

**Notice of Confidentiality Rights: If You Are a Natural Person, You May Remove or Strike Any or All the Following Information from Any Instrument That Transfers an Interest in Real Property Before It is Filed for Record in the Public Records: Your Social Security Number or Your Driver's License Number.**

STATE OF TEXAS                   §  
   §           KNOW ALL BY THESE PRESENTS:  
 COUNTY OF MEDINA           §

**Conservation Easement**  
 Mary Louise DePuy Ranch

<b>Authorizing Ordinance:</b>	
<b>Grantor:</b>	Mary Louise DePuy, Jr. Donohoe, formerly known as Mary Louise DePuy, Jr. Powell, as to an undivided 0.900 ownership interest, and  Mary Louise DePuy, Jr. Donohoe, formerly known as Mary Louise DePuy, Jr. Powell, as Trustee of the Mary Louise DePuy, Jr. Powell Family Trust, under agreement dated August 19, 2003, as to an undivided 0.100 ownership interest
<b>Grantor's Address:</b>	110 East Lakeshore Dr. Dripping Springs, TX 78620 (Hays County)
<b>Grantee:</b>	City of San Antonio, a Texas municipal corporation
<b>Grantee's Address:</b>	P.O. Box 839966, San Antonio, Bexar County, Texas 78283-3966 Attn: Director, Parks and Recreation Dept. (Bexar County)
<b>Property:</b>	649.93 acres, known as the "Mary Louise DePuy Ranch", in Medina County, Texas as more particularly described on <b>Exhibit A</b> .

## **Grant, Rights, and Obligations**

**Now, Therefore,** in consideration of the premises, the mutual covenants and promises contained herein, \$10 in hand paid, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Grantor grants and conveys to Grantee in perpetuity a Conservation Easement (“**Easement**”) in gross over the Property as of the Effective Date. This Easement is created under and is governed by Chapter 183 of the Texas Natural Resources Code, as amended, or its recodification.

### **Predicate Facts**

Grantor owns the Property identified below in fee simple, subject to the Reservations From and Exceptions to Warranty.

The Property sits over the Edwards Aquifer recharge zone, the contributing zone, or both.

Grantor and Grantee both wish to restrict development on the Property in furtherance of protecting indefinitely the quantity and quality of aquifer recharge.

The characteristics of the Property, its current use and state of improvement, are described in the Easement Documentation Report (as identified below and referred to herein as the “**Report**”).

The Report is a complete and accurate description of the Property, which establishes the baseline condition of the Property as of the Effective Date and includes reports, maps, photographs, and other documentation;

In inquiring into the condition of the Property as of the date of this Easement, the Report may be augmented but not contradicted by other evidence.

Grantor and Grantee have the common purpose of protecting the natural condition of the Property to further the Purposes of this Easement in perpetuity.

The rights and obligations arising under this Easement are a bargained-for allocation of property rights between Grantor and Grantee.

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### **Table of Contents**

1. Basic Information.....	3
2. Exhibits.....	4
3. Purpose.....	4
4. Definitions.....	4
5. Development-Related Provisions.....	6
6. Agriculture-Related Provisions.....	7
7. Vegetation-Related Provisions.....	9
8. Vehicle-Related Provisions.....	10
9. Storage, Dumping, and Disposition-Related Provisions.....	10
10. Extraction-Related Provisions.....	11
11. Water Flow-Related Provisions.....	13

12. Requests for Approval .....	13
13. No Public Access.....	14
14. Ownership Obligations.....	14
15. Grantee’s Rights.....	14
16. Discretionary Consent.....	16
17. Alienation by Grantee.....	16
18. Alienation by Grantor.....	17
19. Amendment.....	17
20. Termination, Condemnation.....	17
21. Interpretation.....	18
22. Severability.....	18
23. Successor, Beneficiaries.....	18
24. Encumbrance by Grantor.....	18
25. Appropriations.....	18
26. Notices from Governmental Authorities.....	18
27. Easement Runs with the Land; No Merger.....	18
28. Effective Date.....	19

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**1. Basic Information.**

<b>Maximum Number of Parcels:</b>	One (1)
<b>Maximum Number of Building Envelopes:</b>	Two (2)
<b>No-Development Zones:</b>	As more particularly described on <b>Exhibit B</b> . Structures existing in the No-Development Zones identified in the Report need not be removed.
<b>Maximum Increased Impervious Cover:</b>	141,554.754 square feet, which is intended to approximate ½ of one percent of the Property’s total acreage, but the square footage controls
<b>Maximum Impervious Cover per Building Envelope:</b>	25% of the total square feet in the Building Envelope
<b>Maximum Number of Water Wells:</b>	Three (3)
<b>Report:</b>	The Easement Documentation Report dated September 2016, prepared by Adams Environmental, Inc. relating to the Property, as shown on <b>Exhibit C</b> .
<b>Exceptions to and Reservations from Warranty:</b>	As shown on <b>Exhibit D</b> .

All exhibits are incorporated into this Easement by reference for all purposes, as if fully set forth.

## 2. Exhibits.

Exhibit A	Description of Property
Exhibit B	No-Development Zones and Building Envelopes
Exhibit C	Easement Documentation Report
Exhibit D	Exceptions to and Reservations from Warranty

## 3. Purpose.

This Easement's purpose ("**Purpose**") is to minimize the chance of materially impairing the quantity or quality of aquifer recharge. In furthering the Purpose, the parties restrict numerous activities on the Property and seek to ensure that the Property remains forever in approximately the same natural state in which it now exists, except as otherwise provided. In addition to the specific limitations and requirements of this instrument, Grantor must at all times use its reasonable best efforts to prevent impairment of quality or quantity of aquifer recharge.

## 4. Definitions.

4.01. **Building Envelope** means an area set aside within the Property in which Structures may be built or added. Each Building Envelope is five acres. The Homesite Building Envelope is identified in the Report. Grantor has identified two potential locations for a new second Building Envelope on the Property, and Grantor retains the right to select one of these two locations as a future second Building Envelope. Once Grantor selects one of these two new Building Envelope locations, the remaining new Building Envelope and the right to build in this remaining new Building Envelope will terminate automatically.

4.02. **Feeder** means a device that dispenses or otherwise provides food to livestock or wildlife that sits on legs above the surface of the ground.

4.03. **Development** means any increase in Impervious Cover as defined in 4.06, removal of vegetation, or mechanical tillage of the soil. This definition includes cultivation, earthmoving, land forming, land grading, and land planing.

4.04. **Hazardous Materials** means (i) any hazardous waste as defined by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901 et. seq.), as amended from time to time, and regulations promulgated thereunder; (ii) any hazardous substance as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. Section 9601 et seq.), as amended from time to time, and regulations promulgated thereunder (including petroleum-based products as described therein); (iii) other petroleum and petroleum-based products; (iv) asbestos in any quantity or form which would subject it to regulation under any Applicable Laws; (v) polychlorinated biphenyls (PCBs); (vi) or any substance, the presence of which on the Property is prohibited by any Applicable Laws; and (vii) any other substance which, by any Applicable Laws, requires special handling in its collection, storage, treatment or disposal. As used herein, the term "**Applicable Laws**" means

all laws, statutes, ordinances, regulations, and judicial rulings now or hereafter adopted by any governmental authority with jurisdiction over the Property.

4.05. **Hunting Blind** means a structure of 100 square feet or less used for viewing or hunting wildlife. Blinds may but need not be elevated.

4.06. **Impervious Cover** means any artificial condition that substantially impedes absorption of water by the soil, including roofs, foundations, parking lots, Roads, and anything else covering or placed above the natural surface of the Property. Mobile homes, motor homes, and travel trailers of all types count as Impervious Cover.

4.07. **Confined Animal Feeding Operation** means commercial agricultural operations in which livestock or wildlife is confined for at least 45 days in any 12-month period in a corral or similar enclosure in which most of the animals' nutrition is provided primarily through supplemental feeding rather than grazing.

4.08. **Maximum Increased Impervious Cover** means the maximum amount of the Property to which Impervious Cover may be added after the Effective Date. It does not include the **X.XX acres** of existing Impervious Cover shown in the Report (or replacements thereof).

4.09. **No-Development Zone** means an area set aside within the Property in which no Building Envelopes, Roads, or other Development may occur.

4.10. **Road** means any route traveled by a motorized vehicle which route has been improved through the use of base or other material that would materially impair the recharge capability of the Property. Unimproved trails or paths or permeable roadways identified in the Report that do not materially diminish the recharge capability of the Property or paths made by leveling native or Indigenous soil and rock do not constitute a Road or count as Impervious Cover.

4.11. **Structure** means anything built on or added to the Property, excluding fences, Hunting Blinds, Feeders, and utility poles.

4.12. **Temporary Impervious Cover** means any non-permanent Structure typically used to provide protection from the elements (i.e. tents, awnings, etc.).

4.13. **Exotic** means not naturally occurring in the Edwards Plateau or South Texas Plains eco-region.

4.14. **Indigenous** means naturally occurring in the Edwards Plateau or South Texas Plains eco-region.

4.15. **Fertilizer** means any synthetically produced or manufactured fertilizer. Processed organic fertilizers, such as compost, and naturally occurring fertilizers, such as peat or manure, are not considered to be a synthetically produced or manufactured fertilizer and do not fall under this term.

## 5. Development-Related Provisions.

5.01. Grantor must retain the Property in substantially the same state shown demonstrated in the Report, except as otherwise provided in this Easement.

5.02. Grantor must not:

5.02.01. Exceed Maximum Increased Impervious Cover or the Maximum Impervious Cover per Building Envelope.

5.02.02. Divide, subdivide or otherwise partition the Property . by way of filing a subdivision plat, conveying part of the Property to another, or other arrangement creating characteristics of a subdivision. The Property shall forever remain as one 649.93 acre parcel. Creation of undivided interests in the Property does not create a division, subdivision, or partition. The consolidation of legally separate parcels does not constitute a subdivision, nor does the transfer of possession (but not ownership) of the Property or any portion thereof by lease for residential, recreational, agricultural or other permitted purposes.

5.02.03. Except as otherwise expressly allowed by this Easement, build any Structure outside a Building Envelope, build any Structure higher than three stories (except for antenna towers), or allow a mobile home, motor home, or travel trailer to be lived in or stored on the Property outside a Building Envelope.

5.02.04. Install, maintain, repair, or replace more than one septic system for each Structure containing plumbing.

5.02.05. Unless Grantee consents in writing, grant new utility or Road easements, or modify existing utility or Road easements. Grantee will generally withhold consent except when the easement is granted under threat of condemnation. Despite this proscription, Grantor may, without Grantee's consent but subject to the Maximum Increased Impervious Cover, grant road and utility easements reasonably necessary to service and to permit access to Building Envelopes allowed under this Easement.

5.02.06. Except as otherwise provided in this Easement or as reasonably necessary to conduct activities permitted under this Easement, ditch, drain, fill, dig, blast, grade or otherwise make permanent, substantial topographical changes. Grantor needs no permission to build stock tanks or other surface water-retention facilities, but stock tanks and other surface water retention facilities not shown in the Report must not exceed two acres each and must not cause the Property to exceed the Maximum Increased Impervious Cover, if the bottom of the facility is impervious. Surface water retention facilities built to facilitate recharge do not count toward the Maximum Increased Impervious Cover.

5.02.07. Drill or allow the existence of more than the Maximum Number of Water Wells on the Property. Water wells drilled by Grantee for monitoring or other Grantee purposes and not used by Grantor do not count against the Maximum Number of Wells.

5.02.08. Conduct any business activity on the Property that would draw large numbers of people to the Property at any one time or that might, as a reasonably expected incident of its conduct, materially impair the quantity or quality of aquifer recharge..

For example, wedding venue, a bed and breakfast or guest ranch with 10 or fewer bedrooms is acceptable.

5.03. For so long as the activities are conducted so as not to materially impair the Purpose, Grantor may:

5.03.01. Reside and entertain family and guests on the Property.

5.03.02. Maintain, restore, enlarge, remove and rebuild any Structure in Building Envelopes or shown to be on the Property in the Report.

5.03.03. Continue use and enjoyment of the Property for ranching, agriculture, hunting, fishing, and recreation, consistent with other applicable express provisions of this Easement.

5.03.04. Allow short-term use of Temporary Impervious Cover, such as tents or awnings, for up to thirty (30) days anywhere on the Property except within the No-Development Zones. Any use lasting longer than 30 days is not short-term, and once removed, the Temporary Impervious Cover cannot be re-erected for at least 90 days after removal. Temporary Impervious Cover must not cause the Property to exceed the Maximum Increased Impervious Cover.

5.03.05. Alter the surface of the land for erosion and sediment control pursuant to a plan approved by Grantee.

5.03.06. Engage in all acts and uses that: (i) are permitted by law and (ii) are consistent with the Purpose of this Easement and conform to its terms.

5.04. Grantor has retained the right to select and establish a new second Building Envelope at one of two potential locations identified on Exhibit B. To exercise this right, Grantor must record a memorandum in the real property records of Medina County signed by both Grantor and Grantee, including a description of the new Building Envelope boundaries. All residences shown on the Report must be contained in a Building Envelope. If Grantor wishes to change a Building Envelope, in addition to following the process for designation of any Building Envelope, Grantor must ensure that the former Building Envelope site is restored such that it will offer the same quantity and quality of recharge as similar, previously undeveloped areas.

5.05. With Grantee's permission, Grantor may erect cell towers and other antennas outside No-Development Zones, but all such items are subject to the maximum increase in impervious cover.

## **6. Agriculture-Related Provisions.**

6.01. Grantor must not:

6.01.01. Operate a commercial feedlot, poultry farm, or similarly Confined Animal Feeding Operation. This provision shall not be construed to restrict the holding and feeding of Grantor's domestic animals or wildlife in a confined feeding area in connection with gathering, birthing, transporting, caring for or doctoring domestic

animals or wildlife, nor does the term apply to corrals or other holding areas for horses, wildlife or other domestic animals used by Grantor.

6.01.02. Operate a horticultural nursery.

6.02. For so long as the activities are conducted in such a way as not to materially impair the Purposes of this Easement, Grantor may:

6.02.01. Produce, process and market agricultural crops, including wildlife food plots, in fields identified in the Report or approved by Grantee; and may grow crops anywhere inside the Building Envelopes without Grantee approval. Grantor may hay, mow, harvest for hay and non-crop seed production.

6.02.02 Produce, process, graze and market domestic animals, livestock, commercial wildlife, or Exotic game in a manner that does not impair the Purpose of this Easement., and is consistent with the Grantee-approved plan in Section 6.03.

6.02.03. Hunt and fish on the Property, lease the Property for hunting and fishing, and provide guided and unguided hunts and fishing.

6.02.04. Construct, maintain, replace or remove fences, Hunting Blinds, and Feeders, even in No-Development Zones.

6.02.05. Permit other outdoor recreation on the Property. In connection with recreation, Grantor may install composting toilets on the Property, but if it does so, Grantor must properly maintain them.

6.02.06. Foster the presence of wildlife on the Property.

6.02.07. Manage the Property so as to obtain and maintain the agricultural property tax special valuation, including qualifying the Property for “wildlife management” as defined in Texas Property Tax Code, Title 1, §23.51(7). The Property is currently designated as “qualified open-space land” devoted to agricultural use under Article 8, §1-d-1 of the Texas Constitution and as defined under the Texas Property Tax Code, Title 1, §23.51(1) and (2), and by this designation the Property qualifies for a property tax special valuation. The Property will continue to be available for wildlife management activities as defined under the Texas Property Tax Code, Title 1, §23.51(7), and may be managed in accordance with a Wildlife Management Plan approved by Medina County Central Appraisal District.

6.03. For so long as the activities are conducted in such a way as not to materially impair the Purposes of this Easement, Grantor may graze domestic animals, commercial wildlife, or Exotic game, but only according to a Grantee-provided plan, a United States Department of Agriculture Natural Resource Conservation Service-provided plan (NRCS Plan), or a Texas Parks and Wildlife Department-provided wildlife management plan (TPWD Plan), or a plan provided by a qualified range management specialist, so long as the activities in the provided plan are consistent with the terms of this Easement. Any NRCS Plan, TPWD Plan, or range management specialist plan must be reviewed and approved by Grantee before it may be implemented to assess compliance with the terms of this Easement. If either the United States Department of Agriculture Natural Resource Conservation Service or the Texas Parks and



Wildlife Department ceases to exist or ceases to provide such plans, Grantee may designate an alternative, similarly qualified authority to provide grazing and wildlife management plans. Grantor may also produce, process, and market domestic animals, commercial wildlife, or Exotic game.

## **7. Vegetation-Related Provisions.**

7.01. Grantor must not:

7.01.01. Plant Exotic vegetation on the Property, except for in Building Envelopes and fields permitted under this Easement or subsequently approved by Grantee.

7.01.02. Plow or use Fertilizers, except in fields or food plots permitted under this Easement or shown in the Report, or approved subsequently by Grantee.

7.01.03. Cut or remove vegetation outside Building Envelopes, except Grantor may, without restriction and anywhere on the property, cut and remove diseased or Exotic vegetation or vegetation so damaged by natural forces as to be unable to survive or vegetation which constitutes a hazard to persons, property, livestock, or Road and trail use. Grantor may further cut and remove Indigenous or Exotic vegetation to further the Purpose, in Building Envelopes, and as may be reasonably necessary to conduct activities permitted under this Easement, but in so doing, it must minimize erosion and must not otherwise materially impair the Purpose.

7.02. For so long as the activities are conducted in such a way as not to materially impair the Purposes of this Easement, Grantor may manage resources on the land as follows:

7.02.01. Control brush anywhere on the property according to a United States Department of Agriculture Natural Resource Conservation Service-provided plan (NRCS Plan), a plan provided by a qualified range management specialist, or Grantee-provided plan, or participate in other NRCS Technical Assistance Programs designed to assist in conservation planning, so long as the activities in the provided plan are conducted so as not to materially impair the Purpose and are consistent with the terms of this Easement. Any such plan or program must be reviewed and approved by Grantee before it may be implemented to assess compliance with the terms of this Easement. If the NRCS ceases to exist or ceases to provide such plans, Grantee may designate an alternative, similarly qualified authority to provide brush control and conservation management plans.

7.02.02. Cut trees for domestic use on the Property, including firewood, outside the No-Development Zones.

7.02.03. Create firebreaks up to a width not to exceed three times the height of the adjacent vegetation.

7.02.04. Cut and remove Indigenous or Exotic vegetation in Building Envelopes, and as may be reasonably necessary to conduct activities permitted under this Easement, including construction of allowed Structures, Roads and utilities, and the construction and maintenance of trails outside of any No Development Zone, but in so doing, it must minimize erosion.

7.02.05. Vegetation which is permitted to be cut herein may be retained on the ground to protect new grasses and seedlings, and to create habitat. Woody debris may be placed in drainages, on slopes, and on bare areas to slow the movement of water, reduce erosion, and to catch sediment.

## **8. Vehicle-Related Provisions.**

8.01. Authorized representatives of Grantor and Grantee may use motorized vehicles anywhere on the Property in furtherance of their responsibilities under this Easement and as reasonably necessary for Grantor's residential and commercial use, agricultural, ranching, and wildlife management operations, educational programs and maintenance of the Property. No such motor vehicle use may materially impair the Purpose.

8.02. In no event may the Property be used for commercial off-road or rally purposes for any motorized vehicles. This restriction includes, but is not limited to: cars, trucks, motor-bikes, motorcycles and ATVs.

## **9. Storage, Dumping, and Disposition-Related Provisions.**

9.01. Grantor must not:

9.01.01. Store chemicals (except those for activities permitted under this Easement) that, if leaked, would materially degrade surface or subsurface water quality.

9.01.02. Dump trash, rubbish, or other waste, except short-term storage of material accumulated in the course of conducting activities permitted under this Easement. All such materials must be removed from the Property not less often than annually, and no such materials may leak chemicals into or otherwise pose a material degradation threat to the quality of water entering the aquifer. Grantor may burn domestic waste as defined in Title 30, Texas Administrative Code, Section 101.1(26) in a container or earthen pit so long as all burning is compliant with Title 30, Texas Administrative Code, Section 111 generally and Section 111.209 specifically (as may be amended) and all other laws, ordinances, or regulations pertaining thereto. Any such container or earthen pit must be either identified in the Report or located within a Building Envelope and outside of a No-Development Zone. All such residue must be contained until it is removed from the Property.

9.01.03. Generate, store, collect, transport, dispose, dump, or release Hazardous Materials and waste or materials, in whatever form, or install or permit underground storage tanks on the Property.

9.01.04. Store, use, or apply herbicides, biocides, pesticides, Fertilizers, insecticides, fungicides, rodenticides, or any similar chemicals or agents, except for:

(A) household use or

(B) use of chemicals, including Fertilizers, on a list approved by Grantee, or in a Grantee-approved plan.

Grantee's list may change from time to time and may impose time, quantity, and use restrictions. While the City of San Antonio is the Grantee, the City Manager or City Manager's designee may alter the list without further action or authorization by City Council. Grantor's use of chemicals must conform to the best practices at the time the issue arises, and Grantor must not allow permitted materials to leak into or otherwise pose a material degradation threat to groundwater quality. Grantor must indemnify Grantee from all loss, cost, liability, or expense arising from Grantor's use of such chemicals, with or without Grantee's permission.

9.02. Grantor represents and warrants, to Grantor's actual knowledge (with no duty to investigate), that:

9.02.01. No Hazardous Materials are or have been generated, treated, stored, used, disposed of, or deposited in or on the Property in such manner as to violate or create any liabilities pursuant to any Applicable Laws, and

9.02.02. No underground storage tanks are located on the Property.

9.02.03. No governmental authority has given notice of violation or alleged violation of any Applicable Law relating to the operations or condition of the Property.

9.03. Nothing in this Easement shall be construed as giving rise to any right or ability in Grantee to exercise physical or managerial control over the day-to-day operations of the Property, or any of Grantor's activities on the Property, or otherwise to become an operator with respect to the Property within the meaning of The Comprehensive Environmental Response, Compensation, And Liability Act of 1980, as amended ("CERCLA"), any other applicable federal laws, federal regulations, state laws, county and local ordinances, and any regulations thereunder, all as may be amended from time-to-time.

## **10. Extraction-Related Provisions.**

10.01. Grantor must not:

10.01.01. Use the surface of the Property for any activity related to extracting hydrocarbons or other Minerals on or below the surface, including storing hydrocarbons or other Minerals. "**Minerals**" include not only hydrocarbons but also coal, lignite, uranium, ore, and any other substance that may be removed from the earth.

10.01.02. Extract surface or subsurface water, transfer surface or subsurface water rights for use off the Property, or otherwise use water or water rights other than in direct support of activities Grantor may, consistently with this Easement, otherwise engage in on the Property.

10.01.03. Extract and discharge groundwater at volumes greater than allowed by the more restrictive of the governing groundwater district or by other applicable federal, state, or local laws and regulations.

10.01.04. Sever from surface ownership of the Property the ownership of previously unsevered Minerals or convey to another that is not bound by this Easement any severed Mineral interest.

10.02. Despite any other provision of this Easement to the contrary, soil, sand, caliche, gravel, or rock may be removed from the surface of the Property so long as such removal:

- (A) is solely for use on the Property and for non-commercial purposes, such as, for example, construction, maintenance, and repair of a Road on the Property,
- (B) is in conjunction with activities permitted herein,
- (C) is accomplished in a manner that does not materially impair the Purpose,
- (D) is limited to no more than two one-acre removal sites on the Property at any one time, unless otherwise approved by Grantee, and
- (E) that any area so disturbed is restored and replanted as appropriate with native vegetation at the conclusion of the removal activity and prior to the creation of any new removal site if a new removal site will exceed the limit of no more than two (2) such sites at any one time.
- (F) is not within 500 feet of a recharge feature.

10.03. Any activity permitted under this paragraph must be undertaken and this provision must be interpreted in a manner consistent with Section 170(h) of the United States Internal Revenue Code and the Treasury Regulations adopted pursuant thereto.

10.04. No party to this Easement may hereafter extract any severed or unsevered Minerals pertinent to the Property. Neither may any party hereto convey any Mineral interest or executive right in Minerals to another not bound by this Easement. This clause does not prevent a party to this Easement from accepting royalties, bonuses, delay rentals, or other sums due to the party from another with a previously existing right to extract the Minerals nor prevent Grantor from participating in pooling agreements or off-site extraction..

10.05. Grantor may also permit archaeological digs supervised by qualified personnel for so long as they are conducted in a manner so as not to materially impair the Purpose.

10.06. If any of the Minerals under the Property are, as of the date of this Easement, owned by someone not a party hereto and if some or all of those Minerals are later acquired by Grantor (or the then owner of the Property), then the Minerals so-acquired immediately become subject to this Easement. This Easement conveys to Grantee the right, to be held jointly with Grantor, to consent or not to any matter pertaining to the Minerals so acquired for which Grantor's sole consent would otherwise be required. Grantor's and Grantee's joint right to consent is such that neither can consent without joinder of the other. If a third party owns or leases the Minerals as of the Effective Date, and their interests have not been subordinated to this Easement, Grantor must require, to the greatest extent possible, that any oil, natural gas, and Mineral exploration and extraction conducted by such third party is conducted in accordance with the terms of this Easement.

10.07. Both parties acknowledge that the restrictions on alienation and other provisions in this Section are reasonable, because mineral exploitation poses a risk to aquifer recharge.

10.08 Grantor conveys to Grantee an undivided one-half interest in all mineral executive rights held by Grantor such that no exercise of the executive rights can be made without the joinder of both Grantor and Grantee.

## **11. Water Flow-Related Provisions.**

Grantor must not:

11.01. Alter natural water courses, lakes, ponds, marshes, or other water bodies, subject to Grantor's right to have stock tanks and other surface-water retention facilities, except during stream restoration or bank stabilization projects and during maintenance of permitted Roads.

11.02. Pollute the soil or surface or subsurface water or otherwise engage in activities materially detrimental to water purity or that could materially alter the natural water level or flow in or over the Property. This does not impair the right to use the wells permitted under this Easement for the purposes permitted under this Easement.

11.03. Otherwise, materially and adversely affect the quantity and quality of aquifer recharge.

## **12. Requests for Approval.**

12.01. When Grantee's consent is needed for any purpose under this Easement, Grantor must submit all such requests to Grantee in writing. The requests must set out all detail reasonably required by Grantee, including plans, specifications, and designs where appropriate. The request must include a timetable sufficiently detailed to permit Grantee to monitor progress. Grantor must not make changes or take action for which Grantee's approval is required, unless expressly authorized in writing by Grantee.

12.02. Grantee may consult with governmental agencies, nonprofit preservation and conservation organizations, and other advisors concerning appropriateness of any activity proposed under this Easement.

12.03. Grantee may exercise its approval or disapproval rights in its reasonable discretion. Grantee must respond to a request by Grantor within 60 days after the date of Grantee's receipt of the written request, such approval or disapproval being exercised in light of the nature of such request. Grantee's failure to respond timely is not approval of Grantor's request, but Grantee must not unreasonably withhold, condition, or delay its approval.

12.04. If Grantor does not begin approved actions within one year after the date on which Grantee grants its written approval, the approval is void. Grantor may resubmit the request, but previous approval does not estop Grantee from denying approval on resubmission.

12.05. In any case during such time as the City of San Antonio is the Grantee and the Grantee's consent or agreement is required under this Easement, other than for an amendment of this Easement, the consent or agreement may be given by the City Manager or the Manager's designee without authorization of City Council. The Manager's delegation of authority to a designee must be in writing. Grantee is not estopped by the actions of anyone to whom the Manager's authority has not been delegated in writing. If the City of San Antonio no longer has a City Manager, the governing body of the City may designate an officer to give consents and

agreements called for under this Easement. City Council's approval of this Easement is approval of the delegation of authority to the City Manager contained in this paragraph.

### **13. No Public Access.**

Except as expressly provided, this Easement creates no right of access to the general public.

### **14. Ownership Obligations.**

Grantor is solely responsible to pay all taxes and assessments levied against the Property. Grantee has no responsibility to Grantor to maintain any part of the Property, except for improvements, if any, installed by Grantee.

### **15. Grantee's Rights.**

15.01. In addition to other rights necessarily incident to Grantee's ability to further the Purpose of this Easement, Grantee has the following rights regarding the Property:

15.01.01. The right to monitor the hydrology of the Edwards Aquifer and other water or geologic formations below the subject Property, subject, however, to the entry requirements set out below.

15.01.02. The right to enter the Property once a calendar year to inspect and to determine compliance with this Easement. Grantee may not monitor this Easement by flying drone aircraft over the Property without Grantor's written consent. If Grantee finds a potential violation or breach of this Easement, Grantee may enter the Property as much as necessary to monitor the status of the problem, obtain evidence for enforcement, or correct the problem at Grantor's expense. In so doing, Grantee must not interfere unreasonably with Grantor's permitted uses of the Property. Grantee shall use its reasonable efforts to assure that its entry corresponds with a time that is both timely and convenient for Grantor.

15.01.03. The right to install, operate, and maintain Purpose-related monitoring equipment, including a continuous recording rain gauge at locations outside of Building Envelopes (unless Grantor approves in its sole discretion a location inside of a Building Envelope) that do not unreasonably interfere with Grantor's activities otherwise permitted under this Easement; and further to install, operate, and maintain fences and other devices reasonably necessary to provide security for the monitoring equipment.

15.01.04. The right to drill, operate, and maintain no more than two (2) monitoring wells at locations outside of Building Envelopes (unless Grantor approves in its sole discretion a location inside of a Building Envelope) that do not interfere unreasonably with Grantor's permitted uses of the Property; and further to install, operate, and maintain fences and other devices reasonably necessary to provide security for the monitoring wells.

15.01.05. With Grantor's written consent, the right to use the Property for educational purposes, including field trips related to natural science education, but not more often than once annually, and further, to conduct research activities with appropriate research entities related to watershed management, water quality protection, or other similar

purposes consistent with the Purposes of this Easement. Grantee must provide Grantor with copies of all research conducted on the Property.

15.01.06. The right to review and approve plans of the Grantor involving cave structures and other sensitive hydrogeologic features on the Property.

15.01.07. The right to construct, operate, and maintain at mutually agreed locations outside of Building Envelopes (unless Grantor approves in its sole discretion a location inside of a Building Envelope) one or more recharge structures and associated facilities that do not unreasonably interfere with Grantor's permitted uses of the Property, and further to install, operate, and maintain fences and other devices reasonably necessary to surround such structures or facilities to provide for security.

15.02. If Grantee's exercise of any rights under this Section 15 disturbs the Property, Grantee will use its good-faith efforts to restore the Property to its previous condition. This includes restoring fences and plugging abandoned wells according to applicable law. Grantee is responsible for maintenance of areas fenced by it, for equipment, any Structure or facilities it places on the Property, and for any contractor or individuals entering the Property pursuant to or in connection with Grantee's rights under this Easement. Except as expressly provided to the contrary, no approval or consent required under this Section may be unreasonably withheld, conditioned or delayed. Grantee will provide 72-hour advance, written notice to Grantor before entry, except when immediate entry is necessary or desirable to further the Purpose, to prevent, terminate, or mitigate a violation of this Easement, or to fulfill Grantee's maintenance obligations under this Easement.

15.03. None of the enumerated rights imposes a duty on Grantee to exercise the right.

15.04. Grantor is responsible for remedying violations of this Easement, but Grantee has the right to prevent and correct violations through any means available at law or in equity, including injunction. If Grantee finds a violation has occurred or is threatened to occur, it may, at its discretion, take appropriate legal action or, at Grantor's expense, eliminate or ameliorate any material, continuing violation of this Easement, including any artificial condition that may materially impair the Purpose. Except when an ongoing or imminent violation might substantially diminish or impair the Purpose, Grantee must give Grantor 30-days' prior written notice before initiating action. Grantee shall give notice of such violation to Grantor at the Grantor's last known address via certified mail, return receipt requested. Grantee's notice shall include a description of the violation, its location, and recommendations of measures to be taken by Grantor to cure the violation and reasonably restore the features of the Property damaged or altered as a result of the violation. Upon receiving such notice of violation, Grantor shall (i) promptly commence, and thereafter diligently pursue to completion, reasonable corrective action sufficient to cure the violation (if there is a violation) and, where the violation involves injury to the Property, to reasonably restore the portion of the Property so injured or (ii) if the violation cannot be cured at reasonable cost, provide reasonable compensation to Grantee for the damaged area or feature of the Property, or (iii) provide a written explanation to Grantee of the reason why the alleged violation did not or will not occur, or is not a violation under the terms of this Easement. Restoration contemplated in clause (i) above is highly preferred to compensation in clause (ii). If the condition described in clause (iii) above occurs, both parties agree to meet as soon as possible to resolve this difference. If the parties cannot resolve the violation themselves, the parties may mutually agree to a voluntary alternative method of dispute resolution, such as mediation, or proceed under the remaining provisions of this Section. If a violation cannot reasonably be corrected within 30 days, Grantee may allow Grantor a

longer period that is reasonably necessary under the circumstances to correct the violation. In such case, Grantor must begin corrective action within the 20 days and thereafter diligently and continuously pursue complete correction in good faith. Nothing in this Easement requires Grantor to restore the Property after any act of God or other event over which Grantor had no control, but Grantor must permit Grantee to correct conditions caused by such events that impair quantity or quality of recharge. In so doing, Grantee must not interfere unreasonably with Grantor's permitted uses of the Property.

15.05. Grantor acknowledges that, once pollution enters an aquifer, it may be impossible to undo the damage. Likewise, surface water that might percolate into the aquifer, but that Grantor wrongfully allows to run off, is irreplaceable. Further, loss of the Property and the aquifer as natural phenomena cannot be compensated adequately by damages. Accordingly, the parties acknowledge that, in the case of a material, uncorrected violation of this Easement, Grantee has no adequate remedy at law. In such case, equitable relief generally and an injunction specifically are appropriate remedies.

15.06. Grantee has the right to recover all costs and expenses, including court costs and reasonable attorneys' fees, incurred in enforcing this Easement. In the event this Easement is assigned by the City of San Antonio to an entity which is not prohibited from incurring future unfunded debt, then the prevailing party in any dispute regarding this Easement, has the right to recover all costs and expenses, including court costs and reasonable attorneys fees, incurred enforcing this Easement.

15.07. Grantee's remedies are cumulative. Its exercise of one remedy is not an election of remedies and does not waive or limit other remedies. Failure to exercise a remedy on one or more occasions does not waive or limit use of the remedy on other occasions.

15.08. Grantee has discretion whether and how to enforce this Easement. Grantee's delay in or forbearance from exercising rights under this Easement does not waive the rights the exercise of which is delayed or forborne.

## **16. Discretionary Consent.**

Grantee's consent for activities otherwise prohibited by this Easement may be given under the following conditions and circumstances. If, owing to unforeseen or changed circumstances, any of the prohibited activities listed in this Easement are deemed desirable by both Grantor and Grantee, Grantee may, in its sole discretion, give consent for such activities, subject to the limitations herein. Such requests for consent for otherwise prohibited activities, and consent for such activities requiring Grantee's discretionary consent shall be in writing and shall describe the proposed activity in sufficient detail to allow Grantee to judge the consistency of the proposed activity with the purpose of this Easement. Grantee may give its consent only if it determines, in its sole discretion, that such activities (1) do not violate the Purpose of this Easement, and (2) enhance or do not materially impair any significant conservation interests associated with the Property.

## **17. Alienation by Grantee.**

17.01. This Easement is in gross and is freely alienable by Grantee, subject to the following conditions:



17.01.01. The transferee must be both a “holder” under Section 183.001 of the Texas Natural Resources Code (as the same may be amended from time-to-time) and also a “qualified organization” under Section 170(h) of the U.S. Internal Revenue Code.

17.01.02. The transferee must expressly assume the responsibilities of the Grantee under this Easement.

17.02. If Grantee ceases to exist or no longer qualifies as a holder under applicable law, the Easement continues. On application by Grantor or Grantee, a court of competent jurisdiction must transfer Grantee’s rights under this Easement to a qualified organization having similar purposes that agrees to assume the responsibility. If more than one qualified entity competes for the role, the court should select the entity that, in the court’s judgment, is best suited to assure accomplishment of the Purposes.

## **18. Alienation by Grantor.**

The Property is freely alienable as one 649,93 acre parcel, by Grantor, but Grantor must notify Grantee in writing at least 30 days before transfer. The notice must include the name of the buyer, the anticipated closing date, and evidence that the buyer has been given a copy of this Easement. If Grantor transfers the Property to more than one transferee, the joint transferees must, at the closing of the transfer to them, designate a single party to receive notices from Grantee and to give all approvals and consents to Grantee. If the joint transferees do not unanimously designate a contact for Grantee, Grantee may pick one at random with no liability to the other transferees. Grantor’s transferees take subject to this Easement. This authorization of partial alienation does not authorize more than the Maximum Number of Parcels. If the Property subject to this Easement is transferred while a violation remains uncured, the transferor remains liable for the violation jointly and severally with the transferee. This provision does not apply if Grantee has issued a certificate of compliance evidencing no violations within thirty (30) days prior to the transfer. It is the transferor’s responsibility to request and pay for a certificate of compliance to verify whether violations exist as of the date of transfer.

## **19. Amendment.**

This Easement may be amended only with the written consent of both Grantor and Grantee. Any amendment must be consistent with the Purposes of this Easement and must comply with applicable law, including Sec. 170 (h) of the Internal Revenue Code, as amended from time-to-time, and with Chapter 183 of the Texas Natural Resources Code, as amended from time-to-time. If the Grantee is the City of San Antonio, its consent to an amendment must be authorized by City Council or a successor governing body, in accordance with the City of San Antonio Conservation Easement Amendment Policy (“**Policy**”). Grantor, upon written request to Grantee, may obtain a copy of the most recent version of such Policy.

## **20. Termination, Condemnation.**

20.01. The Easement may be terminated by judicial declaration if condemnation or a change in conditions on or around the Property renders it impossible to substantially fulfill the Purposes of this Easement.

20.02. Grantee’s interest is a compensable property right. If some or all of the Property is condemned or sold in lieu of condemnation, Grantor and Grantee will divide the condemnation proceeds (which, by definition, include proceeds from a sale in lieu of

condemnation) as follows: Grantor receives a share equal to the entire award multiplied times a fraction, the numerator of which is the value of the Property burdened by the Easement and the denominator of which is the value of the Property unburdened by the Easement; Grantee receives the rest of the award. Values are measured at the time of condemnation.

## **21. Interpretation.**

This Easement is to be interpreted under the laws of the State of Texas, resolving any ambiguities and questions of the validity of specific provisions to give maximum effect to its Purposes, without regard to which party was the drafter. This Easement was fully negotiated, and no presumption exists against either party. Nothing in this Easement excuses Grantor from compliance with any applicable law, rule, ordinance, or regulation.

## **22. Severability.**

If any part of this Easement is found invalid or unenforceable, the finding does not affect the remainder.

## **23. Successor, Beneficiaries.**

This Easement inures to the benefit of and binds the heirs, representatives, successors, and permitted assigns of each party. No third party has the right to enforce any part of this Easement.

## **24. Encumbrance by Grantor.**

Grantor may encumber the Property (including consensual liens) after the effective date of this Easement, but all such encumbrances are subordinate to this Easement. Grantor further acknowledges that Subordination Agreements for liens or similar encumbrances existing as of the Effective Date of this Easement have been, or will be, secured and filed of record as of such Effective Date.

## **25. Appropriations.**

All obligations of the City of San Antonio under this Easement are funded through the City of San Antonio General Fund and are subject to the discretion of City Council whether to appropriate funding for any given year.

## **26. Notices from Governmental Authorities.**

Grantor must deliver to Grantee copies of any notice of violation or lien relating to the Property received by Grantor from any government authority within five (5) days of receipt. Upon request by Grantee, Grantor must promptly furnish Grantee with evidence of Grantor's compliance with the notice or lien, if compliance is required by law.

## **27. Easement Runs with the Land; No Merger.**

This Easement continues in perpetuity and runs with the land (referred to as "Property" in this Easement). It is binding upon Grantor and all those claiming by, through, or under Grantor. Any right, title, or interest granted in this Easement to Grantee passes to each successor and assign of Grantee and each following successor and assign, and the word "Grantee" includes all

such successors and assigns. This Easement survives unity of ownership of the fee and the Easement.

## **28. Effective Date.**

The effective date of this Easement is the date it is recorded in the real property records of the county in which the Property is located or, if the Property crosses county lines, in Medina County.

**TO HAVE AND TO HOLD** this Easement unto the Grantee and its successors and permitted assigns forever. Without limitation, this Easement conveys to Grantee all development rights in the Property not expressly retained by Grantor. Grantor further conveys to Grantee the property right to enforce this Easement according to law. Grantor conveys to Grantee the property rights Grantor would otherwise have to perform activities limited or prohibited by this Easement. Grantor violates its obligations under this Easement if it violates any applicable law the observance of which would further the Purpose.

Grantor further makes subject to this Easement all the following interests, collectively called "Excess Lands": (1) all interest, if any, in excess lands or vacancies (within the meaning of subchapters E and F of Chapter 51 of the Texas Natural Resources Code, as may be amended from time to time) presently held or later acquired by Grantor; (2) all interest in strips or gores between the Property and abutting properties and acreage in adjoining surveys to which Grantors' predecessors in title have superior right; (3) any land lying in or under the bed of any road or highway, opened or proposed, abutting or adjacent to the Property; (4) any land lying in or under the bed of any creek, stream, or river, if any, running through or abutting or adjacent to the Property; and (5) all interests in real property within the boundaries of this Easement title to which is later acquired by Grantor.

Grantor binds Grantor and Grantor's heirs, executors, administrators, and successors to warrant and forever defend all and singular this Easement to Grantee and Grantee's administrators, successors, and assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof, but excepting the Exceptions to and Reservations From Warranty.

**In Witness Whereof**, the parties have caused their representatives to set their hands. By the signature of its representative below, Grantee manifests its acceptance of this Easement.

**Grantor:**

**Mary Louise DePuy, Jr. Donohoe**,  
formerly known as Mary Louise  
DePuy, Jr. Powell, as to an undivided  
0.900 ownership interest,

Signature: \_\_\_\_\_

Mary Louise DePuy, Jr. Donohoe,  
formerly known as Mary Louise  
DePuy, Jr. Powell, as Trustee of the  
Mary Louise DePuy, Jr. Powell Family  
Trust, under agreement dated August  
19, 2003, as to an undivided 0.100  
ownership interest

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

**Grantee:**

**City of San Antonio**, a Texas municipal  
corporation

Signature: \_\_\_\_\_

Printed

Name: Grant Ellis

Title: Natural Resources Manager

Date: \_\_\_\_\_

**Approved as to Form:**

\_\_\_\_\_  
City Attorney

STATE OF TEXAS §

COUNTY OF \_\_\_\_\_ §

This Easement was acknowledged this date before me by **Mary Louise DePuy, Jr. Donohoe**, formerly known as Mary Louise DePuy, Jr. Powell, in her individual capacity, and by Mary Louise DePuy, Jr. Donohoe, as Trustee of the Mary Louise DePuy, Jr. Powell Family Trust, under agreement dated August 19, 2003, a married person on behalf of such entity.

Date: \_\_\_\_\_

\_\_\_\_\_  
Notary Public, State of Texas

My Commission expires: \_\_\_\_\_

STATE OF TEXAS §

COUNTY OF \_\_\_\_\_ §

This Easement was acknowledged before me this date by \_\_\_\_\_,  
\_\_\_\_\_ of the City of San Antonio, a Texas municipal corporation,  
in the capacity therein stated and on behalf of such entity.

Date: \_\_\_\_\_

\_\_\_\_\_  
Notary Public, State of Texas

My Commission expires: \_\_\_\_\_