

14A

ORDINANCE NO. 016622

AN ORDINANCE AUTHORIZING THE CITY MANAGER TO SIGN A CONSERVATION EASEMENT AGREEMENT WITH THE FRONTERA LAND ALLIANCE FOR A PORTION OF TRACT 1-E, H.G. FOSTER SURVEY NO. 259, EL PASO COUNTY, TEXAS, ACCORDING TO THE MAP ON FILE IN THE OFFICE OF THE CENTRAL APPRAISAL DISTRICT, EL PASO COUNTY, TEXAS.

**WHEREAS**, the City of El Paso is sole owner in fee simple of a certain tract of real property described as a portion of Tract 1-E, H.G. Foster Survey No. 259, El Paso County, Texas, according to the map on file in the Office of the Central Appraisal District, El Paso County, Texas and being more particularly described by metes and bounds labeled Exhibit "A" attached hereto and incorporated herein by reference (the "Protected Property"). The Protected Property is located within the boundaries of the El Paso Public Improvement District No. 1 (Thunder Canyon) (the "PID" or the "District"); and

**WHEREAS**, the City of El Paso acquired the Protected Property in order to preserve and retain the property in its natural state of open space which is a public purpose of the City of El Paso which benefits all of the citizens of the City of El Paso; and

**WHEREAS**, the Protected Property is a significant natural area that qualifies as a "... relatively natural habitat of fish, wildlife, or plants, or similar ecosystem," as that phrase is used in P.L. 96-541, 26 USC 170(h)(4)(A)(ii), as amended, and in regulations promulgated thereunder. In particular, the Protected Property contains outstanding open space and scenic qualities, a variety of wildlife and significant recharge features and represents a portion of an undisturbed natural watershed (collectively, the "Conservation Values"); and

**WHEREAS**, the City of El Paso intends that the Conservation Values of the Protected Property be preserved and maintained by permitting only those land uses on the Protected Property that do not significantly impair or interfere with such values, including without limitation, those land uses relating to open space existing at the time of this grant; and

**WHEREAS**, the mission of The Frontera Land Alliance, as a nonprofit organization duly incorporated in the State of Texas, is for the purpose of land conservation as defined in Section 170(h) of the United States Internal Revenue Code, and specifically to preserve significant lands that maintain and enhance the natural environment and cultural heritage of the Northern Chihuahuan Desert Region; and

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**WHEREAS**, the City of El Paso and The Frontera Land Alliance would like to work together and enter into a Conservation Easement Agreement pursuant to the Texas Natural Resource Code Chapter 183, and the City of El Paso and The Frontera Land Alliance desire to avail themselves of the provisions of that law; and

**WHEREAS**, The Frontera Land Alliance is exempt from federal taxation pursuant to Section 501(c)(3) of the United States Internal Revenue Code, in accordance with Section 253.011 of the Texas Local Government Code, this easement may be conveyed to The Frontera Land Alliance without the necessity of complying with the notice and bidding requirements of state law,

**NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EL PASO:**

That the City Manager be authorized to sign a Conservation Easement Agreement by and between the City of El Paso and The Frontera Land Alliance for a portion of Tract 1-E, H.G. Foster Survey No. 259, El Paso County, Texas, according to the map on file in the Office of the Central Appraisal District, El Paso County, Texas and being more particularly described by metes and bounds labeled Exhibit "A" attached hereto and incorporated herein by reference.

PASSED AND APPROVED this 8<sup>th</sup> day of May, 2007.

THE CITY OF EL PASO

  
John F. Cook - Mayor


ATTEST:

  
Richarda Momsen  
City Clerk

APPROVED AS TO CONTENT:

  
Kelly Carpenter  
Planning Deputy Director

APPROVED AS TO FORM:

  
Theresa A. Cullen-Garney  
Deputy City Attorney

Being a portion of Tract 1B,  
H.G. Foster Survey No. 259  
City of El Paso, El Paso County, Texas  
Prepared for: Willis Construction  
October 24, 1991

### METES AND BOUNDS DESCRIPTION

Description of a parcel of land being a portion of Tract 1B, H.G. Foster Survey No. 259, City of El Paso, El Paso County, Texas and being more particularly described by metes and bounds as follows:

Beginning at the City Monument at the centerline intersection of Stanton Street (70.00 R.O.W.) and Moondale Drive (50.00 R.O.W.); Thence along the centerline of said Stanton Street, South  $48^{\circ}45'00''$  East a distance of 75.00 feet to a point; Thence, leaving said centerline South  $41^{\circ}15'00''$  West a distance of 35.00 feet to a point on the westerly right-of-way line of said Stanton Street; Thence along said westerly right-of-way line, 92.01 feet long the arc of a curve to the right whose radius is 183.32 feet, whose interior angle is  $28^{\circ}45'26''$ , whose chord bears South  $34^{\circ}22'15''$  East a distance of 91.05 feet to the southeasterly corner of Lot 1, Block 16, Mesa Hills Unit 4 for the "POINT OF BEGINNING";

Thence, along said westerly right-of-way line of Stanton Street, the following ten courses:

Thence 11.83 feet along the arc of a curve to right whose radius is 183.32 feet, whose interior angle is  $03^{\circ}41'53''$ , whose chord bears South  $18^{\circ}08'35''$  East a distance of 11.83 feet;

Thence South  $38^{\circ}20'24''$  West a distance of 37.41 feet;

Thence South  $51^{\circ}39'36''$  East a distance of 20.00 feet;

Thence North  $38^{\circ}20'24''$  East a distance of 20.98 feet;

Thence 464.63 feet along the arc of a curve to the left whose radius is 666.92 feet, whose interior angle is  $39^{\circ}55'00''$ , whose chord bears South  $28^{\circ}32'30''$  East a distance of 455.29 feet;

Thence 81.83 feet along the arc of a curve to the right whose radius is 480.02 feet, whose interior angle is  $09^{\circ}46'02''$ , whose chord bears South  $43^{\circ}36'59''$  East a distance of 81.73 feet;

Thence South  $51^{\circ}16'02''$  West a distance of 43.05 feet;

Thence South  $00^{\circ}53'09''$  West a distance of 20.00 feet;

Thence South  $89^{\circ}06'51''$  East a distance of 67.78 feet;

Thence 133.88 feet along the arc of a curve to the right whose radius is 480.02 feet, whose interior angle is  $15^{\circ}58'49''$ , whose chord bears South  $23^{\circ}43'39''$  East a distance of 133.45 feet;

Thence leaving said westerly right-of-way line of Stanton Street;

Thence South  $74^{\circ}15'46''$  West a distance of 126.87 feet;

Thence North  $67^{\circ}51'31''$  West a distance of 265.01 feet;

Thence South  $80^{\circ}01'35''$  West a distance of 120.91 feet;

Thence South  $64^{\circ}22'44''$  West a distance of 277.56 feet;

Thence South  $09^{\circ}10'34''$  West a distance of 279.86 feet to the southwest corner Block 24 and the north line of Block 7, Mesa Hills Unit 2;

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THENCE, along the north line of Blocks 7 and 11, said Mesa Hills Unit 2, the following eleven courses:

Thence South  $88^{\circ}26'09''$  West a distance of 1101.69 feet;

Thence North  $16^{\circ}21'09''$  West a distance of 80.05 feet;

Thence North  $08^{\circ}44'41''$  West a distance of 60.00 feet;

Thence South  $81^{\circ}15'19''$  West a distance of 501.23 feet;

Thence North  $08^{\circ}44'41''$  West a distance of 105.10 feet;

Thence South  $85^{\circ}16'35''$  West a distance of 107.60 feet;

Thence South  $78^{\circ}35'48''$  West a distance of 89.03 feet;

Thence South  $71^{\circ}07'10''$  West a distance of 88.90 feet;

Thence South  $66^{\circ}46'51''$  West a distance of 89.04 feet;

Thence South  $68^{\circ}39'15''$  West a distance of 77.54 feet;

Thence South  $89^{\circ}39'52''$  West a distance of 60.04 feet to the northwest corner of Lot 1, Block 11;

Thence North  $11^{\circ}43'53''$  East a distance of 166.73 feet to the southwest corner of Block 16, Mesa Hills Unit 4;

Thence North  $84^{\circ}28'05''$  East a distance of 1289.99 feet;

Thence North  $66^{\circ}00'00''$  East a distance of 870.00 feet;

Thence North  $50^{\circ}18'14''$  East a distance of 565.67 feet to the "POINT OF BEGINNING" and containing 963,123.03 square feet or 22.110 acres of land more or less.

NOT A SURVEY

CONDE, INC.  
1790 Leo Trevino, Suite 400  
El Paso, Texas 79936  
(915) 592-0283

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**NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF 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.**

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STATE OF TEXAS           §  
                                  §       **CONSERVATION EASEMENT AGREEMENT**  
COUNTY OF EL PASO    §

This Conservation Easement Agreement (the "Conservation Easement") made this 8<sup>th</sup> day of May, 2007, by CITY OF EL PASO ("Grantor"), a municipal corporation situated in the County of El Paso, and THE FRONTERA LAND ALLIANCE ("Grantee"), a nonprofit organization duly incorporated in the State of Texas for the purposes of land conservation and exempt from federal income tax under Section 501(c)(3) of the United States Internal Revenue Code.

#### **Background**

A. Grantor is sole owner in fee simple of a certain tract of real property described as a portion of Tract 1-E, H.G. Foster Survey No. 259, El Paso County, Texas, according to the map on file in the Office of the Central Appraisal District, El Paso County, Texas, and being more particularly described by metes and bounds labeled **Exhibit "A"** attached hereto and incorporated herein by reference (the "**Protected Property**"). The Protected Property is currently being used for natural storm water drainage purposes and utility infrastructure and is intended to be used in the same manner in the future, and is located within the boundaries of the El Paso Public Improvement District No. 1 (Thunder Canyon) (the "**PID**" or the "**District**").

B. Grantor acquired the Protected Property in order to preserve and retain the property in its natural state of open space which is a public purpose of the Grantor which benefits all of the citizens of the City, and further, the PID described above was formed to further this purpose.

C. The Protected Property is a significant natural area that qualifies as a ". . . relatively natural habitat of fish, wildlife, or plants, or similar ecosystem," as that phrase is used in P.L. 96-541, 26 USC 170(h)(4)(A)(ii), as amended, and in regulations promulgated thereunder. In particular, the Protected Property contains outstanding open space and scenic qualities, a variety of wildlife and undisturbed natural area (collectively, the "**Conservation Values**"), all of which are of great importance to Grantor, Grantee, the properties within the PID, the citizens of the City of El Paso.

D. Grantor intends that the Conservation Values of the Protected Property be preserved and maintained by permitting only those land uses on the Protected Property that do not significantly impair or interfere with such values, including without limitation, those land uses relating to natural open space, uses existing at the time of this grant, and activity and uses permitted herein.

E. Grantee's mission as a nonprofit organization duly incorporated in the State of Texas is for the purpose of land conservation as defined in Section 170(h) of the United States Internal Revenue Code, and specifically to preserve significant lands that maintain and enhance the natural environment and cultural heritage of the Northern Chihuahuan Desert Region.

F. Grantor and Grantee acknowledge that this Conservation Easement is being executed and conveyed pursuant to the Texas Natural Resource Code Chapter 183, and Grantor and Grantee wish to avail themselves of the provisions of that law. Grantor intends, as owner of the Protected Property, to convey to Grantee the right to preserve and protect the Conservation Values of the Property, in perpetuity, subject to the existing uses and uses permitted by the terms of this Conservation Easement, except as may be terminated by the provisions contained herein.

G. As Grantee is exempt from federal taxation pursuant to Section 501(c)(3) of the United States Internal Revenue Code, in accordance with Section 253.011 of the Texas Local Government Code, this easement may be conveyed to the Grantee without the necessity of complying with the notice and bidding requirements of state law.

H. Grantee agrees, by accepting this grant, to honor the intentions of Grantor stated herein and to preserve and protect the Conservation Values, as stated herein, of the Protected Property for the benefit of the citizens of El Paso.

**NOW, THEREFORE**, for and in consideration of the facts recited above and the mutual covenants, terms, conditions and restrictions contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Grantor hereby voluntarily grants and conveys unto the Grantee a Conservation Easement over the Protected Property of the nature and character and to the extent hereinafter set forth, in perpetuity, except as may be terminated by the provisions contained herein.

1. **Purpose.** The purpose of this Conservation Easement is to further the following

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municipal public purposes: (a) ensure that the Protected Property will be retained forever predominantly in its natural, undisturbed and scenic open space condition; (b) prevent any use of the Protected Property that will significantly impair or interfere with the Conservation Values of the Protected Property described above; and (c) otherwise implement the mutual intentions of the parties as expressed by the facts recited above, which are incorporated herein by reference. The Grantor intends that this Conservation Easement will restrict the use of the Protected Property as provided in this Conservation Easement below.

2. **Prohibited Uses.** Any activity on or use of the Protected Property inconsistent with the purposes of this Conservation Easement is prohibited. Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited:

2.1 **No Surface Alteration.** There shall be no ditching, draining, diking, filling, excavating, dredging, mining, drilling or other major alteration of the surface of the Protected Property, no disturbance of the subsoils (including, but not limited to, the excavation or removal of soil, sand, gravel, rock, peat, or sod, or the placing of soil or other substances and materials such as land fill or dredging spoils), except as may be necessary to restore or maintain the natural condition or Existing Uses of the Protected Property, provided, however, natural materials, such as rock, dirt, sand and gravel, may be taken for use in connection with permitted activities on the Protected Property.

2.2 **Dumping.** There shall be no storage or dumping of ashes, trash, garbage, Hazardous Materials (defined in Paragraph 8 hereof) or any other materials, except that waste or debris from permitted activities may be stored temporarily in appropriate containers for removal at reasonable intervals consistent with the scenic and natural character of the Protected Property.

2.3 **Construction.** There shall be no placement or construction of structures or other improvements on the Protected Property, except in connection with the repair, maintenance, expansion or replacement of utility structures and other improvements existing at the time of this grant in their present location, or in the future as required and as permitted in Paragraph 3.

**2.4 Residential and Commercial Activities.** There shall be no residential, commercial or industrial use of or activity on the Protected Property, except as permitted in Paragraph 3.

**2.5 Agricultural Activities.** There shall be no farming or agricultural activities on the Protected Property, including planting, raising, harvesting, or producing agricultural products. Grazing by cattle or horses or other livestock animals shall not be permitted. The establishment or maintenance of any commercial feed lot shall not be permitted.

**2.6 No Vehicles.** There shall be no operation of any motorized vehicles, including, but not limited to, dune buggies, motorcycles and all-terrain vehicles, except as may be necessary to exercise any of the Grantor's rights described in Paragraph 3.

**2.7 No Subdivision.** The Protected Property shall not be further subdivided or otherwise partitioned in ownership.

**2.8 Signage and Telecommunications Facilities.** Billboards or other advertising media are prohibited; provided, however, advertising media shall not include project and safety related signage installed by the Grantor. Telecommunications facilities (including antennae or relay stations and accessory towers, satellite dishes or utility of any type) are prohibited.

**2.9 Recreational Construction and Usage.** Except as permitted herein, none of the following shall be allowed to be built or be brought onto the Protected Property including: barbeque pits, grill pits, picnic tables, trash containers or receptacles of any kind (unless used temporarily for litter clean-up); no restroom facilities; no buildings of any sort unrelated to nature-observation activities. Provided however, the Grantor may install and maintain park benches at regular intervals within the Protected Property and in locations agreed to by the Grantee, which approval shall not be unreasonably withheld.

3. **Grantor's Reserved Rights.** Grantor reserves to itself, and to its successors, and assigns, all rights accruing from Grantor's ownership of the Protected Property,

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including the right to engage in, or permit or invite others to engage in, all uses of the Protected Property that are not prohibited herein and are not inconsistent with the purpose of this Conservation Easement. Without limiting the generality of the foregoing, the following rights are expressly reserved:

**3.1 Existing Uses.** The Grantor and the Grantee understand and agree that the current and continuing existing uses of the Protected Property include utility infrastructure and storm water drainage ("Drainage"), and while the Grantee has no responsibility to maintain the use of the Protected Property for Drainage and utility infrastructure, the Grantor and Grantee understand and agree that such continued use is not in conflict and does not impair or interfere with the Conservation Values recited herein, if conducted to the extent reasonably possible in accordance with the terms of this Conservation Easement. The Grantor shall have the right to continue and maintain any activity or use of the Protected Property in effect at the time of this grant, subject to any limitations imposed by this Conservation Easement, including, but not limited to use of the Protected Property for Drainage and utility infrastructure as further described herein.

**3.2 Drainage.** If required by a city; a storm water utility district, or other similarly named district or entity created for the purpose of managing storm water; the state or federal government, or as necessary to ensure protection of the public health, safety and welfare, the Grantor may install, construct and maintain drainage structures utilizing best management practices and in such a manner which shall preserve and, to the extent reasonably possible, shall least interfere with the Conservation Values. Grantor shall attempt in good faith to negotiate and request the entity imposing such requirement on the Grantor to seek alternatives which will mitigate and reduce the impact on the Conservation Values.

**3.3 Transfer.** The right to sell, gift, mortgage, lease, or otherwise convey the Protected Property, provided such conveyance is in total and subject to the terms of this Conservation Easement and written notice thereof is provided to the Grantee in accordance with Paragraph 19.6 below. Although notice is provided to the Grantee, Grantee's approval is not necessary prior to any transfer of the Protected Property.

**3.4 Structures.** The Grantor and the Grantee acknowledge the easement recorded in Volume 2661, Page 460, of the Real Property Records of El Paso County, Texas, which was granted to the Grantor for the use and benefit of its Public Service Board (El Paso Water Utilities), and the rights granted to the Grantor pursuant to that easement. The identified existing structures and other improvements located within the easement include: an 8-inch diameter sewer main 1,882 feet long and sixteen (16) 4-foot diameter manholes. The Grantor agrees to coordinate with its Public Service Board (El Paso Water Utilities) and strongly encourage the Public Service Board (El Paso Water Utilities), when exercising its rights pursuant to the identified recorded easement, to utilize best management practices and to use best management practices in such a manner which shall preserve and, to the extent reasonably possible, provide the least interference with the Conservation Values. The Grantor will request that its Public Service Board notify the Grantee at least seventy-two (72) hours prior to commencing any maintenance or construction to the existing structures within the Protected Property; provided, however, failure to provide prior notice shall not be grounds to deny access to the Protected Property. In addition, Grantee's permission is strongly encouraged but not necessary prior to entering the Protected Property for any reason directly related to the identified recorded easement.

**3.5 Right of Entry.** Without the necessity of prior notice to and appointment with Grantee, the Grantor retains the right of ingress and egress to the Protected Property as needed and at any location. Provided however, the point of entry for any particular operation shall be the one that disturbs and damages the terrain and plants within the Protected Property to the least extent reasonably possible under the circumstances and shall preserve and, to the extent reasonably possible, provide the least interference with the Conservation Values.

**3.6 Construction and Maintenance.** All such construction and maintenance permitted herein, shall utilize existing topography in a manner which minimizes impacts to the surface and subsurface hydrology, and least interferes with the Conservation Values. The Grantor will notify the Grantee at least seventy-two (72) hours prior to commencing any maintenance or construction within the Protected Property; provided, however, failure to provide prior notice shall not be

grounds to deny access to the Protected Property. In addition, the Grantee's permission is not necessary prior to entering the Protected Property for any reason consistent with the permitted uses and with the intention to preserve the Conservation Values.

**3.7 Emergency Situations.** The Grantor shall not be required to provide advance written notice to the Grantee, when the Grantor must enter the Protected Property to immediately address emergency conditions that may affect public health and safety or situations arising from an Act of God or a third party beyond the control of the Grantor or the Grantee. In the event that the Grantor accesses the Protected Property due to an emergency, to the extent reasonably possible, the Grantor shall enter the property in such a manner as to cause the least amount of damage possible and preserve the Conservation Values, and provide notice to the Grantee as soon as reasonably possible of the date and reason for the entrance to the Protected Property.

**3.8 Costs of Operation, Upkeep, and Maintenance.** The Grantor shall assume all responsibilities and shall bear all costs and liabilities, to the extent allowed by law, of any kind related to the operation, upkeep and maintenance of the Protected Property in its natural state.

**3.9 Water Rights.** All surface and subsurface water rights associated with the Protected Property are reserved by and for the benefit of the Grantor.

4. **Grantee's Right.** To accomplish the purposes of this Conservation Easement, the following rights are hereby conveyed to the Grantee:

**4.1 Right to Protect.** The right to preserve and protect the herein described Conservation Values of the Protected Property.

**4.2 Right of Entry.** Without the necessity of prior notice to and appointment with the Grantor, the right of ingress and egress to the Protected Property as needed.

**4.3 Enforcement.** The right to prevent any activity on or use of the Protected

Property that is in violation with this Conservation Easement and to require the restoration of such areas or features of the Protected Property that may be damaged by any activity or use in violation of this Conservation Easement.

**4.4 Discretionary Consent.** The Grantee may consent to activities otherwise prohibited under Paragraph 2 above, or activities requiring the Grantee's consent under Paragraph 3 above, under the following conditions and circumstances. If, owing to unforeseen or changed circumstances, any of the activities listed in Paragraph 2 are reasonably determined by both the Grantor and the Grantee to be desirable, the Grantor may, after securing the Grantee's written permission, give permission for such activities, provided such activities (a) do not violate the purposes of the Conservation Easement and (b) either enhance or do not impair any significant Conservation Values associated with the Protected Property. Notwithstanding the foregoing, the Grantee and the Grantor have no right or power to agree to any activities that would result in the termination of this Conservation Easement by a third party or to allow any residential, commercial or industrial structures or uses. In the event the Grantor wishes to engage in any activity or use of the Protected Property requiring the Grantee's consent, the Grantor shall send written notice to the Grantee describing in detail such request. The Grantee shall respond to the request within sixty (60) days.

5. **Public Access.** The Grantor and the Grantee agree and understand that the Protected Property is not to be used in a manner which would constitute a public forum; however, the public will be allowed access to the Protected Property in the same manner it is allowed to access other natural open spaces of the Grantor. In order to protect the current status and ownership rights of the Grantor in the Protected Property, nothing contained in this Conservation Easement shall give or grant to the public a right, except as herein acknowledged, to enter upon or use the Protected Property or any portion thereof, unless the Grantee and the Grantor consent in writing and if such access further promotes and preserves the Conservation Values. In the event of an emergency that may affect public health and safety or situations arising from an Act of God or a third party beyond the control of the Grantor or the Grantee, the Grantor, through its City Manager, shall have sole authority and discretion to grant access to the public to and through the Protected Property as necessary to evaluate and mitigate such emergencies and

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shall take all precautions to preserve the Conservation Values.

6. **Permits.** For any action undertaken solely by the Grantor, the Grantor shall be responsible for obtaining any applicable governmental permits and approvals for any construction or other activity or use permitted under this Conservation Easement, and all such construction or other activity or use shall be undertaken in accordance with all applicable federal, state, and local laws, regulations, and requirements.
7. **Title.** The Grantee shall have the use of and enjoyment of all the benefits derived from and arising out of this Conservation Easement. The Grantor warrants that the Grantor has good and sufficient title to the Property, that the Grantor has good right, full power, and lawful authority to grant and convey this Conservation Easement. The Grantor further represents that the Protected Property is free and clear of any and all encumbrances, except those reservations and encroachments identified on **Exhibit "B,"** attached hereto.
8. **Hazardous Materials.** The Grantor represents to the Grantee, that to the best of its knowledge since acquiring title to the Protected Property, that no Hazardous Materials exist nor have been generated, treated, stored, used, disposed of, or deposited in or on the Protected Property, and that there are not now any underground storage tanks located on the Protected Property. As used herein, the term "**Hazardous Materials**" shall mean (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 Governmental Requirements; (v) polychlorinated biphenyls; (vi) any substance, the presence of which on the Protected Property is prohibited by any Governmental Requirements; and (vii) any other substance which, by any Governmental Requirements, requires special handling in its collection, storage, treatment or disposal. The term

**"Governmental Requirements"** shall mean all laws, ordinances, statutes, codes, rules, regulations, orders and decrees of any governmental authorities having jurisdiction over the Protected Property. Nothing in this Conservation Easement shall be construed as giving rise, in the absence of a judicial decree, to any right or ability in the Grantee to exercise physical or managerial control over the day-to-day operations of the Protected Property, or any of the Grantor's activities on the Protected Property, or otherwise to become an operator with respect to the Protected Property within the meaning of The Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"); the Texas Solid Waste Disposal Act (Texas Health and Safety Code Annotated, Section 361); or any other federal, state or local law or regulation.

9. **Grantor's Remedies.** If the Grantee ceases to exercise its easement rights in a manner consistent with the public purposes or otherwise abandons its public purpose as stated in Section 1 of this Conservation Easement, this easement shall terminate immediately and automatically revert to the Grantor.
10. **Baseline Documentation Report.** The Grantor and the Grantee agree that the Baseline Documentation Report, attached as **Exhibit "C"** and incorporated by reference for all purposes, shall be deemed to provide objective information concerning the Protected Property's condition at the time of this conveyance, for use as a baseline for monitoring compliance with the terms of this grant.
11. **Grantee's Remedies.**
  - 11.1 **Notice of Violation; Corrective Action.** If the Grantee determines that a violation of the terms of this Conservation Easement has occurred or is threatened, the Grantee shall give written notice to the Grantor of such violation and request corrective action sufficient to cure the violation and, where the violation involves injury to the Protected Property resulting from any use or activity inconsistent with the purposes of this Conservation Easement, to restore the portion of the Protected Property so injured to its prior condition in accordance with a reasonable plan approved by the Grantor and the Grantee.

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**11.2 Remedies.** If the Grantor fails to cure the violation within one hundred eighty (180) days after receipt of notice thereof from the Grantee, or under circumstances where the violation cannot reasonably be cured within a one hundred eighty (180) day period, fail to begin curing such violation within the one hundred eighty (180) day period, or fail to continue diligently to cure such violation until finally cured, the Grantee may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Conservation Easement, to enjoin the violation by temporary or permanent injunction, and to pursue specific performance of this agreement, which may include restoration of the Protected Property to the condition that existed prior to any damages. The Grantor hereby waives immunity to suit for specific performance of this Conservation Easement only, and does not waive immunity from damages of any kind with respect to any suit for specific performance of this Conservation Easement nor does the Grantor agree to attorney's fees, under any cause of action.

**11.3 Emergency Enforcement.** If the Grantor, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values of the Protected Property, the Grantor may pursue its remedies under this Paragraph without prior notice to the Grantee or without waiting for the period for cure to expire. However, the Grantor agrees to use its best efforts to notify the Grantee of such circumstances as soon as reasonably practicable.

**11.4 Scope of Relief.** The Grantor acknowledges that actual events of non-compliance under this Conservation Easement constitute immediate and irreparable harm. The Grantee is entitled to invoke the equitable jurisdiction of the courts to enforce this Conservation Easement.

**11.5 Forbearance.** Forbearance by the Grantee to exercise its rights under this Easement in the event of any breach of any term of this Conservation Easement by the Grantor shall not be deemed or construed to be a waiver by the Grantee of such term or of any subsequent breach of the same or any other term of this Conservation Easement or of any of the Grantee's rights under this Conservation Easement. No delay or omission by the Grantee in the exercise of any right or

remedy upon any breach by the Grantor shall impair such right or remedy or be construed as a waiver.

**11.6 Acts Beyond Grantor's Control.** Nothing contained in this Conservation Easement shall be construed to entitle the Grantee to bring any action against Grantor for any injury to or change in the Protected Property resulting from causes beyond Grantor's control, including, without limitation, actions by third parties not within Grantor's control or supervision, Acts of God, fire, flood, storm, earth movement, or governmental or regulatory requirements.

**11.7 Third Party Enforcement.** The Grantor and the Grantee may execute an addendum to this Conservation Easement after its creation to authorize an appropriate third party to enforce the terms of this Conservation Easement. Any such addendum shall not diminish the enforcement rights of the Grantee.

12. **Insurance and General Liability.** EACH PARTY SHALL BE RESPONSIBLE FOR ITS OWN ACTIONS AND IS RESPONSIBLE FOR SECURING THEIR OWN INSURANCE, OR MAINTAIN A COMPARABLE SELF-INSURANCE PROGRAM AS EACH DEEMS NECESSARY. TO THE EXTENT PERMITTED BY LAW AND WITHOUT WAIVING SOVEREIGN IMMUNITY, IF APPLICABLE, EACH PARTY SHALL BE RESPONSIBLE FOR ANY AND ALL CLAIMS, DEMANDS, SUITS, ACTIONS, DAMAGES, AND CAUSES FOR ACTION RELATED TO OR ARISING OUT OF OR IN ANY WAY CONNECTED WITH ITS OWN ACTIONS, AND THE ACTIONS OF ITS PERSONNEL OR AUTHORIZED AGENTS IN RELATION TO PERFORMANCE OF EACH PARTY PURSUANT TO THE TERMS AND CONDITIONS OF THIS CONSERVATION EASEMENT. GRANTOR SHALL REQUIRE ITS CONTRACTORS TO INDEMNIFY, DEFEND, AND SAVE HARMLESS GRANTEE, AND THEIR SUCCESSORS AND ASSIGNS, FROM AND AGAINST ALL LOSS, COSTS, EXPENSE, SUITS, JUDGMENTS AND DAMAGES (INCLUDING WITHOUT LIMITATION, COURT COSTS AND REASONABLE ATTORNEYS' FEES) FOR INJURIES OR DEATH TO PERSONS OR PROPERTY CONNECTED WITH OR ARISING OUT OF THE EXERCISE OF THE RIGHTS UNDER

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## THIS CONSERVATION EASEMENT.

13. **Parties Subject to Easement.** The covenants agreed to and the terms, conditions, and restrictions imposed by this grant shall not only be binding upon the Grantor but also its lessees, agents, personal representatives, successors and assigns, and all other successors in interest to the Grantor and shall continue as a servitude running in perpetuity with the Protected Property, unless otherwise terminated as provided for herein.
14. **Subsequent Transfers.** The Grantor agrees that the terms, conditions, restrictions and purposes of this grant or reference thereto will be inserted by the Grantor in any subsequent deed or other legal instrument by which the Grantor divests either the fee simple title or possessory interest in the Protected Property; and the Grantor further agrees to notify the Grantee of any pending transfer of any interest in the Protected Property at least thirty (30) days in advance of such transfer. The failure of the Grantor to perform any act required by this paragraph shall not impair the validity of this Conservation Easement or limit its enforcement in any way.
15. **Merger.** The Grantor and the Grantee agree that the terms of this Conservation Easement shall survive any merger of the fee estate and easement interest in the Protected Property.
16. **Assignment.** The parties hereto recognize and agree that the benefits of this Conservation Easement are in gross and assignable, and the Grantee hereby covenants and agrees it may not transfer or assign this Conservation Easement without the Grantor's prior written approval. The Grantor may withhold its approval of an assignment for any reason. Any proposed organization receiving the interest must be a qualified organization as that term is defined in Section 170(h)(3) of the Internal Revenue Code of 1986 (or any successor section) and the regulations promulgated thereunder, or that is organized and operated primarily for one of the conservation purposes specified in Section 170(h)(4)(A) of the Internal Revenue Code, and the Grantee further covenants and agrees that the terms of the transfer or assignment will be such that the transferee or assignee will be required to continue to carry out in perpetuity the conservation purposes that

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the contribution was originally intended to advance. The Grantee shall provide advance written notice to the Grantor no less than ninety (90) days prior to any proposed assignment.

17. **Extinguishment.** If circumstances arise in the future to render the purpose of this Conservation Easement impossible to accomplish, this Conservation Easement can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction, or by the automatic termination provisions of Paragraph 9.

18. **Eminent Domain.** Whenever all or part of the Protected Property is taken in exercise of eminent domain by public, corporate, or other authority so as to abrogate the restrictions imposed by this Conservation Easement, the Grantor and the Grantee shall join in appropriate actions at the time of the taking to recover the full value of the taking and all incidental or direct damages resulting from it, and the Grantor and the Grantee shall be entitled to their proportionate share of any and all proceeds.

19. **Miscellaneous Provisions.**

19.1 **Severability.** If any provision of the 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 and the application of such provisions to persons or circumstances other than those as to which it is found to be invalid shall not be affected thereby.

19.2 **Successors and Assigns.** The term "Grantor" shall include the Grantor and the Grantor's successors and assigns and shall also mean the masculine, feminine, corporate, singular or plural form of the word as needed in the context of its use. The term "Grantee" shall include the Grantee and its successors and assigns.

19.3 **Applicable Laws.** The Grantor and the Grantee shall comply with all governmental requirements in connection with any of their activities on the Protected Property or in connection with this Conservation Easement.

19.4 **Recording.** The Grantor is authorized to record or file any notices or instruments appropriate to assuring the perpetual enforceability of this Conservation Easement for such purpose. Without limiting the foregoing, the Grantee agrees to execute any such instruments required for such filings or notices upon request.

19.5 **Captions.** The captions herein have been inserted solely for convenience or reference and are not part of this Conservation Easement and shall have no effect upon construction or interpretation.

19.6 **Notices.** Any notice, communication, request, reply or advice (severally and collectively referred to as "**Notice**") in this Conservation Easement provided or permitted to be given, made or accepted by either party to the other must be in writing. Notice may, unless otherwise provided herein, be given or served (a) by depositing the same in the United States mail, postage paid, certified mail, and addressed to the party to be notified at the last address for which that the sender has at the time of mailing, with return receipt requested, (b) by delivering the same to such party, or an agent of such party, or (c) when appropriate, by sending a telegram or wire addressed to the party to be notified. Notice deposited in the mail in the manner hereinabove described shall be effective from and after such deposit. Notice given in any other manner shall be effective only if and when received by the party to be notified. For the purposes of notice, the addresses of the parties shall, until changed as provided below, be as follows:

Grantor: City of El Paso  
ATTN: City Manager  
2 Civic Center Plaza, Tenth Floor  
El Paso, Texas 79901  
Telephone: (915) 541-4000; Fax: (915) 541-4866

Copy to: Parks and Recreation Department  
ATTN: Director  
2 Civic Center Plaza  
El Paso, Texas 79901  
Telephone: (915) 541-4000; Fax: (915) 541-4355

El Paso Water Utilities – Public Service Board  
ATTN: General Manager  
1154 Hawkins Blvd.

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PO Box 511  
El Paso, Texas 79961-001

Grantee: The Frontera Land Alliance  
3800 North Mesa, Suite 2A-258  
El Paso, Texas 79902

**19.7 Effective Date.** This Agreement shall not become effective and binding until fully executed by both the Grantor and the Grantee.

**19.8 Mediation.** If a dispute arises between the parties concerning the consistency of any existing or proposed use or activity with the purpose of this Conservation Easement, and the Grantor agrees not to cease the disputed use or activity pending resolution of the dispute, either party may refer the dispute to mediation by request made in writing to the other. Within sixty (60) days of the receipt of such a request, the parties shall select a single trained and impartial mediator to assist in the resolution of the dispute. If the parties are unable to agree on the selection of a single mediator, then each party shall name one mediator and the two mediators thus selected shall select a third mediator; provided, however, if either party fails to select an mediator, or if the two mediators selected by the parties fail to select the third mediator within thirty (30) days after the appointment of the second mediator, then in each such instance a proper court, on petition of a party, shall appoint the second or third mediator or both, as the case may be, in accordance with the rules of the American Arbitration Association then in effect. If the parties are unable to reach a settlement within ninety (90) days of a mediation conducted, either party may bring a suit in a court of law of competent jurisdiction. The prevailing party shall be entitled to such relief and as defined in Paragraph 11.2 hereof as applicable to the Grantor as may be determined by any court of competent jurisdiction that may be called upon to enforce or review the award. Nothing herein to the contrary shall limit or otherwise impair the Grantee's right to pursue any enforcement action, including without limitation, injunctive relief, from a court of competent jurisdiction.

**19.9 Entire Agreement.** All agreements between the parties, schedules and exhibits referred to in or attached to this Conservation Easement are incorporated into and made a part of this Conservation Easement for the purposes indicated

herein and contains the entire agreement of the parties. There are no other

agreements or promises, oral or written, between the parties regarding the subject matter of this Conservation Easement. This Conservation Easement can be amended only by written agreement signed by the parties after approval and formal action of the Grantor.

**19.10 Ambiguities Not to Be Construed against Party Who Drafted Document.** The rule of construction that ambiguities in a document will be construed against the party who drafted it will not be applied in interpreting this Conservation Easement.

**19.11 Authority for Execution.** Each Party hereby certifies and represents that the execution of this Conservation Easement has been duly authorized.

**19.12 Choice of Law; Venue.** This Conservation Easement will be construed under the laws of the State of Texas. Venue is in courts of competent jurisdiction in El Paso County.

TO HAVE AND TO HOLD this Conservation Easement unto the Grantee in perpetuity, except as may be terminated herein, together with all and singular the appurtenances and privileges belonging or any way pertaining thereto, either at law or in equity, either in possession or expectancy, for the proper use and benefit of the Grantee, its successors and assigns, forever. This conveyance is made subject to those matters identified on **Exhibit "B"** attached hereto.

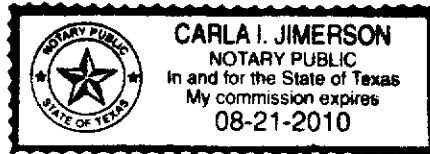
IN WITNESS WHEREOF, the Grantor has executed this document the day and year first above written.

(Signatures begin on next page)

**GRANTOR:**

Joyce A. Wilson  
Joyce A. Wilson  
City Manager

STATE OF TEXAS       §  
COUNTY OF EL PASO   §



This instrument was acknowledged before me this 8<sup>th</sup> day of May 2007,  
by JOYCE A. WILSON, City Manager of City of El Paso, Texas, a Texas municipal corporation.

Carla I. Jimerson  
Notary Public in and for the State of Texas

**APPROVED AS TO FORM**

Theresa Cullen-Garney  
Theresa Cullen-Garney  
Deputy City Attorney

**APPROVED AS TO CONTENT**

Kelly Carpenter  
Kelly Carpenter  
Planning Deputy Director

(Signatures continue on next page)

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IN WITNESS WHEREOF, the said **THE FRONTERA LAND ALLIANCE** has caused this instrument to be signed by its authorized officer, and the corporate seal affixed on the 7<sup>th</sup> day of MAY, 2007.

**GRANTEE:**

By: [Signature]  
Printed Name: MARIA A. TRUNK  
Title: PRESIDENT

STATE OF TEXAS           §  
COUNTY OF EL PASO   §

This instrument was acknowledged before me this 7<sup>th</sup> day of May, 2007, by MARIA A. TRUNK, President of Frontera Land Alliance, a Texas nonprofit corporation.



My Commission Expires

[Signature]  
Notary Public in and for the State of Texas

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**EXHIBIT "A"**  
**METES AND BOUNDS**

Document #: 30326  
Document Name: PLAN/Thunder Canyon/conservation easement

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Being a portion of Tract 1E, H.G. Foster Survey No. 259,  
City of El Paso, El Paso County, Texas  
Prepared for: Willis Homes  
March 9, 2006

# METES AND BOUNDS DESCRIPTION

Description of a parcel of land being a portion of Tract 1E, H.G. Foster Survey No. 259, City of El Paso, El Paso County, Texas and being more particularly described by metes and bounds as follows:

Commencing for reference at an existing city monument at the point of curve centerline Stanton Street ADJACENT TO Lot 32, Block 1, Thunderbird Crest recorded in Volume 67, Page 45, Plat records of El Paso County, Texas said point lying North 00°00'08" West a distance of 66.14 feet from the centerline intersection of Stanton Street and Thunder Crest Ln.; Thence along the centerline of Stanton Street 141.46 feet along the arc of a curve to the left which has a radius of 515.02 feet a central angle of 15°44'14" a chord which bears North 07°52'15" West a distance of 141.01 feet, Thence leaving said centerline South 74°15'38" West a distance of 35.00 feet to a set ½" rebar with cap marked TX 5152 on the westerly right of way line of Stanton Street for THE "TRUE POINT OF BEGINNING"

Thence South 74°15'38" West (S 74°15'46" W, Vol. 67, Pg. 45) a distance of 126.87 feet to a set ½" rebar with cap marked TX 5152;

Thence North 67°51'39" West (N 67°51'39" W Vol. 67, Pg. 45) a distance of 265.01 feet to a set ½" rebar with cap marked TX 5152;

Thence South 80°01'27" West (S 80°01'35" W, Vol. 67, Pg. 45) a distance of 120.91 feet to a set ½" rebar with cap marked TX 5152;

Thence South 64°22'36" West (S 64°22'44" W, Vol. 67, Pg. 45) a distance of 277.56 feet to a set ½" rebar with cap marked TX 5152;

Thence South 09°10'26" West (S 09°10'34" W, Vol. 67, Pg. 45) a distance of 279.92 (279.86 Vol. 67, Pg. 45) feet to a set ½" rebar with cap marked TX 5152 on the northerly line of Mesa Hills Unit Two;

Thence along said line South 88°25'51" West (S 88°25'19" W, Vol. 51, Pg. 27) a distance of 1101.37 Feet (1104.35 Vol. 51, Pg. 27) to a set ½" rebar with cap marked TX 5152;

Thence North 16°21'45" West (N 17°05'28" W, Vol. 51, Pg. 27) a distance of 80.26 feet (84.03 feet Vol. 51, Pg. 27) to a set ½" rebar with cap marked TX 5152;

Thence North 08°44'49" West (N 09°28'32" W, Vol. 51, Pg. 27) a distance of 60.00 feet to a set ½" rebar with cap marked TX 5152;

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Thence South  $81^{\circ}15'11''$  West (S  $80^{\circ}31'28''$  W, Vol. 51, Pg. 27) a distance of 401.56 feet to a point;

Thence 78.80 feet along the arc of a curve to the left which has a radius of 61.54 feet a central angle of  $73^{\circ}21'41''$  a chord which bears South  $81^{\circ}15'11''$  West a distance of 73.53 feet to a point;

Thence South  $81^{\circ}15'11''$  West (S  $80^{\circ}31'28''$  W, Vol. 51, PG. 27) a distance of 26.39 feet to a set  $\frac{1}{2}''$  rebar with cap marked TX 5152;

Thence North  $08^{\circ}44'49''$  West (N  $09^{\circ}28'32''$  W, Vol. 51, PG. 27) a distance of 105.00 feet to a set  $\frac{1}{2}''$  rebar with cap marked TX 5152;

Thence South  $85^{\circ}16'27''$  West (S  $84^{\circ}32'44''$  W, Vol. 51, Pg. 27) a distance of 107.64 feet to a set  $\frac{1}{2}''$  rebar with cap marked TX 5152;

Thence South  $78^{\circ}36'33''$  West (S  $77^{\circ}52'50''$  W, Vol. 51, PG. 27) a distance of 88.98 feet to a set  $\frac{1}{2}''$  rebar with cap marked TX 5152;

Thence South  $71^{\circ}04'03''$  West (S  $70^{\circ}20'20''$  W, Vol. 51, Pg. 27) a distance of 89.03 feet to a set  $\frac{1}{2}''$  rebar with cap marked TX 5152;

Thence South  $66^{\circ}44'41''$  West (S  $66^{\circ}00'58''$  W, Vol. 51, Pg. 27) a distance of 89.03 feet to a set  $\frac{1}{2}''$  rebar with cap marked TX 5152;

Thence South  $69^{\circ}02'15''$  West (S  $68^{\circ}18'32''$  W, Vol. 51, Pg. 27) a distance of 77.43 feet to a set  $\frac{1}{2}''$  rebar with cap marked TX 5152;

Thence South  $89^{\circ}15'28''$  West (S  $88^{\circ}31'45''$  W, Vol. 51, PG. 27) a distance of 60.00 feet to a set  $\frac{1}{2}''$  rebar with cap marked TX 5152;

Thence leaving Mesa Hills Unit Two North  $11^{\circ}45'24''$  East (N  $11^{\circ}43'52''$  E, Vol. 2878, Pg. 1418) a distance of 166.84 feet to a found  $\frac{1}{2}''$  rebar on the southerly line of Mesa Hills Unit Four;

Thence along said line North  $84^{\circ}27'57''$  East (N  $84^{\circ}28'05''$  E, Vol. 56, Pg. 12) a distance of 1289.99 feet to a set  $\frac{1}{2}''$  rebar with cap marked TX 5152;

Thence North  $65^{\circ}59'52''$  East (N  $66^{\circ}00'00''$  E, Vol. 56, PG. 12) a distance of 870.00 feet to a set  $\frac{1}{2}''$  rebar with cap marked TX 5152;

Thence North  $50^{\circ}18'06''$  East (N  $50^{\circ}18'14''$  E, Vol. 56, Pg. 12) a distance of 235.95 feet to a set  $\frac{1}{2}''$  rebar with cap marked TX 5152;

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Thence leaving said line of Mesa Hills Unit Four, South  $40^{\circ}35'32''$  East a distance of 54.54 feet to a point;

Thence North  $49^{\circ}24'28''$  East a distance of 72.13 feet to a point;

Thence North  $40^{\circ}35'32''$  West a distance of 53.41 feet to a point on the southerly line of Mesa Hills Unit Four;

Thence along said line North  $50^{\circ}18'06''$  East (N  $50^{\circ}18'14''$  E, Vol. 56, Pg. 12) a distance of 257.58 feet to a set  $\frac{1}{2}$ " rebar with cap marked TX 5152 on the westerly right of way line of Stanton Street;

Thence along said right of way line the following three courses

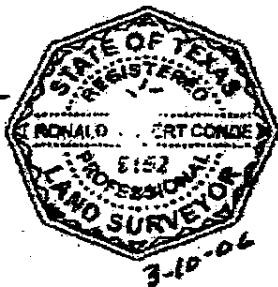
36.77 feet along the arc of a curve to the right which has a radius of 183.32 feet a central angle of  $11^{\circ}29'31''$  a chord which bears South  $14^{\circ}14'53''$  East a distance of 36.71 feet to a point;

465.60 feet along the arc of a curve to the left which has a radius of 666.92 feet a central angle of  $40^{\circ}00'00''$  a chord which bears South  $28^{\circ}30'08''$  East a distance of 456.20 feet to a set  $\frac{1}{4}$ " rebar with cap marked TX 5152;

Thence 274.48 feet along the arc of a curve to the right which has a radius of 480.02 feet a central angle of  $32^{\circ}45'46''$  a chord which bears South  $32^{\circ}07'15''$  East a distance of 270.76 feet to the "TRUE POINT OF BEGINNING" and containing 22.07 Acres of land more or less.

NOTE: Bearings basis is true north for a Transverse Mercator Surface projection as determined by GPS methods centered near this site.

R R C  
Ron R. Conde  
R.P.L.S. No. 5152  
Job# 206-56 R.C.



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**EXHIBIT "B"**  
**EXCEPTIONS TO CONVEYANCE AND WARRANTY**

**EXHIBIT "B"**

**EXCEPTIONS TO CONVEYANCE AND WARRANTY**

Mineral Interest as set out in instrument recorded in Volume 25, Page 563, Real Property Records of El Paso County, Texas.

Those recorded in Volume 1101, Page 1593, partially released in Volume 1233, Page 1148 and Volume 1547, Page 549 Real Property Records of El Paso County, Texas

Easement to the City of El Paso recorded in Volume 2661, Page 460, Real Property Records of El Paso County, Texas.

Restriction on vehicular access from Stanton Street in Volume 1574, Page 2020, Real Property Records of El Paso County, Texas.

Any and all encroachments shown on the plat of survey, dated March 15, 2006 prepared by Ron R. Conde, Registered Professional Land Surveyor.

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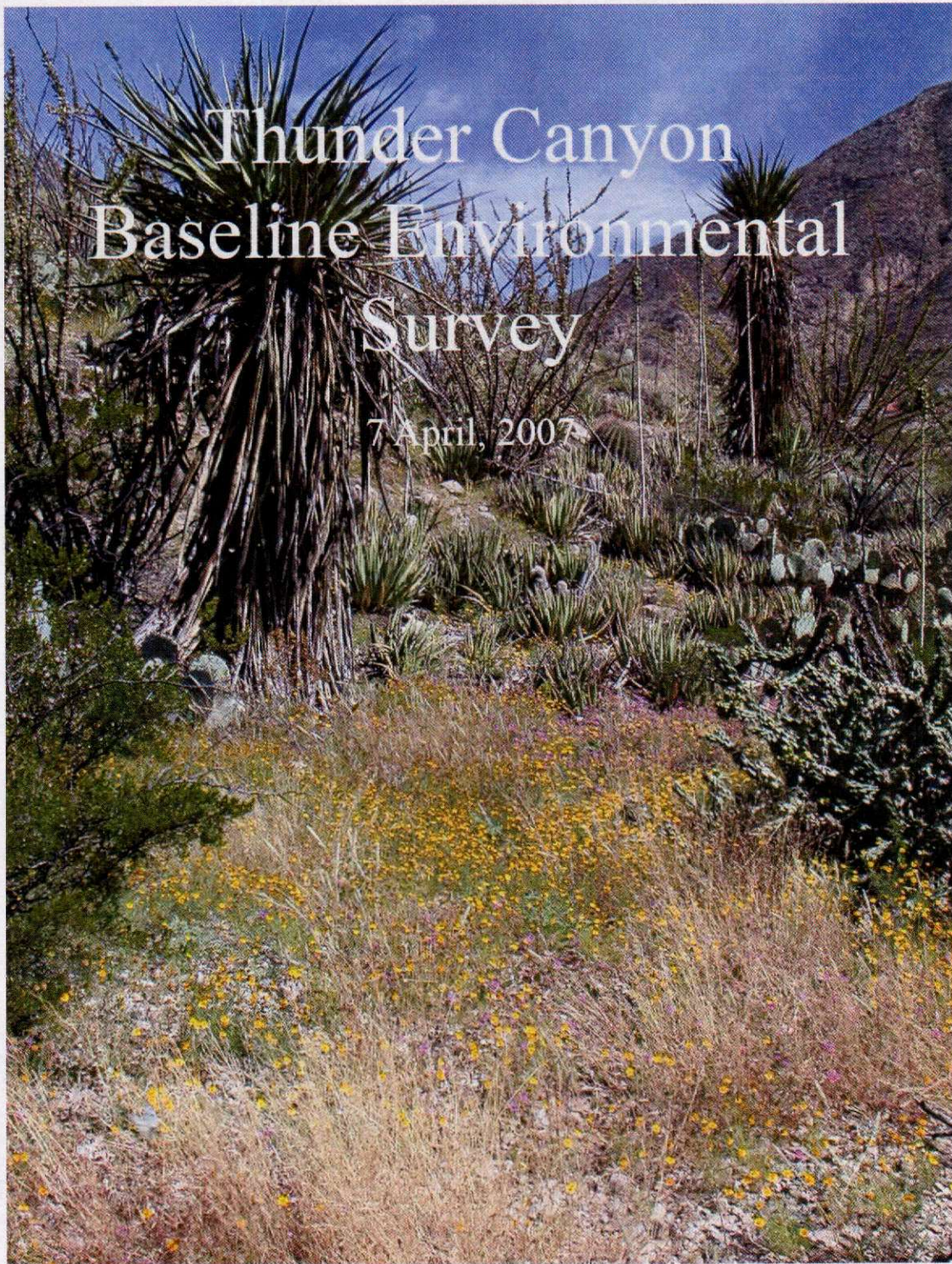
**EXHIBIT "C"**  
**BASELINE DOCUMENTATION REPORT**

A true and correct copy of Exhibit "C," "The April 7, 2007 Thunder Canyon Baseline Environmental Survey" is on file in the El Paso Municipal Clerk's Office attached to the Conservation Easement Agreement dated May 8, 2007 by the City of El Paso, Grantor, and The Frontera Land Alliance, Grantee.

**COUNTY RECORDINGS MAY 16, 2006**

**05/15/07    QUITCLAIM DEED** – A portion of Lot 1, Block 6, Americas Ten Subdivision, City of El Paso, El Paso County, Texas, Exhibit A Property description and map.







*The Frontera Land Alliance*

Baseline Environmental Survey  
Thunder Canyon

Dates of Site Visits: 23 October, 2006; 4 February, 2007

Anticipated Conveyance  
Date of Conservation  
Easement:

Property Ownership/  
Grantor: City of El Paso

Name of Proposed  
Easement Area: Thunder Canyon

Directions to Property: From the junction of North Mesa Street and Shadow Mountain Drive, travel north on Shadow Mountain Drive to Pebble Beach Drive and turn right. Go up Pebble Beach Drive to Oak Cliff Drive and turn right. Continue straight ahead past Lawndale Drive to the dead end of Oak Cliff Drive. This is the western edge of Thunder Canyon.

Description of Property: Thunder Canyon encompasses roughly 26 acres in El Paso County, Texas, bounded on the east by North Stanton Street, on the south by the Thunder Crest Lane community and its adjacent arroyo (which feeds into Thunder Canyon) and the community along Sharondale Drive, on the west by Oak Cliff Drive and adjacent homes, and on the north by the community on Moondale Drive (see accompanying Figure 1).

There are currently some serious erosion problems associated with the sewer line and its attendant access road. After the severe rains of 1 August, 2006, severe erosion washed away three to four feet of soil surrounding the manhole covers for the sewer system, especially in the middle portion of the property. This exposed the vertical portions of the manholes, took away large sections of the access road, and resulted in what appears to be a change in course of the dry stream bed within the Canyon (see accompanying figures 2, 3 and 4). Without attention, this erosion will further expose the sewer line and potentially lead to serious damage to the line and further loss of native vegetation.

Visits to the property on 23 October 2006 and 4 February 2007 revealed no visual evidence of hazardous waste dumping. There is a large section of concrete pipe on the slope of the northeastern slope of the property. Three piles of asphalt paving were found about 75 ft. east and 20 ft. north of electrical box. These piles were roughly 30 x 15 feet in size and appeared to have been in place for quite some time based on dirt accumulation on them and plant growth around them (see accompanying Figure 7).



Conservation Purposes of  
the Easement:

1. Conservation of natural undisturbed land for wildlife habitat and minimal-impact recreational use.
2. Conservation of the scenic viewshed for residents surrounding Thunder Canyon.
3. Providing open space for public enjoyment of a natural area.
4. Protecting Thunder Canyon from development and human disturbance.

Land Use

Current Use:

Natural undisturbed open space, unchannelized stormwater drainage, and sewer line right-of-way for the Thunder Crest development.

Reserved Use:

Natural undisturbed open space, minimal-impact recreation, unchannelized stormwater drainage, and minimal-impact access to sewer-line right of way for needed repairs.

Property Structures:

There are no surface structures on the property. The sewer line servicing the Thunder Crest development runs the length of the property from the northern edge of Thunder Crest Lane to Oak Cliff Drive. Currently there are curbs, the remnants of a road and subsurface electrical lines running up from Oak Cliff Drive into the property for about 200 ft. Some of the homes along the ridges surrounding the property may have encroached onto the property with unauthorized building.

Archeological Sites:

No evidence of archeological sites were noted during site visits on 23 October 2006 and 4 February 2007. However, no archaeologist was present during site visits. A trained archeologist or someone familiar with recognizing archaic sites should evaluate the land for archeological sites.

Recreation/Scenic Value:

Scenic views of the Franklin Mountains to the east and the mesa lands of New Mexico to the west; opportunities for minimal-impact recreation such as hiking and wildlife viewing.

Vegetation:

Chihuahuan Desert Scrub typical of well-drained calcareous soil canyonlands for this elevation (approximately 4350 feet above sea level).

Plant species observed

Ocotillo (*Fouquieria splendens*)

Creosote *Larrea tridentata*)

Sotol (*Dasylirion* cf. *wheeleri*)

Grasses (unidentified)

Side-oats grama grass (*Bouteloua curtipendula*)

Bermuda grass (*Cynodon dactylon*)

Yucca (*Yucca* sp.)

Brickellia (*Brikellia* sp.)

Mariola (*Parthenium incanum*)

Desertwillow (*Chilopsis linearis*)

Skeletonleaf Goldeneye (*Viguiera stenoloba*)

Silver-leaf nightshade (*Solanum elaeagnifolium*)

Snakeweed (*Gutierrezia* sp.)



Trailing four-o'clock (*Allionia incarnate*)  
 Amaranth (*Amaranthus* cf. *palmeri*)  
 Littleleaf sumac (*Rhus microphylla*)  
 Mesquite (*Prosopis glandulosa*)  
 Graythorn (*Ziziphus obtusifolia*)  
 Mormon tea (*Ephedra* sp.)  
 Groundseltree (*Baccharis* sp.)  
 Short-billed dayflower (*Commelina* sp.)  
 Beavertail cactus (*Opuntia* sp.).  
 Cholla (*Opuntia* cf. *imbricata*)  
 Turk's head cactus (*Echinocactus horizonthalonius*)  
 Green-flower pitaya (*Echinocereus chloranthus*)  
 Cow-tongue cactus (*Opuntia engelmannii* var. *lenguiformis*)  
 Nipple cactus (*Mammillaria* sp.)  
 Barrel cactus (*Echinocactus wislizeni*)  
 Ratany (*Krameria* sp.)  
 Lechuguilla (*Agave lechuguilla*)  
 Rock rose mallow (*Hibiscus denudatus*)  
 Plume tiguilia (*Tiguilia greggii*)  
 Scarlet creeper (*Ipomoea cristulata*)  
 Salt cedar (*Tamarix* sp.)  
 Palo verde (*Cercidium* sp.)  
 London rockets (*Sisymbrium irio*)  
 Goat-heads (*Tribulus terrestris*)

Wildlife:

Currently habitat for a variety of native terrestrial and non-terrestrial species as well as stop-over habitat for migrating birds.

Endangered, threatened or rare species:

None observed during these two site visits, but Texas horned lizards (*Phrynosoma cornutum*), currently listed as a threatened species by the State of Texas, have been observed in similar nearby habitats.

Birds: 23 October 2006

Rock wren (*Salpinctes obsoletus*)  
 House wren (*Troglodytes aedon*)  
 Curve-billed thrasher (*Toxostoma curvirostre*)  
 White-winged doves (*Zenaida asiatica*)  
 Mockingbird (*Mimus polyglottus*)  
 Cactus wren (*Campylorhynchus brunneicapillus*)  
 Ladder-backed woodpecker (*Picoides scalaris*)

Birds: 4 February 2007

Curve-billed thrasher (*Toxostoma curvirostre*)  
 White-winged dove (*Zenaida asiatica*)  
 House finch (*Carpodacus mexicanus*)  
 Spotted towhee (*Pipilo maculatus*)  
 Dark-eyed juncos (gray-headed) (*Junco hyemalis*)  
 Black-throated sparrow (*Amphispiza bilineata*)



Cactus wren (*Campylorhynchus brunneicapillus*)  
Lincoln Sparrow (*Melospiza lincolnii*)  
White-crowned sparrow (*Zonotrichia leucophrys*)

Mammals 4 February 2007

Deer (*Odocoileus cf. hemionus*)- tracks

**Baseline Inventory Contributors:**

Scott M. Cutler (primary author): El Paso/Trans-Pecos Audubon Society, Centennial Museum of the  
University of Texas at El Paso

Lois Balin: Urban Wildlife Biologist for Texas Parks & Wildlife

Michael Gaglio: Environmental Scientist, AMEC Earth and Environmental Services

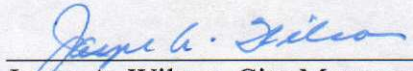
Maria Trunk: Texas Master Naturalist

Kevin von Finger: Ecologist

**Certification**

We, the undersigned signatories, do hereby certify, that the natural resources inventory contained in this  
Baseline Environmental Survey as collected on 23 October 2006 and 4 February 2007, and the  
accompanying illustrations, are an accurate representation of the Easement Area to the best of our  
knowledge at the time of the grant of this Conservation Easement on May 8, 2007

**Grantor: City of El Paso**

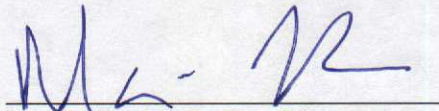


Joyce A. Wilson, City Manager

05.08.07

Date

**Grantee: The Frontera Land Alliance**



Maria A. Trunk, President

8 May 2007

Date

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07 MAY - 4 PM 3:43



Illustrations Accompanying Thunder Canyon Baseline Environmental Survey



Figure 1. Location of Thunder Canyon

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**Figure 2. Erosion Around Sewer Line in Thunder Canyon**



**Figure 3. Erosion of Maintenance Road after August 1, 2006 Rainstorm.** Maintenance road on left, erosional channel and exposed sewer manholes on right

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07 MAY -4 PM 3:43





**Figure 4. Changed Flow Path in Canyon.** Original flow path goes to right side of photograph, new erosional channel on left side of photograph with exposed sewer manhole.



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07 MAY -4 PM 3:43

**Figure 5. View of West Portion of Thunder Canyon.** Taken from north side of the property opposite the west end of the Thunder Crest development (same spot as figure 6).





**Figure 6. View of East Portion of Thunder Canyon.** Taken from the north side of the property opposite the west end of the Thunder Crest development (same spot as figure 5).



**Figure 7. Asphalt Waste in Thunder Canyon.** One of three piles of asphalt found in the lower end of the property near the electrical box.