY OTHER MATTER WITH RESPECT TO THE PREMISES, AND SPECIFICALLY THAT COUNTY HAS NOT MADE, DOES NOT MAKE AND SPECIFICALLY DISCLAIMS ANY REPRESENTATIONS REGARDING SOLID WASTE, AS DEFINED BY THE US. ENVIRONMENTAL PROTECTION AGENCY REGULATIONS AT 40 C.F.R., PART 261, OR THE DISPOSAL OR EXISTENCE, IN OR ON THE PREMISES, OF ANY HAZARDOUS SUBSTANCE, AS DEFINED BY THE COMPREHENSIVE ENVIRONMENTAL RESPONSE COMPENSATION AND LIABILITY ACT OF 1980, AS AMENDED, AND APPLICABLE STATE LAWS, AND REGULATIONS PROMULGATED THEREUNDER. PARK ATTENDANT FURTHER ACKNOWLEDGES AND AGREES THAT HAVING BEEN GIVEN THE OPPORTUNITY TO INSPECT THE PREMISES, PARK ATTENDANT IS RELYING SOLELY ON ITS OWN INVESTIGATION OF THE PREMISES AND NOT ON ANY INFORMATION PROVIDED OR TO BE PROVIDED BY COUNTY. PARK ATTENDANT FURTHER ACKNOWLEDGES AND AGREES THAT ANY INFORMATION PROVIDED OR TO BE PROVIDED WITH RESPECT TO THE PREMISES WAS OBTAINED FROM A VARIETY OF SOURCES AND THAT COUNTY HAS NOT MADE ANY INDEPENDENT INVESTIGATION OR VERIFICATION OF SUCH INFORMATION. PARK ATTENDANT FURTHER ACKNOWLEDGES AND AGREES THAT THE OCCUPATION AND USE OF THE PREMISES AS PROVIDED FOR HEREIN IS MADE ON AN "AS IS, WHERE IS" CONDITION AND BASIS "WITH ALL FAULTS". PARK

ATTENDANT ACKNOWLEDGES AND AGREES THAT THE PROVISIONS OF THIS PARAGRAPH WERE A MATERIAL FACTOR IN ALLOWING THE PARK ATTENDANT TO OCCUPY THE PREMISES. THE TERMS OF THIS PARAGRAPH WILL SURVIVE ANY TERMINATION OF THIS AGREEMENT. PARK ATTENDANT ACKNOWLEDGES THAT NO AGREEMENTS HAVE BEEN MADE REGARDING FUTURE REPAIRS UNLESS OTHERWISE SPECIFIED IN THIS AGREEMENT.

8. MAINTENANCE AND REPAIRS. As part of Park Attendant's duties under employment with Williamson County, Park Attendant shall maintain in good repair or supervise maintenance of the exterior and interior of the Premises, including foundation, the exterior walls, doors, door closure devices, HVAC system, window and door frames, molding, locks and hardware, and the roof of the Premises and all portions of the Premises extending beyond the exterior walls of the building in good repair. The County shall pay the costs of materials necessary for repair and maintenance of the Premises, except as otherwise provided herein, provided that funds have been appropriated for such costs. Park Attendant shall, however, obtain prior consent from County before Park Attendant expends any amounts for the repair and/or maintenance of the exterior and interior of the Premises. Notwithstanding of any provision to the contrary, Park Attendant shall, at its sole cost and expense, repair and/or replace any portion of the interior or exterior of the Premises that are damaged due to the acts or omissions of Park Attendant or Park Attendant's family, agents, guests, invitees or visitors. At the termination of this Agreement, Park Attendant shall deliver the Premises in good order and condition, reasonable wear and tear excepted. Park Attendant and Park Attendant's family, agents, guests, invitees or visitors may not smoke any type of tobacco or non-tobacco product inside any of the improvements and/or buildings on the Premises.

9. ALTERATIONS. All alterations, additions and improvements shall become the property of County and shall remain upon and be surrendered with the Premises as a part thereof on the termination of this Agreement. Such alterations, additions and improvements may only be made with the prior written consent of County. No cooling tower, equipment, antenna, sign or structure of any kind shall be placed on the roof or elsewhere on the Premises by Park Attendant without prior written permission of County. If such permission is granted, such work or installation shall be done at Park Attendant's expense and in such a manner that the roof shall not be damaged thereby. If it becomes necessary to remove such cooling tower, equipment or structure temporarily, so that repairs to the roof can be made, Park Attendant shall promptly repair at its expense any damages resulting from such removal. At the termination of this Agreement, Park Attendant shall deliver the Premises in good order and condition, natural deterioration only excepted. Any damage caused by the installation or removal of fixtures shall be repaired at Park Attendant's expense prior to the expiration of the Agreement Term. All alterations, improvements, additions, and repairs made by Park Attendant shall be made in good and workmanlike manner.

10. COMPLIANCE WITH LAWS AND REGULATIONS. Park Attendant shall, at its own expense, comply with all laws, orders, and requirements of all governmental entities with reference to the use and occupancy of the Premises. Park Attendant and Park Attendant's family, agents, guests, invitees or visitors shall fully comply with any rules and regulations governing the use of the building or other improvements to the Premises as required by County. County may make reasonable changes in such rules and regulations from time to time as deemed

advisable for the safety, care and cleanliness of the Premises, provided same are in writing and are not in conflict with this Agreement.

11. ASSIGNMENT AND SUBLETTING. Park Attendant shall not assign this Agreement, nor sublet the Premises or any interest therein without the prior written consent of County. An assignment or subletting without the prior written consent of County shall be void and shall, at the option of County terminate this Agreement.

12. DESTRUCTION. In the event the Premises is partially damaged or destroyed or rendered partially unfit for occupancy by fire or other casualty, Park Attendant shall give immediate notice to County. County may repair the damage and restore the Premises to substantially the same condition as immediately prior to the occurrence of the casualty. Such repairs shall be made at County's expense unless due to Park Attendant's acts or omissions. If the Premises are totally destroyed or deemed by the County to be rendered unfit for occupancy by fire or other casualty, or if County shall decide not to repair or rebuild, this Agreement shall terminate.

13. SURRENDER OF PREMISES; ABANDONMENT OF PROPERTY. On or before the termination of this Agreement, Park Attendant shall surrender ("Surrender" shall mean vacating the premises and returning all keys and access devices to the County) the Premises clean and free of all trash, debris and any personal property or belongings and in as good condition as they were at the commencement of this Agreement, reasonable use and wear and damages by the elements excepted. If Park Attendant leaves any personal property or belongings in, on or about the Premises after Park Attendant Surrenders possession of the Premises, all such personal property and/or belongings of Park Attendant will be forfeited to and become the property of the County. In the event that Park Attendant forfeits such personal property or belongings pursuant to the terms of this Agreement, Park Attendant hereby acknowledges and agrees that County may dispose of such personal property or belongings of Park Attendant, without liability to County, in any manner in which County, in County's sole discretion, deems fit or reasonable.

14. SUBORDINATION. County is hereby irrevocably vested with full power and authority to subordinate this Agreement to any loan, bond or encumbrance and Park Attendant agrees on demand to execute such instruments subordinating this Agreement as County may request.

15. LIABILITY. UNLESS CAUSED BY COUNTY'S GROSS NEGLIGENCE, PARK ATTENDANT ACKNOWLEDGES AND AGREES THAT COUNTY IS NOT LIABLE OR RESPONSIBLE TO PARK ATTENDANT, PARK ATTENDANT'S FAMILY, GUESTS, OCCUPANTS, AND/OR INVITEES FOR ANY DAMAGES, INJURIES, OR LOSSES TO PERSON OR PROPERTY CAUSED BY FIRE, FLOOD, WATER LEAKS, ICE, SNOW, HAIL, WINDS, EXPLOSIONS, SMOKE, INTERRUPTION OF UTILITIES, THEFT, BURGLARY, ROBBERY, ASSAULT, VANDALISM, OTHER PERSONS, THE CONDITION OF THE PREMISES, ENVIRONMENTAL CONTAMINANTS, INCLUDING BUT NOT LIMITED TO CARBON MONOXIDE, ASBESTOS, RADON GAS AND LEAD BASED PAINT, OR OTHER OCCURRENCES OR CASUALTY LOSSES. PARK ATTENDANT HEREBY AGREES TO INDEMNIFY AND HOLD HARMLESS COUNTY, ITS OFFICIALS, AGENTS, EMPLOYEES, OFFICERS, AND REPRESENTATIVES AND THE PREMISES FROM ALL COSTS, LOSSES, DAMAGES, LIABILITIES, EXPENSES, PENALTIES, AND FINES WHATSOEVER THAT MAY ARISE FROM OR BE CLAIMED AGAINST COUNTY OR THE PREMISES BY ANY PERSON OR PERSONS FOR ANY INJURY TO

PARK ATTENDANT: Leroy Smith
 400 Borho
 Leander, Texas 78641

19. REPORTS OF ACCIDENTS. Within 24 hours after Park Attendant becomes aware of the occurrence of any accident or other event which results in, or might result in, injury to the person or property of any person in, on or around the Premises, whether or not it results from or involves any action or failure to act by the Park Attendant, the Park Attendant shall send a written report of such accident or other event to the County, setting forth a full and concise statement of the facts pertaining thereto. The Park Attendant shall also immediately send the County a copy of any summons, subpoena, notice, or other documents served upon the Park Attendant or received by it in connection with any matter before any court arising in relation to any injury to the person or property of any person in, on or around the Premises.

20. DEFAULT BY COUNTY. In the event of breach by County of any covenant, warranty, term or obligation of this Agreement, County's failure to cure same or commence a good faith effort to cure same within 30 days after written notice thereof by Park Attendant shall be considered a default and shall entitle Park Attendant to either terminate this Agreement or cure the default at its sole cost. Park Attendant hereby acknowledges that such right to terminate or cure the default shall be the sole remedies available in the event County breaches this Agreement and fails to cure as set forth in this provision. If any utility services furnished by County are interrupted and continue to be interrupted despite the good faith efforts of the County to remedy same, County shall not be liable in any respect for damages to the person or property of Park Attendant or Park Attendants employees, agents, or guests, and same shall not be construed as grounds to terminate this Agreement.

21. DEFAULT BY PARK ATTENDANT. Park Attendant hereby acknowledges and agrees that if Park Attendant fails to comply with any covenant, warranty, term or obligation of this Agreement, such failure shall be deemed to be a material breach of this Agreement. Furthermore, if Park Attendant fails to comply with any covenant, warranty, term or obligation of this Agreement or any present rules and regulations or any that may be hereafter prescribed by County, or if Park Attendant fails to comply with any duties imposed on Park Attendant by law, County may immediately terminate this Agreement and/or avail itself of any remedies that may be available at law or in equity. If County decides that Park Attendant should be allowed the opportunity to correct the noncompliance, County may deliver a written notice specifying the noncompliance and allowing ten (10) days within which it may be corrected. If compliance is not made within said period, County may then terminate this Agreement and/or avail itself of any remedies that may be available at law or in equity.

22. TERMINATION OF EMPLOYMENT. This Agreement shall terminate immediately upon Park Attendant's termination, retirement or resignation from employment with Williamson County. County may terminate this Agreement due to a change in Park Attendant's employment position with Williamson County. In the event this Agreement is terminated pursuant to this provision, Park Attendant shall have fourteen days to vacate the Premises, unless the parties agree otherwise in writing.

23. TERMINATION FOR CONVENIENCE. Either party may terminate this Agreement, for convenience and without cause or further liability, upon thirty (30) calendar day's written notice to the other party.

24. RIGHT OF ENTRY. County shall have the right during normal business hours to enter the Premises: (a) to inspect the general condition and state of repair thereof; (b) to make repairs required or permitted under this Agreement; or (c) for any other reasonable purpose.

25. WAIVER OF BREACH; NO WAIVER OF IMMUNITIES. The waiver by County of any breach of any provision of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of the same or a different provision of this Agreement. Nothing in this Agreement shall be deemed to waive, modify or amend any legal defense available at law or in equity to County, its past or present officers, employees, or agents, nor to create any legal rights or claim on behalf of any third party. County does not waive, modify, or alter 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.

26. TIME OF ESSENCE. Time is expressly declared to be of the essence in this Agreement.

27. BINDING OF HEIRS AND ASSIGNS. All provisions of this Agreement shall extend to and bind not only the parties to this Agreement, but to each and every one of the heirs, executors, representatives, successors, and assigns of County and Park Attendant.

28. NO THIRD PARTY BENEFICIARIES. This Agreement is for the sole and exclusive benefit of the Park Attendant and County, and nothing in this Agreement, express or implied, is intended to confer or shall be construed as conferring upon any other person or entity any rights, remedies or any other type or types of benefits.

29. RIGHTS AND REMEDIES CUMULATIVE. The rights and remedies provided to County under this Agreement are cumulative and the County's use of any one right or remedy shall not preclude or waive County's right to use any or all other remedies. Said rights and remedies are given to County in addition to any other rights the parties may have by law, statute, ordinance, or otherwise.

30. TEXAS LAW TO APPLY. This Agreement shall be construed under and in accordance with the laws of the State of Texas. Venue shall lie and be exclusively in Williamson County, Texas.

31. SEVERABILITY; LEGAL CONSTRUCTION. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein. Each party to this Agreement acknowledges that it and its counsel have reviewed this Agreement and that the normal rules of

construction are not applicable and there will be no presumption that any ambiguities will be resolved against the drafting party in the interpretation of this Agreement.

32. ENTIRE AGREEMENT. This Agreement constitutes the sole and only agreement of the parties to this Agreement and supersedes any prior understandings or written or oral agreements between the parties respecting the subject matter of this Agreement. No amendment, modification, or alteration of the terms hereof shall be binding unless it is in writing, dated subsequent to the date hereof, and duly executed by the parties.

EXECUTED this the _____ day of _____ 20_____.


PARK ATTENDANT:

By: 

Printed Name: Leroy Smith

COUNTY:

Williamson County, Texas, a political subdivision
of the State of Texas

By: 
Dan A. Gattis, 09-20-11
Williamson County Judge