Item 3

# Travis County Commissioners Court Agenda Request

**Meeting Date:** July 22, 2014
**Prepared By:** Dan Chapman **Phone #:** 512-263-9114
**Division Director/Manager:** Charles Bergh, Parks Division Director

**Department Head:** Steven M. Manilla, P.E., County Executive-TNR
**Sponsoring Court Member:** Commissioner Davis, Precinct One

**AGENDA LANGUAGE:** Consider and take appropriate action regarding approval of Agricultural Leases on Parks/Open Space tracts in Precincts One

**BACKGROUND/SUMMARY OF REQUEST:**
In April 2013, Court approved two Agricultural Leases for tracts that the county had acquired for the proposed Gilleland Creek Greenway trail. Both relationships have proven to be beneficial for both the county and the lessees. Now, three additional potential lease tracts have become available for lease purposes:

- Holley tract (Fritsch Lease Agreement Exhibit A: 67 acres on Decker Lake Road)
- Hubbard tract (Wenzel Lease Agreement Exhibit A: 88 acres on Gregg Manor) Road
- Killingsworth Tract (Wenzel Lease Agreement Exhibit B: 20 acres on Cameron Road

Similar to the two tracts that were the subject of the 2013 approval, these three tracts have been used historically for agricultural purposes up until county acquisition. The Hubbard tract conveyed to the county with an Agricultural Lease (between the former property owner and Amos Wenzel) in place that has since expired; however, the son of the historic lessee is interested in continuing the relationship with the county. The family has adjoining property and had grazed cattle on the Hubbard tract for at least 25 years. The Wenzel family has also raised hay and grazed cattle on a portion of the Killingsworth tract for over 30 years. They too, had a lease with the former owner of the tract.

The Holley tract has been mowed for hay by Charles Fritsch for at least 10 years. Mr. Fritsch owns land just across the road from the tract had a "gentleman's agreement" with the former property owner. Mr. Fritsch wishes to continue a similar mowing relationship with the county.

**STAFF RECOMMENDATIONS:**
Staff recommends approval of the two Agricultural Leases.

**ISSUES AND OPPORTUNITIES:**

The potential lessees have been using the tracts for years. Upon inspection of the tracts subsequent to county purchase, staff determined that the use has been beneficial, and has resulted in improved land management. Several advantages exist from having lessees: (1) continuing beneficial land management practices, which frees up county staff time and responsibilities; (2) lessee maintenance of fences and facilities, (3) lessee regular visits to the tracts which will provide for increased security; and (4) a continuing relationship with historic users who are supportive of the county's plans for the tracts. Regular grazing and mowing (Mr. Fritsch uses the hay solely to feed his personal livestock) will also help mitigate wildland fire danger through a reduction in fuel loads.

In discussions regarding the 2013 leases, Court questioned why the leases were not subjected to a public bid process. The County Attorney's Office did some research and determined that since the leases are revenue-generating, they do not have to go out for bid; citing Texas Local Government Code 320.001 and 320.004. As stated above, Travis County Park staff feel that continuing the relationship with the historic users is beneficial to the potential lessees and to the county.

Court, in 2013, also requested information regarding how Park staff arrived at the cost per acre lease amount ($8/acre/year). Park staff spoke with numerous sources, including the AgriLife Extension Service, the Farm Service Agency and Travis County Sheriff's Office Estray Units, all who have knowledge of relevant pricing all over the county. The sources stated that farm/ranch land in eastern Travis County typically leases for $6.00 - $30.00/acre, depending on the quality of the soil, quality and type of forage, type of grass for mowing/harvesting and the terms of the lease (most importantly, if the lessee maintains fencing when grazing livestock, which is a requirement under county leases). It was determined that these tracts are not of the highest quality and decided that $8.00/acre was a reasonable amount.

Mr. Fritsch will be working all 67 acres of the Holley tract.

Mr. Wenzel will be working all 88 acres of the Hubbard tract and 20 acres of the Killingsworth tract.

Both potential lessees have signed the Lease Agreement prepared and approved by Parks, the County Attorney's Office, and Risk Management.

## FISCAL IMPACT AND SOURCE OF FUNDING:

The lessees will pay rent in accordance with their respective lease agreements. Total yearly income from the two tracts is $1400.00 (Holley = $536, Hubbard = $704, and Killingsworth = $160). First year's rent will be prorated from date of Court approval.

## ATTACHMENTS/EXHIBITS:

Charles Fritsch Lease Agreement
Holley Lease Agreement Exhibit A
Darrell Wenzel Lease Agreement
Hubbard Lease Agreement Exhibit A

## REQUIRED AUTHORIZATIONS:

| | | | |
|---|---|---|---|
| Cynthia McDonald | Financial Manager | TNR | (512) 854-4239 |
| Steve Manilla | County Executive | TNR | (512) 854-9429 |
| Christopher Gilmorre | Assistant County Attorney | County Attorney's Office | (512) 854-9455 |
| William Paterson | Risk Manager | HRMD/Risk Management | (512) 854-9650 |
| Charles Bergh | Parks Director | TNR | (512) 854-9408 |
| Robert Armistead | Parks Division Manager | TNR | (512) 854-9831 |

**CC:**

| | | | |
|---|---|---|---|
| Tim Speyrer | East District Parks Manager | TNR | (512) 854-7218 |
| Dan Chapman | Chief Park Ranger | TNR | (512) 263-9114 |
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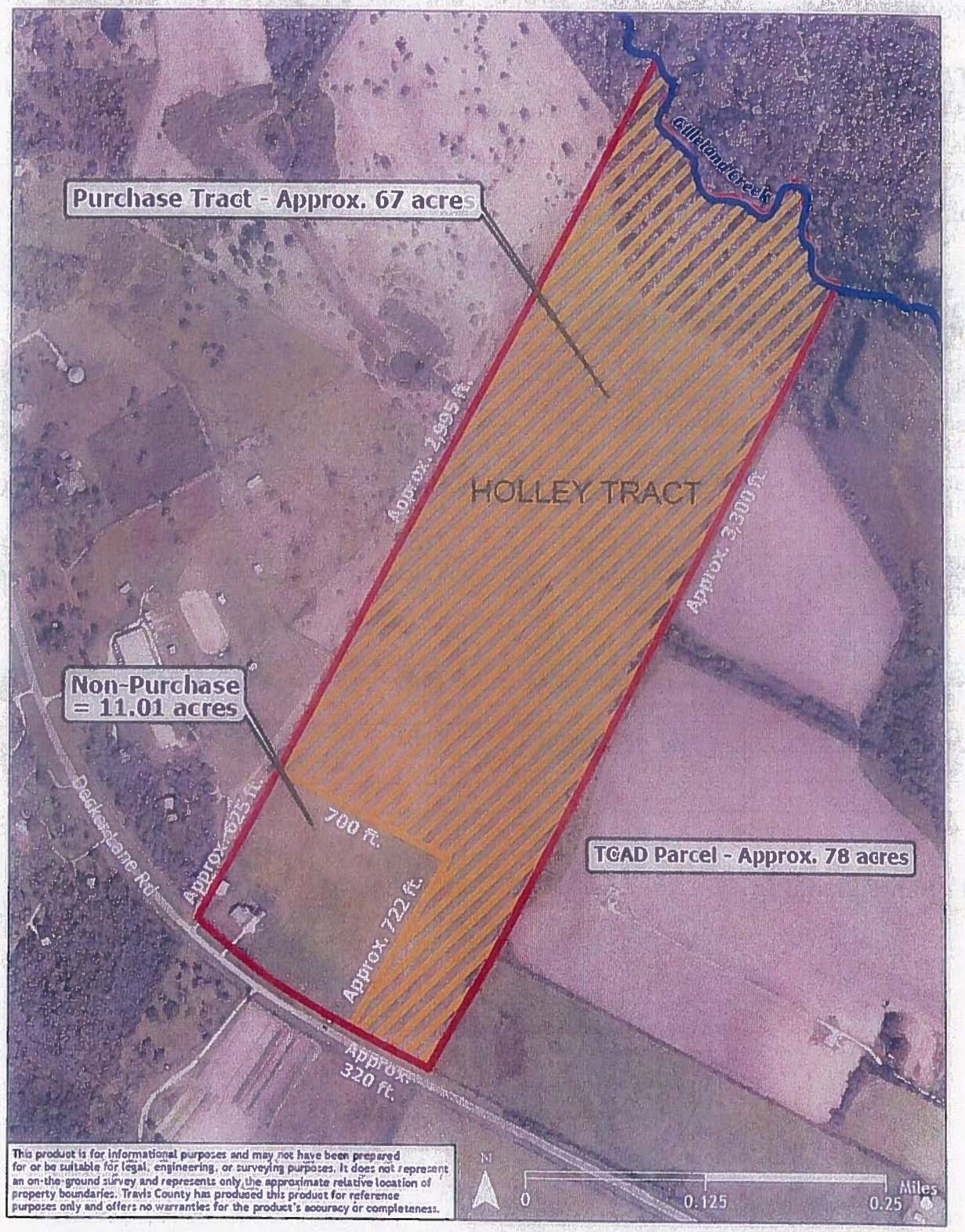
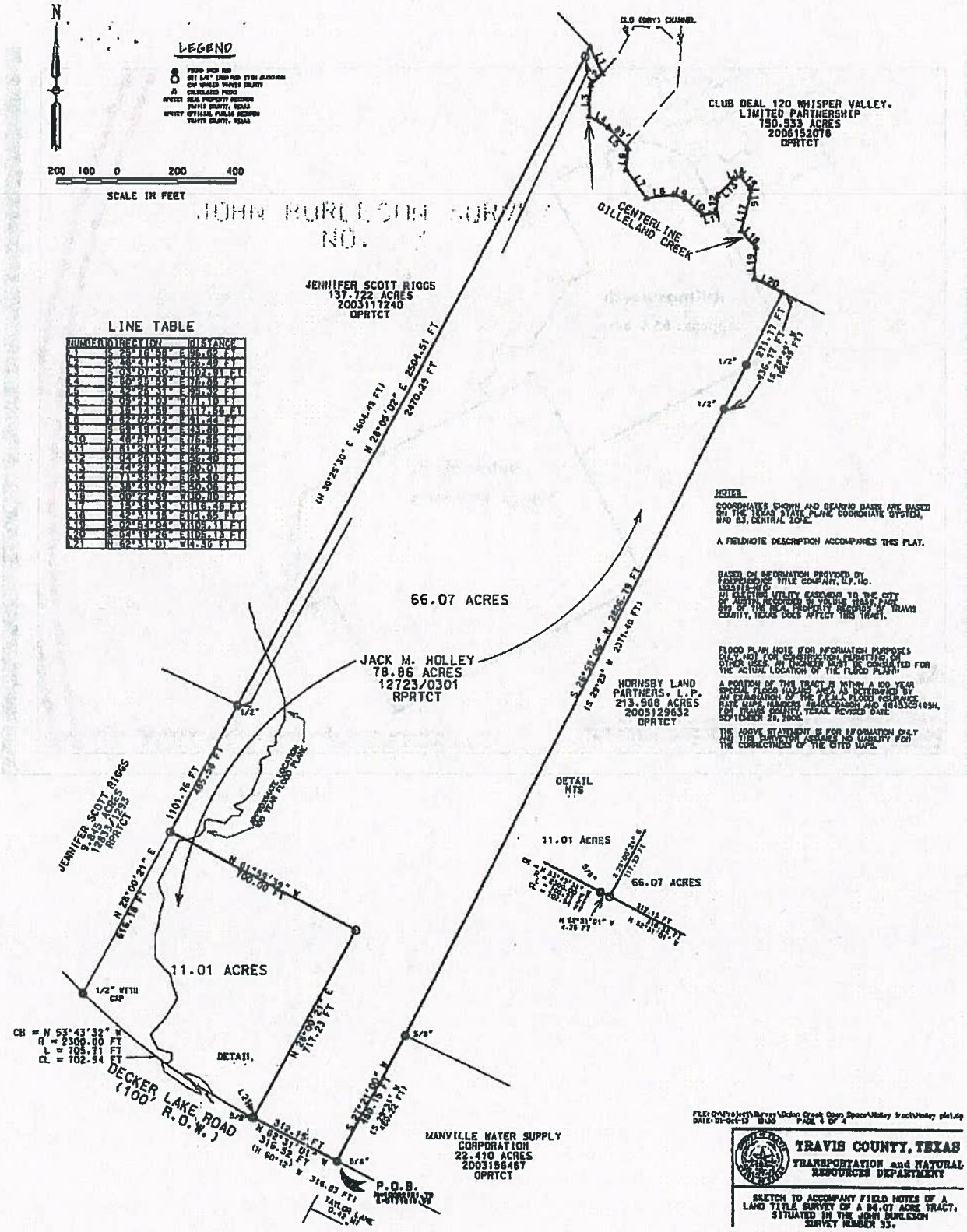
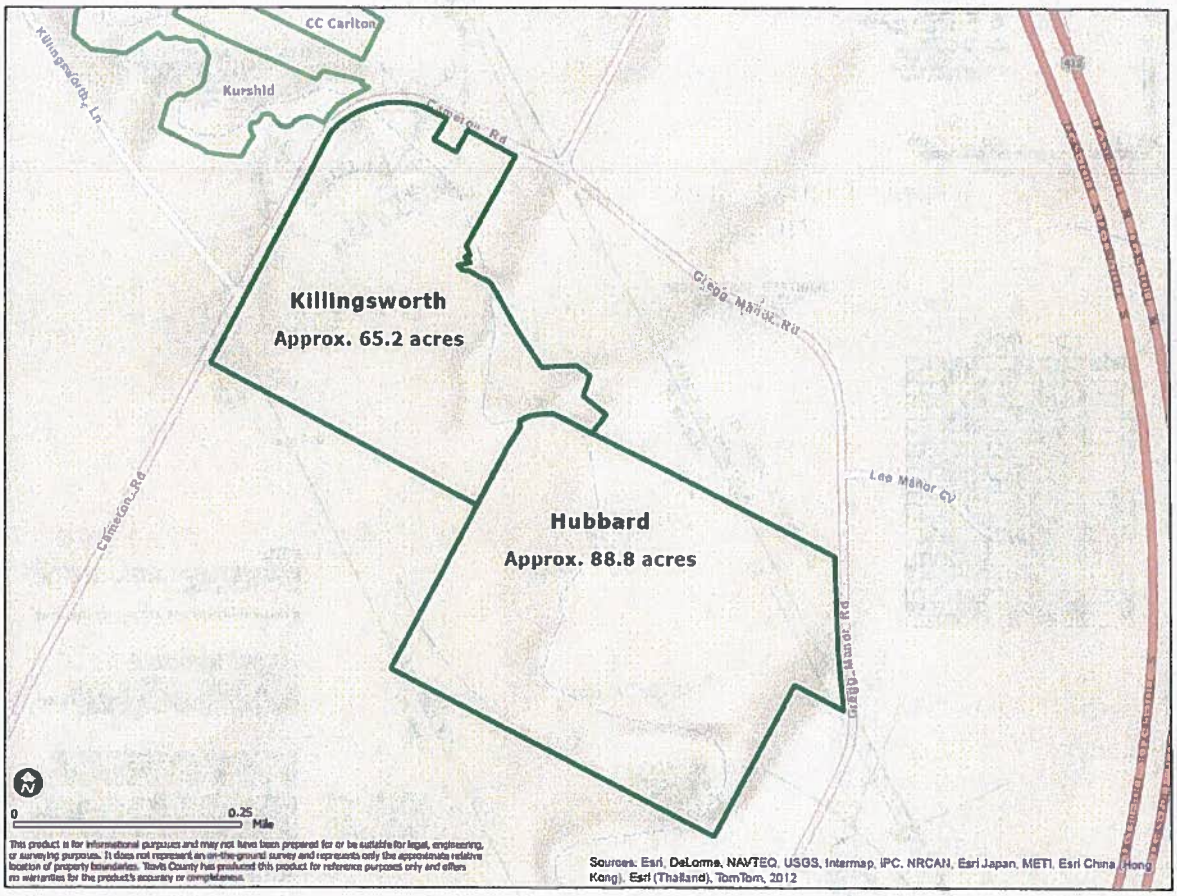
**0701 - Parks Planning -**

# Fritsch Lease Agreement Exhibit A




N
LEGEND
200 100 0 200 400
SCALE IN FEET
JOHN BURLESON SURVEY NO. 33
OLD (DRY) CHANNEL
CLUB DEAL 120 WHISPER VALLEY, LIMITED PARTNERSHIP
750.533 ACRES
2006152076
OPRTCT
CENTERLINE GILLELAND CREEK
JENNIFER SCOTT RIGGS
137.722 ACRES
2003117240
OPRTCT
LINE TABLE
NUMBER DIRECTION DISTANCE
L1 S 25°16'58" E 96.62 FT
L2 S 46°47'32" W 56.49 FT
L3 S 03°07'40" W 102.91 FT
L4 S 60°25'59" E 78.88 FT
L5 S 42°28'31" E 99.32 FT
L6 S 05°23'03" W 71.10 FT
L7 S 35°14'59" E 117.56 FT
L8 N 62°02'52" E 91.44 FT
L9 S 69°19'14" E 43.80 FT
L10 S 48°57'04" E 76.86 FT
L11 N 61°29'12" E 45.75 FT
L12 N 04°28'53" E 56.40 FT
L13 N 44°29'13" E 80.01 FT
L14 N 71°35'17" E 23.60 FT
L15 S 38°49'07" E 50.06 FT
L16 S 00°22'39" W 30.80 FT
L17 S 15°38'34" W 116.48 FT
L18 S 42°51'18" E 74.65 FT
L19 S 02°54'04" W 105.11 FT
L20 S 04°19'26" E 105.13 FT
L21 N 62°31'01" W 4.36 FT
N 30°25'30" E 3604.49 FT
N 28°05'02" E 2504.51 FT
2470.29 FT
66.07 ACRES
JACK M. HOLLEY
78.86 ACRES
12723/0301
RPRTCT
HORNSBY LAND PARTNERS, L.P.
213.968 ACRES
2003129632
OPRTCT
S 26°58'06" W 2806.79 FT
(S 29°23' W 2371.40 FT)
DETAIL HTS
11.01 ACRES
66.07 ACRES
JENNIFER SCOTT RIGGS
9.845 ACRES
12833/1293
RPRTCT
1101.76 FT
485.58 FT
APPROXIMATE LOCATION 100 YEAR FLOOD PLANE
N 28°00'21" E
616.18 FT
N 61°59'39" W
700.00 FT
11.01 ACRES
1/2" WITH CAP
CB = N 53°43'32" W
R = 2300.00 FT
L = 705.71 FT
CL = 702.94 FT
DETAIL
DECKER LAKE ROAD (100' R.O.W.)
N 28°00'21" E
717.23 FT
312.15 FT
N 62°31'01" W
316.52 FT
(N 60°12' W 316.83 FT)
P.O.B.
MANVILLE WATER SUPPLY CORPORATION
22.410 ACRES
2003156467
OPRTCT
NOTES
COORDINATES SHOWN AND BEARING BASIS ARE BASED ON THE TEXAS STATE PLANE COORDINATE SYSTEM, NAD 83, CENTRAL ZONE.
A FIELDNOTE DESCRIPTION ACCOMPANIES THIS PLAT.
BASED ON INFORMATION PROVIDED BY INDEPENDENCE TITLE COMPANY, U.F. NO. 1323978-RFD
AN ELECTRIC UTILITY EASEMENT TO THE CITY OF AUSTIN RECORDED IN VOLUME 12839, PAGE 889 OF THE REAL PROPERTY RECORDS OF TRAVIS COUNTY, TEXAS DOES AFFECT THIS TRACT.
FLOOD PLAIN NOTE (FOR INFORMATION PURPOSES ONLY NOT FOR CONSTRUCTION, PERMITTING OR OTHER USES. AN ENGINEER MUST BE CONSULTED FOR THE ACTUAL LOCATION OF THE FLOOD PLAIN)
A PORTION OF THIS TRACT IS WITHIN A 100 YEAR SPECIAL FLOOD HAZARD AREA AS DETERMINED BY AN EXAMINATION OF THE F.E.M.A. FLOOD INSURANCE RATE MAPS, NUMBERS 48453C0480H AND 48453C0485H, FOR TRAVIS COUNTY, TEXAS. REVISED DATE SEPTEMBER 28, 2008.
THE ABOVE STATEMENT IS FOR INFORMATION ONLY AND THIS SURVEYOR ASSUMES NO LIABILITY FOR THE CORRECTNESS OF THE CITED MAPS.
PAGE 4 OF 4
TRAVIS COUNTY, TEXAS
TRANSPORTATION and NATURAL RESOURCES DEPARTMENT
SKETCH TO ACCOMPANY FIELD NOTES OF A LAND TITLE SURVEY OF A 66.07 ACRE TRACT, SITUATED IN THE JOHN BURLESON SURVEY NUMBER 33.

# Wenzel Agricultural Lease Exhibit A



Lessee will be raising hay on the 20 acre smooth gray area of the Killingsworth tract.

ORIGINAL

# AGRICULTURAL LEASE

This Agricultural Lease (the "Lease") is made and entered into on the below-indicated date by and between Travis County, a political subdivision of the State of Texas (hereinafter referred to as "Landlord"), and Charles Fritsch (hereinafter referred to as "Tenant").

NOW THEREFORE, in consideration of the covenants and agreements set forth herein, the Parties agree as follows:

1. **Leased Premises**. Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, the SURFACE ONLY of certain real estate located in Travis County, Texas, the legal description of which is attached hereto as Exhibit "A," being hereinafter referred to as the "Leased Premises."

Tenant represents that Tenant or Tenant's representative has fully inspected the Leased Premises, and Tenant accepts the same in the presently existing condition of the Leased Premises. LANDLORD MAKES NO WARRANTY, AND EXPRESSLY DISAFFIRMS ANY WARRANTY, EXPRESS OR IMPLIED, AS TO LEASED PREMISES, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY REGARDING: (1) ADEQUACY OR USEFULNESS OF ANY IMPROVEMENTS, (II) THE HABITABILITY OF ANY IMPROVEMENTS, (III) THE AVAILABILITY, CONTENT, OR ADEQUACY OF SURFACE OR SUB-SURFACE WATER, (IV) THE CONDITION OR SUITABILITY OF THE FORAGE, GRASSES, SOIL, SUBSOIL, OR LEASED PREMISES GENERALLY, OR (V) THE FITNESS OF THE LEASED PREMISES FOR ANY PARTICULAR USE OR PURPOSE. Tenant recognizes that some or all of the Leased Premises may be subject to flooding. Tenant agrees to immediately locate all underground gas, electric, and other utility lines and to provide such information to Tenant's employees, licenses, invitees, and contractors.

Landlord reserves the right to remove from this lease, without the permission of Tenant, such amount of the Leased Premises as Landlord may determine necessary for purposes other than grazing, and in which event, this Lease shall be cancelled as to the area so designated by Landlord in writing to Tenant, and rent shall be prorated on the basis of the amount of acreage so taken for said purpose or purposes.

2. **Term**. The term of this Lease ("the Terms") shall be from the date Commissioners Court approves the Lease (the "Commencement Date") until January 31, 2017 (the "Termination Date"), unless terminated earlier in accordance with the terms of this Lease.

3. **Rent**. The Rent for the Leases Premises shall be $8.00 per acre per year ( 67 acres X $8.00/acre = $ 536.00 Total Rent) with the first year payable in advance prior to

the Commencement Date and subsequent years payable in advance on each anniversary of the Commencement Date. Any Rent not paid on or before the due date shall bear interest at 5% from the due date until paid. The first year's payment shall be prorated, with the amount payable calculated from the term commencing from the date Commissioners Court approves the Lease and ending on January 31, 2017. Payment shall be remitted to:

Travis County - TNR
Attn: Zoe Blair
PO Box 1748
Austin, TX 78767

4. **Use.** The Tenant shall use the Leased Premises for grazing purposes, dry land hay farming, and uses reasonably incident thereto.

Tenant shall not graze more livestock than recommended by the Travis County AgriLife Extension Service.

5. **No Water Use.** The Tenant shall have no use of the water resources on the Leased Premises.

6. **Advances for Production Costs**. Landlord shall have no obligation to advance, pay, or lend to Tenant any production costs.

7. **Ranch Labor**. Tenant shall pay for all ranch labor or services used on the Leased Premises. All ranch labor shall be the employees of the Tenant and shall at all times be under the supervision and control of Tenant in the details of their work. Tenant shall pay the employer's share of all federal, social security, and all federal and state unemployment compensation taxes. Tenant shall pay all federal and state taxes of whatever sort, including gross receipt taxes, franchise taxes, and all other taxes applicable to Tenant's activities, facilities, employees, and materials used upon the Leased Premises.

8. **Tenant Obligations**. Without otherwise limiting the Tenant's obligations in this Lease, the Tenant shall:

(a) graze the Leased Premises in a workmanlike manner in accordance with the standards of good agricultural husbandry.

(b) pay all costs of production and other related expenses on the Leased Premises whether ordinary or extraordinary, direct or indirect. All materials and services provided shall be (1) of first quality, (2) of the type used in operating first class grazing operations in the area, and (3) furnished or provided at such times, in such quantities and in such manner as good agricultural practices dictate;

(c) pay when due any water, water, sewer, gas, electricity, telephone, or

other utility expenses incurred in connection with the Tenant's use of the Leased Premises, and, upon request, the Tenant will provide the Landlord with copies of any utility bills;

(d) prevent noxious weeds (as determined by Landlord) from going to seed on the Leased Premises, destroy such weeds and otherwise comply with Governmental Requirements;

(e) keep the Leased Premises neat and orderly and free from trash or debris, prevent all unnecessary waste, or loss, or damage to the Leased Premises, to the improvements thereon, and to any equipment or other property of Landlord, and repair or pay for the repair of all damage to the Leased Premises or the improvements, equipment, or other property of Landlord other than that resulting from natural wear and tear or that for which Landlord has assumed the risk of loss or repair under this Lease relating to Major Repairs;

(f) enforce security on the Leased Premises by evicting any trespasser not having a business purpose or carrying written permission from Landlord;

(g) maintain all fences and gates on the Leased Premises;

(h) assume all risk of loss to all agricultural equipment, and machinery, and all other personal property of Tenant, Tenant's employees, agents, or invitees. Landlord shall have no obligation to repair or restore any of said property;

(i) undertake no activity, act, or omission upon the Leased Premises as shall endanger, effect, or terminate part or all of any agricultural exemption on the Leased Premises for the purposes of *ad valorem* taxation;

(j) pay all taxes on the livestock grazed or raised on the Leased Premises and on Tenant's personal property located on the Leased Premises; and

(k) keep the Landlord apprised of all unusual activity on the Leased Premises including accidents, spills, vandalism, theft, or casualty damage.

9. **Alterations**. Tenant shall not make, erect, or install nor permit to be made, erected, or installed, any alterations, additions, or improvements to the Leased Premises whether of the character of a Building Improvement or a Land Improvement, or incur any expense for such purposes, without the prior written consent of Landlord. If such consent is given, such additions, alterations, and/or improvements shall meet the standards and requirements of Landlord, of any applicable governmental unit and of power and insurance companies. Tenant shall, after notice to Landlord and compliance with this Lease, make all additions, improvements, alterations, and repairs on the Leased Premises and on and to the improvements and equipment thereof, required by any governmental authority or which may be made necessary by the act or neglect of any person, firm, or corporation (public or private). Upon completion of any work for or on behalf of Tenant, Tenant shall provide Landlord with such documents as Landlord may require (including, without limitation, sworn contractor's statements and supporting

lien waivers) evidencing payment in full for such work.

10. **Preconditions**. Before Tenant commences any repair, replacement, restoration, rebuilding, maintenance, or alterations permitted or required under this Lease, Tenant shall obtain the prior written approval of Landlord and Landlord may require Tenant to submit to Landlord any and all plans and specifications for approval, as well as estimates of the cost of the proposed work, satisfactory evidence of sufficient contractor's comprehensive general liability insurance covering Landlord, builder's risk insurance, and worker's compensation insurance, a performance and payment bond satisfactory in form and substance to Landlord and such other security as Landlord may require to insure the completion of all work free and clear of liens.

11. **Encumbering Title**. Tenant shall not do any act which shall in any way encumber the title of Landlord in and to the Leased Premises, nor shall the interest or estate of Landlord in the Leased Premises be in any way subject to any claim by way of lien or encumbrance, whether by operation of law or by virtue of any express or implied contract by Tenant. Any claim to, or lien upon, the Leased Premises arising from any act or omission of Tenant shall accrue only against the leasehold estate of Tenant and shall be subject and subordinate to the paramount title and rights of Landlord in and to the Leased Premises.

12. **Signs**. The Landlord shall be entitled to maintain upon the Leased Premises such signs as the Landlord shall deem necessary and appropriate. The Tenant shall not place any signage upon the Leased Premises except upon prior approval by the Landlord. The Tenant shall be responsible for maintaining in a neat and orderly appearance any signage erected upon the Leased Premises by the Tenant.

13. **Security of Leased Premises**. Tenant will keep all perimeter gates to the Leased Premises closed and locked. Ingress and egress from the Leased Premises shall be at those places designated by the Landlord. Tenant shall not change the Landlord's lock system without permission of the Landlord.

14. **Liens and Indemnification**. Tenant shall not permit the Leased Premises to become the subject of any mechanic's, laborer's, or materialman's lien on account of laboror material furnished to Tenant or claimed to have been furnished to Tenant in connection with work of any character performed or claimed to have been performed on the Leased Premises by, or at the discretion or sufferance of Tenant. Tenant shall have no authority to place any lien on the Leased Premises, and any attempt to do so will be void and of no effect.

IN THE EVENT THE LEASED PREMISES BECOMES THE SUBJECT OF ANY SUCH LIEN, TENANT SHALL INDEMNIFY AND HOLD HARMLESS LANDLORD FROM ALL COSTS, LOSSES, OR EXPENSES (INCLUDING ATTORNEY'S FEES) WITH RESPECT THERETO. Tenant shall have the right to contest in good faith and with reasonable diligence the validity of any such lien or claimed lien if Tenant shall give the Landlord such security as Landlord may deem satisfactory to insure payment thereof and to prevent any sale, foreclosure, or forfeiture of the Leased Premises by reason of non-payment thereof; provided further, however, that on final determination of the validity of the lien or claim for lien, Tenant shall immediately pay any judgment

rendered, with proper costs and charges, and shall immediately have the lien released and any judgment satisfied.

If Tenant shall fail to contest the validity of any lien or claimed lien and give security to Landlord to insure payment thereof, or having commenced to contest the same and having given such security, shall fail to prosecute such contest with diligence, or shall fail to have the same released and satisfy any judgment rendered thereon, then Landlord may, at its election (but shall not be required to do so), remove or discharge such lien or claim for lien (with the right, in its sole discretion, to settle or compromise the same), and any amounts advanced by Landlord for such purposes shall constitute additional rental due from Tenant to Landlord immediately after any such payment, with interest (except as to said attorneys' fees) at the highest lawful rate, from the date of the advance to the date of repayment by Tenant to Landlord.

15. **Environmental**.

(a) **Limitations on the Use and Handling of Hazardous Materials**. Save in accordance with normal and usual agricultural practices, the Tenant shall not use, and shall not permit any servant, contractor, licensee, employee, agent, or invitee to use any portion of the Leased Premises for the placement, storage, manufacture, disposal, application, or handling of any "Hazardous Materials" (as herein defined). With respect to Hazardous Materials, Tenant shall store, manage, handle, and provide safeguards for the Leased Premises and all persons coming to the Leased Premises in accordance with all rules, regulations, orders, guidelines, and other instructions or directives of the State of Texas, the United States of America, and any political subdivision of either of such governmental entities, or any other governmental entity having authority to regulate such Hazardous Materials. Tenant shall not apply, store, use, transport, handle, or spray any pesticide, predacide, rodenticide, herbicide, fertilizer, or other agricultural chemical (hereinafter collectively "Agricultural Chemicals") upon the Leased Premises save in accordance with:

(1) All requirements of the TEX. AGRIC. CODE, TEX. WATER CODE, and TEX. NATURAL RES. CODE, and all regulations adopted thereunder;

(2) All labeling restrictions on any such Agricultural Chemical;

(3) All statutory or regulatory requirements administered or promulgated by the Environmental Protection Agency, Texas Department of Agriculture, U. S. Department of Agriculture, Texas Natural Resources Conservation Commission, Office of the Texas State Chemist, and the Texas Feed and Fertilizer Control Service;

(4) All requirements of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. § 136, *et seq.* "FIFRA") and all regulations adopted thereunder; and

(5) The standards of good agricultural husbandry.

All Agricultural Chemicals brought upon the Leased Premises shall be purchased or acquired from a licensed distributor of such product and shall be applied only by a person duly licensed and bonded for the application of such product. Any applicator of Agricultural Chemicals on the Leased Premises shall keep all required records relating to such application and these shall be made available to the Landlord upon request. No Agricultural Chemicals shall be incinerated, disposed of, or spilled upon the Leased Premises. Tenant shall be responsible for all cleanup procedures necessitated by the disposal or spill of any such product including the removal of any contaminated soil, vegetation, or water. Upon expiration of this Lease, Tenant shall be responsible for removing from the Leased Premises in a safe and prompt manner all Agricultural Chemicals remaining on the Leased Premises and any containers thereof. In the event of any accident or spill involving Agricultural Chemicals, the Tenant shall immediately notify the Landlord in writing of the details of such accident or spill inclusive of the identity of the product, volume of the spill, and exact location of the spill or accident. Upon reasonable request of the Landlord, the Tenant shall provide the Landlord with copies of all hazardous waste manifests and all inventory and application records maintained by the Tenant which are required by law or are customary agricultural practice for the use of such products.

(b) **Discovery and Removal of Hazardous Materials**. In the event that the Tenant or the Landlord discovers any Hazardous Materials in or on the Leased Premises which are not being properly used, applied, stored, maintained, or contained in accordance with all applicable laws, rules, and regulations, Tenant shall immediately undertake such removal and remediation work as necessary to correct any such violation. Tenant represents and warrants that the Tenant or its agents will competently perform and supervise any removal or remediation work that is determined to be necessary under the terms hereof. Tenant shall proceed with reasonable diligence to effect the removal, abatement, or remediation of any such Hazardous Materials in or on the Leased Premises.

(c) **Costs**. Tenant shall be responsible for the costs of any removal, abatement, or remediation of any Hazardous Materials placed, stored, manufactured, disposed of, or handled by the Tenant or the Tenant's agents, contractors, or licensees, or invitees, in or on the Leased Premises and for the cost of any removal, abatement, or remediation of any Hazardous Materials which might be disturbed or released as a result of any work performed on the Leased Premises by the Tenant. Such costs shall include, without limitation, the cost of any consultant retained by the Landlord in connection with such work.

(d) **INDEMNITY**. TENANT SHALL INDEMNIFY AND HOLD HARMLESS LANDLORD AND ITS AGENTS, SUCCESSORS, AND ASSIGNS FROM

AND AGAINST ANY LOSS, COSTS, LIABILITY, OR EXPENSE (INCLUDING REASONABLE ATTORNEYS' FEES, EXPENSES, AND COURT COSTS) ARISING OUT OF THE PLACEMENT, APPLICATION, STORAGE, MANUFACTURE, DISPOSAL, HANDLING, REMOVAL, SPILL, DISPOSAL, ABATEMENT, OR REMEDIATION OF ANY HAZARDOUS MATERIALS BY TENANT, OR ANY REMOVAL, ABATEMENT, OR REMEDIATION OF HAZARDOUS MATERIALS REQUIRED HEREUNDER TO BE PERFORMED OR PAID FOR BY TENANT. THE PROVISIONS OF THIS SECTION SHALL SURVIVE THE TERMINATION OF THIS LEASE.

(e) **Definition of Hazardous Materials**. The term "Hazardous Materials" as defined herein shall mean:

(1) any substance the presence of which requires special handling, investigation, notification, or remediation under any federal, state, or local statute, regulation, ordinance, order, action, policy, or common law;

(2) any substance which is or becomes defined as a "hazardous waste," "hazardous substance," "pollutant," or" contaminant" under any federal, state, or local statute, regulation, rule, or ordinance or amendments thereto;

(3) any substance which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic, or otherwise hazardous under any regulations by any governmental authority, agency, department, commission, board, agency, or instrumentality of the United States, the State of Texas, or any political subdivision thereof;

(4) any substance the presence of which on the Leased Premises causes or threatens to cause an erosion, contamination, drainage, or nuisance problem on the Leased Premises or any adjacent properties, public roads, or rights-of-way, or poses or threatens to pose a hazard to the health or safety of persons, livestock, or vegetation in or about the Leased Premises or adjacent properties;

(5) any substance which contains gasoline, diesel fuel, or other petroleum hydrocarbons; and

(6) any substance which contains polychlorinated biphenyls, asbestos, or urea formaldehyde foam insulation.

16. **Tenant Not to Misuse**. Tenant shall not allow the Leased Premises to be used for any purpose that will increase the rate of insurance thereon, nor for any purpose other than that herein specified. Tenant will not permit the Leased Premises to be used for any unlawful purpose, or for any purpose that will injure the reputation of the Leased Premises or increase the fire hazard of the Leased Premises. Tenant shall pay to

Landlord as additional rent immediately upon receipt of a bill by Landlord, any increase in Landlord's insurance premiums due to the acts of Tenant or Tenant's agents, employees, invitees, assignees, or sublessees.

17. **Assignment and Subletting**. Tenant shall not assign, mortgage, or encumber this Lease, nor sublet, nor suffer or permit the Leased Premises or any part thereof to be used by other persons without the prior written consent of Landlord. Any attempted or purported assignment, subletting, or conveyance shall be void and or no force or effect. If the Landlord does consent, Landlord's consent to any subletting or assignment shall not be consent to any other subletting or assignment by the Tenant. Landlord may, as a condition to consent require a guaranty from a creditworthy party or other security for the performance of the assignee's obligations under this Lease. The making of any assignment or subletting, in whole or in part, shall not relieve Tenant from Tenant's obligations hereunder without the written consent of the Landlord.

If this Lease is assigned to any person or entity pursuant to the provisions of the Bankruptcy Code, 11 U.S.C. §§ 101 et. seq. (the "Bankruptcy Code"), any and all monies or other considerations payable or otherwise to be delivered in connection with such assignment shall be paid or delivered to Landlord, shall be and remain the exclusive property of Landlord and shall not constitute property of the Tenant or of Tenant's estate within the meaning of the Bankruptcy Code. Any person or entity to which this Lease is assigned pursuant to the Bankruptcy Code shall be deemed, without further act or deed, to have assumed all of the obligations arising under this Lease on and after the date of such assignment.

The Landlord may assign, convey, or otherwise transfer its right, title, and interest hereunder or in the Leased Premises, or any portion thereof, without the consent of the Tenant.

18. **GENERAL LIABILITY AND INDEMNIFICATION**. TENANT ASSUMES ALL RISKS AND RESPONSIBILITIES FOR ACCIDENTS, INJURIES, OR DEATH RESULTING FROM SUCH INJURIES OR DAMAGES TO PERSON OR PROPERTY OCCURRING IN, ON, OR ABOUT THE LEASED PREMISES, AND AGREES TO INDEMNIFY AND HOLD HARMLESS LANDLORD AND LANDLORD'S EMPLOYEES, AGENTS, AND ASSIGNS FROM ANY AND ALL CLAIMS, LIABILITIES, LOSSES, COSTS, AND EXPENSES (INCLUDING ATTORNEYS' FEES) ARISING FROM, OR IN CONNECTION WITH, THE CONDITION, USE, OR CONTROL OF THE LEASED PREMISES, INCLUDING THE IMPROVEMENTS AND EQUIPMENT THEREON, DURING THE TERM OF THIS LEASE. TENANT SHALL BE LIABLE TO LANDLORD FOR ANY DAMAGES TO THE LEASED PREMISES, INCLUDING THE IMPROVEMENTS AND EQUIPMENT THEREON, AND FOR ANY ACT DONE BY TENANT OR ANY EMPLOYEE, AGENT, INVITEE, LICENSEE, OR CONTRACTOR OF TENANT.

TENANT SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS LANDLORD FROM ALL COSTS, LOSSES, LIABILITIES, CLAIMS, PENALTIES, OR EXPENSES (INCLUDING ATTORNEYS' FEES) IMPOSED UPON OR INCURRED BY OR ASSERTED AGAINST LANDLORD BY REASON OF: (I) ANY FAILURE ON THE PART

OF TENANT TO PERFORM OR COMPLY WITH ANY OF THE TERMS OF THIS LEASE; (II) ANY ENFORCEMENT OR REMEDIAL ACTION TAKEN BY LANDLORD IN THE EVENT OF A FAILURE TO PERFORM OR COMPLY WITH THE TERMS OF THIS LEASE; OR (III) ANY LITIGATION, NEGOTIATION, OR TRANSACTION IN WHICH LANDLORD BECOMES INVOLVED OR CONCERNED (WITHOUT LANDLORD'S FAULT) RESPECTING THIS LEASE, THE LEASED PREMISES, OR THE USE, MANAGEMENT, CONTROL, OR OCCUPANCY OF THE LEASED PREMISES BY TENANT, INCLUDING CLAIMS ARISING OUT OF ANY NEGLIGENCE, GROSS NEGLIGENCE, OR INTENTIONAL ACT OF THE TENANT OR THE TENANT'S AGENTS, INVITEES, LICENSEES, OR CONTRACTORS. LANDLORD'S RIGHT OF INDEMNIFICATION FROM TENANT SHALL NOT BE LIMITED BY THE AMOUNT OF INSURANCE MAINTAINED BY THE TENANT. THE PROVISIONS OF THIS PARAGRAPH SHALL SURVIVE THE TERMINATION OF THIS LEASE WITH RESPECT TO ANY CLAIM ARISING BEFORE SUCH TERMINATION.

19. **Insurance**. During the entire Term of this Lease, Tenant shall procure and maintain, at its own expense, public liability and property damage insurance, insuring Landlord and Tenant with provisions and coverages acceptable to Landlord, and with such increases in limits as Landlord may from time to time request. Initially, Tenant shall provide for coverage including ranch liability coverage for personal injury to or death of any one person of not less than $_____ for personal injury to or death of more than one person of not less than $_____, and coverage for property damage liability of not less than $250,000. The aforesaid insurance shall be obtained from a company satisfactory to Landlord and licensed to do business in the State of Texas. Such insurance policy or policies shall name Landlord as an additional insured and provide for at least 10 days' written notice to Landlord prior to cancellation, termination, modification, or change of any policy. The original insurance policy (or certificates thereof satisfactory to Landlord), together with satisfactory evidence of payment of the premiums thereon, shall be deposited with Landlord on or before the commencement date of this Lease. All insurance policies insuring personal property owned by Tenant shall contain a provision waiving all rights of subrogation against Landlord.

20. **Default Remedies**. Tenant agrees that any one or more of the following events shall be considered Events of Default under this Lease:

(a) Tenant's filing or admission to the jurisdiction of the court and the material allegations contained in any petition in bankruptcy or any petition pursuant or purporting to be pursuant to the Bankruptcy Code as now or hereafter amended, or under the laws of any state, or Tenant's institution of any proceedings or consenting to the institution of any proceedings for any relief under any bankruptcy or insolvency laws or any laws relating to the relief of debtors, readjustment of indebtedness, reorganization, arrangement, composition, or extension;

(b) Tenant making any assignment for the benefit of creditors or Tenant applying for or consenting to the appointment of a receiver for Tenant or

any of the property of Tenant;

(c) the levying upon or attachment of Tenant's interest in the Leased Premises;

(d) the making or issuance of a decree or order appointing a receiver of the property of Tenant, which decree or order shall not have been vacated or set aside within thirty (30) days from the date of entry or granting thereof;

(e) Tenant's abandonment of the Leased Premises during the Term hereof;

(f) the default in any payment of Rent or in any other payment required to be made by Tenant hereunder when due;

(g) Tenant's failure to contest the validity of any lien or claimed lien which purports to have priority over the security interest or Landlord's lien held by Landlord, or failure to prosecute such contest with diligence or failure to have the same released or subordinated to the security interest of Landlord; or

(h) Tenant's default in keeping, observing, or performing any of the other covenants or agreements herein contained to be kept, observed, and performed by Tenant.

Upon the occurrence of any one or more of such Events of Default, Landlord may, at its election, accelerate any and all payments due under this Lease and/or terminate this Lease upon written notice to Tenant. Upon termination of this Lease, Tenant shall surrender possession of and vacate the Leased Premises immediately and shall deliver possession thereof to Landlord, and Tenant hereby grants to Landlord the full and free right, without demand or notice of any kind to Tenant, to enter into and upon the Leased Premises in such event with or without process of law and to repossess the Leased Premises as Landlord's former estate and to expel or remove Tenant and any others who may be occupying or within the Leased Premises without being deemed in any manner guilty of trespass, eviction, or forcible entry or detainer, without incurring any liability for any damage resulting therefrom, and without relinquishing Landlord's rights to Rent or any other right given to Landlord hereunder or by operation of law. Upon termination of this Lease by Landlord, Tenant shall have no right to return to the Leased Premises nor to harvest the crops remaining, if any, without the prior written consent of the Landlord. Landlord reserves the right to supervise any harvest by Tenant which Landlord may allow and to impose upon Tenant any terms and conditions Landlord deems appropriate.

Tenant shall be liable for and hereby agrees to pay any and all losses, liabilities, costs, and expenses, including attorneys' fees, which Landlord incurs in connection with any of the aforesaid defaults and the enforcement of Landlord's rights and remedies under this Lease as a result of such default.

No remedy herein or otherwise conferred upon or reserved to Landlord shall be deemed to exclude or suspend any other remedy, but the same shall be cumulative and

shall be in addition to every other remedy given hereunder, now or hereafter existing at law or in equity or by statute, and every power and remedy given by this Lease to Landlord may be exercised from time to time and so often as occasion may arise or as may be deemed expedient.

No delay or omission of Landlord to exercise any right or power arising from any Events of Default shall impair any such right or power or be construed to be a waiver of any such Events of Default or any acquiescence therein. No waiver of any breach of any of the covenants of this Lease shall be construed, taken, or held to be a waiver of any other breach, nor as a waiver, acquiescence in, or consent to any further or succeeding breach of the same covenant. The acceptance by Landlord of any payment of Rent or other charges hereunder after the termination by Landlord of this Lease shall not, in the absence of agreement in writing to the contrary by Landlord, be deemed to restore this Lease but shall be construed as a payment on account, and not in satisfaction of damages due from Tenant to Landlord.

21. **Surrender**. Upon the expiration or termination of this Lease, whether by forfeiture, lapse of time, or otherwise, Tenant will surrender and deliver the Leased Premises to Landlord in as good condition and repair as at the time Tenant takes possession of same, reasonable wear and tear excepted. All additions, repairs, and replacements and all improvements in or upon the Leased Premises placed affixed or installed there by Tenant, shall become Landlord's property and shall remain upon the Leased Premises upon such expiration or termination of this Lease, by lapse of time or otherwise, without compensation, allowance, or credit to Tenant.

Upon the expiration or termination of this Lease, by lapse of time or otherwise, Tenant shall remove the Tenant's personal property from the Leased Premises, provided however, that Tenant shall repair any injury or damage to the Leased Premises which may result from such removal. If Tenant does not remove Tenant's personal property from the Leased Premises prior to the normal expiration or earlier termination of this Lease, Landlord may, at its option, remove the same and deliver same to any other place of business of Tenant or warehouse the same, and Tenant shall pay to Landlord on demand the cost of such removal (including the repair or any injury or damage to the Leased Premises resulting from such removal, delivery and warehousing), or Landlord may treat such property as having been conveyed to Landlord with this Lease as a Bill of Sale, without further payment or credit by Landlord to Tenant.

22. **Holdover**. If the Tenant shall remain in possession of the Leased Premises after the expiration or other termination of this Lease term, then the Tenant will be deemed to be occupying the Leased Premises as a tenant at sufferance of the Landlord subject to all terms and conditions of this Lease except that the rent payable during any holdover period will be equal to 150% of the rent applicable during any like period during the Lease Term.

23. **Landlord's Right to Entry During Term of Lease**. Landlord reserves for

Landlord, Landlord's agents or employees, the right to enter upon the Leased Premises at any time without notice for the purposes of inspecting the same, for working or making repairs or improvements thereon, for developing mineral resources as provided in Paragraph 24 below, for conducting clearing operations, for evaluating Tenant's performance hereunder, and for performing all other operations on the Leased Premises that Landlord deems necessary. This right of entry is separate and apart from Landlord's right of entry upon the occurrence of an Event of Default. Any such entry shall not constitute an eviction or authorize a reduction in rent. During the 120 days prior to the expiration of the Lease Term, Tenant will permit the Landlord to exhibit the Leased Premises to prospective tenants and to place notices on the Leased Premises advertising the Leased Premises "For Lease".

24. **Mineral Rights**. Nothing in this Lease shall confer upon Tenant any right to minerals underlying the Leased Premises, but same are hereby reserved by Landlord together with the full right to enter upon the Leased Premises and to bore, search, and excavate for same, to work and remove same, and to deposit excavated rubbish, and with full liberty to pass over the Leased Premises with vehicles and to lay down and work any railroad track or tracks, tanks, pipelines, power lines, and structures as may be necessary or convenient for the above purpose.

25. **Eminent Domain**. In the event that all or a part of the Leased Premises is taken or condemned for public or quasi-public use under any statute or by the right of eminent domain or, in lieu thereof, all or a part of the Leased Premises is sold to a public or quasi-public body under threat of condemnation, and such taking, condemnation, or sale renders the Leased Premises unsuitable for agricultural purposes, this Lease shall terminate as to the part of the Leased Premises so taken, condemned, or sold on the date possession is transferred to the condemning authority. All Rent for such part shall be paid up to the date of transfer of possession of the condemning authority, and all compensation awarded or paid for the taking or sale in lieu thereof shall belong to and be the sole property of Landlord, and Tenant shall have no claim against Landlord for the value of any unexpired portion of the Lease Term; provided, however, that Tenant shall be entitled to any award expressly made to Tenant for damages to Tenant's personal property, if any.

26. **Estoppel Certificates**. Tenant shall, at any time and from time to time, upon not less than ten (10) days' prior written notice from Landlord, execute, acknowledge, and deliver to Landlord, in form reasonably satisfactory to Landlord a written statement certifying (if true) that Tenant has accepted the Leased Premises, that this Lease is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified and stating the modifications), that the Landlord is not in default hereunder, the date to which the rental and other charges have been paid in advance, if any, and such other accurate certification as may reasonably be required by Landlord.

27. **Landlord's Right to Cure**. Landlord may, but shall not be obligated to, cure any default by Tenant (specifically including, but not by way of limitation, Tenant's failure to obtain insurance, make repairs, or satisfy lien claims); and whenever Landlord so

elects, all costs and expenses paid by Landlord in curing such default, including without limitation, reasonable attorneys' fees, shall be so much additional rent due immediately after any such payment, together with interest (except in the case of said attorneys' fees) at the highest lawful rate, from the date of the advance to the date of repayment by Tenant to Landlord.

28. **Complete Agreement; Amendments**. THIS LEASE CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE LAND AND THE TENANT. NO PRIOR WRITTEN OR PRIOR OR CONTEMPORANEOUS ORAL PROMISES OR REPRESENTATIONS WILL BE BINDING. None of the covenants, terms, or conditions of this Lease shall in any manner be altered, waived, modified, changed, or abandoned except by a written instrument duly signed and acknowledged by the Parties hereto.

29. **Brokerage**. Tenant warrants that Tenant has had no dealings with any broker or agent in connection with this Lease. Tenant covenants to pay, hold harmless, and indemnify Landlord from and against any and all cost, expense, or liability, any compensation, commissions, and charges claimed by any broker or other agent with respect to this Lease or the negotiation thereof.

30. **Quiet Enjoyment**. Landlord warrants that Landlord has good title to the Leased Premises subject to matters of record and visible easements, roadways, and transmission lines and subject to all existing and future easements, oil, gas, and mineral reservations and leases covering all or any part of the Leased Premises. Landlord reserves the right to any and all monies and other considerations paid or to be paid under and by virtue of the execution of any pipeline, road, railroad, utility, or other easement and any existing oil, gas, and mineral leases upon the above-described lands for the purpose of making geophysical tests, exploring and drilling for oil, gas, and other minerals and the removal of same if found. Subject to the aforesaid, Landlord represents and warrants that so long as Tenant is not in default of this Lease, Tenant may peaceably and quietly have, hold, and enjoy the Leased Premises with all rights and privileges herein provided.

31. **No Implied Waiver**. No acceptance of any sum paid by the Tenant, nor failure by the Landlord to complain of any action, inaction, or Event of Default of Tenant will constitute a waiver by Landlord or any of Landlord's rights or remedies under this Lease or under law. Landlord's waiver of any right or Event of Default shall not constitute a waiver of any other right of Landlord for either a subsequent default of the same obligation or for any other default.

32. **Records**. Tenant agrees to keep and maintain accurate records and grant Landlord access thereto, relating to livestock grazed upon the Leased Premises.

33. **No Partnership Created**. This Lease shall not be construed as creating a relationship of principal and agent or of a joint venture, partnership, or other business association between Landlord and Tenant, it being understood and agreed that no provisions contained in this Lease, nor any acts of the parties hereto, shall be deemed to create any relationship other than that of Landlord and Tenant.

The Tenant operates an independent business. Nothing herein shall be

construed as reserving or granting to Landlord the right to exercise any control over the Tenant's business or the manner in which it is conducted subject only to Tenant's obligations to perform the terms and conditions of this Lease.

34. **Successors**. The terms, covenants, and conditions hereof shall be binding upon, and inure to the benefit of, the heirs, personal representatives, successors, or assigns, of the Parties (without altering the terms of Paragraph 22 hereof regarding assignment or subletting).

35. **Notice**. Any notice required under this Lease shall be in writing and sent by personal delivery, expedited delivery service (with proof of delivery), or certified mail, return receipt requested, to the following address:

Landlord: Steve Manilla, County Executive (or Successor)
P.O. Box 1748
Austin, TX 78767

Christopher Gilmore, Assistant County Attorney
P.O. Box 1748
Austin, TX 78767

Charles Bergh, Parks Director
P.O. Box 1748
Austin, TX 78767

or at any such other address as Landlord shall have last designated by notice in writing to Tenant.

Tenant: Charles Fritsch
8901 Sam Carter Drive
Austin, TX 78736

or at any such other address as Tenant shall have last designated by notice in writing to Tenant.

36. **Not Recorded**. This Lease shall not be recorded by Tenant.

37. **Time of the Essence**. Time is of the essence of this Lease, and all provisions herein relating thereto shall be strictly construed.

38. **Taxes**. Tenant shall pay and discharge when due, as additional rent, all income and other taxes and charges imposed on the conduct of its business on the Leased Premises.

39. **Captions**. The captions of this Lease are for convenience only and are not to be construed as part of this Lease and shall not be construed as defining or limiting in any way the scope or intent of the provisions hereof.

40. **Severability**. If any term or provision of this Lease shall to any extent be held invalid or unenforceable, the remaining terms and provisions of this Lease shall not be affected thereby, but each term and provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.

41. **Applicable Law**. This Lease shall be construed, interpreted, and enforced in accordance with the laws of the State of Texas. The obligations of the Parties are performable and have for any legal action shall lie in Travis County, Texas.

42. **Number, Gender**. The words "Landlord" and "Tenant" wherever used in this Lease shall be construed to mean Landlords or Tenants in all cases in which there is more than one Landlord or Tenant, and to apply to individuals, male or female, or to firms or corporations, as the same may be described as Landlord or Tenant in this Lease, and the necessary grammatical changes shall be assumed in each case as though fully expressed. In the event Tenant means more than one person or entity, all persons and entities to which that term applies shall be jointly and severally liable for the obligation of Tenant hereunder.

43. **Firearms, Fireworks, Hunting and Fishing**. Landlord reserves all hunting and fishing rights and privileges, provided exercise of such rights will not unreasonably interfere with Tenant's farming activity. Neither Tenant nor any third party may exercise hunting or fishing rights without the express written consent of Landlord. Tenant is prohibited from discharging firearms on the Leased Premises, except for purposes of feral animal control. Prior to the commencement of each and any feral animal control activity, Tenant must secure approval from the Chief Park Ranger. Tenant is prohibited from the use of fireworks on the Lease Premises.

44. **No Third-Party Beneficiary**. This Lease shall not be construed so as to confer any benefit on any party not a Party to this Lease nor shall this Lease provide any rights to such third parties to enforce its provisions, terms, or conditions.

45. **Risks**. Tenant is fully aware that this Lease and the agricultural enterprise contemplated by the Tenant upon the Leased Premises involves the high degree of risk inherent in any agricultural enterprise. Risk factors include accidents, predators, pestilence, theft, fluctuations in consumer demand, strikes, transportation difficulties, weather, drought, floods, disease, governmental quarantines, restrictions on sale, change in economic programs, unfavorable market forces, credit problems with purchases of agricultural products or with providers of goods and services necessary to Tenant's operations, and many other factors which may seriously affect the final profit or loss experienced by the Tenant. Tenant is aware that because of the many risk factors inherent, that neither Party can warrant or guarantee that profits will result to Tenant from agricultural enterprises conducted on the Leased Premises or that proceeds

generated by such agricultural enterprises will be sufficient to repay the sums due from Tenant hereunder or otherwise incurred by the Tenant. The Tenant has entered into this Lease of Tenant's own free will and accord without reliance on any representative or warranties of any kind or character not expressly set forth herein.

46. **Tax Consequences**. No representation or warranty is made by Landlord of the tax consequences which may inure to the Tenant in connection with this Lease. Moreover, no assurances have been made that the existing tax laws and regulations will not be amended or modified in the future denying any tax consequences or benefits anticipated by the Tenant.

47. **Chapter 320.** By approving this Lease, the Travis County Commissioners Court orders that Chapter 320 of the Texas Local Government Code applies to the park (Leased Premises).

IN WITNESS WHEREOF, the parties hereto have executed this Lease on the _____ day of _____, 201_.

Landlord:
Travis County, a political subdivision of the State of Texas

By:_____
Samuel T. Biscoe, County Judge

Tenant:

_____
Charles Fritsch

Attachments: Exhibit A

ORIGINAL

# AGRICULTURAL LEASE

This Agricultural Lease (the "Lease") is made and entered into on the below-indicated date by and between Travis County, a political subdivision of the State of Texas (hereinafter referred to as "Landlord"), and Darrell Wenzel (hereinafter referred to as "Tenant").

NOW THEREFORE, in consideration of the covenants and agreements set forth herein, the Parties agree as follows:

1. **Leased Premises**. Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, the SURFACE ONLY of certain real estate located in Travis County, Texas, the legal description of which is attached hereto as Exhibit "A," being hereinafter referred to as the "Leased Premises."

Tenant represents that Tenant or Tenant's representative has fully inspected the Leased Premises, and Tenant accepts the same in the presently existing condition of the Leased Premises. LANDLORD MAKES NO WARRANTY, AND EXPRESSLY DISAFFIRMS ANY WARRANTY, EXPRESS OR IMPLIED, AS TO LEASED PREMISES, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY REGARDING: (1) ADEQUACY OR USEFULNESS OF ANY IMPROVEMENTS, (II) THE HABITABILITY OF ANY IMPROVEMENTS, (III) THE AVAILABILITY, CONTENT, OR ADEQUACY OF SURFACE OR SUB-SURFACE WATER, (IV) THE CONDITION OR SUITABILITY OF THE FORAGE, GRASSES, SOIL, SUBSOIL, OR LEASED PREMISES GENERALLY, OR (V) THE FITNESS OF THE LEASED PREMISES FOR ANY PARTICULAR USE OR PURPOSE. Tenant recognizes that some or all of the Leased Premises may be subject to flooding. Tenant agrees to immediately locate all underground gas, electric, and other utility lines and to provide such information to Tenant's employees, licenses, invitees, and contractors.

Landlord reserves the right to remove from this lease, without the permission of Tenant, such amount of the Leased Premises as Landlord may determine necessary for purposes other than grazing, and in which event, this Lease shall be cancelled as to the area so designated by Landlord in writing to Tenant, and rent shall be prorated on the basis of the amount of acreage so taken for said purpose or purposes.

2. **Term.** The term of this Lease ("the Terms") shall be from the date Commissioners Court approves the Lease (the "Commencement Date") until January 31, 2017 (the "Termination Date"), unless terminated earlier in accordance with the terms of this Lease.

3. **Rent.** The Rent for the Leases Premises shall be $8.00 per acre per year

(Hubbard Tract: 88 acres X $8.00/acre = $ 704.00 Total Tract Rent; Killingsworth Tract: 20 acres X $8.00/acre = $160.00 Total Tract Rent. **Total Yearly Rent = $864.00**.) with the first year payable in advance prior to the Commencement Date and subsequent years payable in advance on each anniversary of the Commencement Date. Any Rent not paid on or before the due date shall bear interest at 5% from the due date until paid. The first year's payment shall be prorated, with the amount payable calculated from the term commencing from the date Commissioners Court approves the Lease and ending on January 31, 2017. Payment shall be remitted to:

Travis County - TNR
Attn: Zoe Blair
PO Box 1748
Austin, TX 78767

4. **Use.** The Tenant shall use the Leased Premises for grazing purposes, dry land hay farming, and uses reasonably incident thereto.

Tenant shall not graze more livestock than recommended by the Travis County AgriLife Extension Service.

5. **No Water Use.** The Tenant shall have no use of the water resources on the Leased Premises.

6. **Advances for Production Costs**. Landlord shall have no obligation to advance, pay, or lend to Tenant any production costs.

7. **Ranch Labor**. Tenant shall pay for all ranch labor or services used on the Leased Premises. All ranch labor shall be the employees of the Tenant and shall at all times be under the supervision and control of Tenant in the details of their work. Tenant shall pay the employer's share of all federal, social security, and all federal and state unemployment compensation taxes. Tenant shall pay all federal and state taxes of whatever sort, including gross receipt taxes, franchise taxes, and all other taxes applicable to Tenant's activities, facilities, employees, and materials used upon the Leased Premises.

8. **Tenant Obligations**. Without otherwise limiting the Tenant's obligations in this Lease, the Tenant shall:

(a) graze the Leased Premises in a workmanlike manner in accordance with the standards of good agricultural husbandry.

(b) pay all costs of production and other related expenses on the Leased Premises whether ordinary or extraordinary, direct or indirect. All materials and services provided shall be (1) of first quality, (2) of the type used in operating first class grazing operations in the area, and (3) furnished or provided at such times, in such quantities and in such manner as good

agricultural practices dictate;

(c) pay when due any water, water, sewer, gas, electricity, telephone, or other utility expenses incurred in connection with the Tenant's use of the Leased Premises, and, upon request, the Tenant will provide the Landlord with copies of any utility bills;

(d) prevent noxious weeds (as determined by Landlord) from going to seed on the Leased Premises, destroy such weeds and otherwise comply with Governmental Requirements;

(e) keep the Leased Premises neat and orderly and free from trash or debris, prevent all unnecessary waste, or loss, or damage to the Leased Premises, to the improvements thereon, and to any equipment or other property of Landlord, and repair or pay for the repair of all damage to the Leased Premises or the improvements, equipment, or other property of Landlord other than that resulting from natural wear and tear or that for which Landlord has assumed the risk of loss or repair under this Lease relating to Major Repairs;

(f) enforce security on the Leased Premises by evicting any trespasser not having a business purpose or carrying written permission from Landlord;

(g) maintain all fences and gates on the Leased Premises;

(h) assume all risk of loss to all agricultural equipment, and machinery, and all other personal property of Tenant, Tenant's employees, agents, or invitees. Landlord shall have no obligation to repair or restore any of said property;

(i) undertake no activity, act, or omission upon the Leased Premises as shall endanger, effect, or terminate part or all of any agricultural exemption on the Leased Premises for the purposes of *ad valorem* taxation;

(j) pay all taxes on the livestock grazed or raised on the Leased Premises and on Tenant's personal property located on the Leased Premises; and

(k) keep the Landlord apprised of all unusual activity on the Leased Premises including accidents, spills, vandalism, theft, or casualty damage.

9. **Alterations**. Tenant shall not make, erect, or install nor permit to be made, erected, or installed, any alterations, additions, or improvements to the Leased Premises whether of the character of a Building Improvement or a Land Improvement, or incur any expense for such purposes, without the prior written consent of Landlord. If such consent is given, such additions, alterations, and/or improvements shall meet the standards and requirements of Landlord, of any applicable governmental unit and of power and insurance companies. Tenant shall, after notice to Landlord and compliance with this Lease, make all additions, improvements, alterations, and repairs on the Leased Premises and on and to the improvements and equipment thereof, required by any governmental authority or which may be made necessary by the act or neglect of

any person, firm, or corporation (public or private). Upon completion of any work for or on behalf of Tenant, Tenant shall provide Landlord with such documents as Landlord may require (including, without limitation, sworn contractor's statements and supporting lien waivers) evidencing payment in full for such work.

10. **Preconditions**. Before Tenant commences any repair, replacement, restoration, rebuilding, maintenance, or alterations permitted or required under this Lease, Tenant shall obtain the prior written approval of Landlord and Landlord may require Tenant to submit to Landlord any and all plans and specifications for approval, as well as estimates of the cost of the proposed work, satisfactory evidence of sufficient contractor's comprehensive general liability insurance covering Landlord, builder's risk insurance, and worker's compensation insurance, a performance and payment bond satisfactory in form and substance to Landlord and such other security as Landlord may require to insure the completion of all work free and clear of liens.

11. **Encumbering Title**. Tenant shall not do any act which shall in any way encumber the title of Landlord in and to the Leased Premises, nor shall the interest or estate of Landlord in the Leased Premises be in any way subject to any claim by way of lien or encumbrance, whether by operation of law or by virtue of any express or implied contract by Tenant. Any claim to, or lien upon, the Leased Premises arising from any act or omission of Tenant shall accrue only against the leasehold estate of Tenant and shall be subject and subordinate to the paramount title and rights of Landlord in and to the Leased Premises.

12. **Signs**. The Landlord shall be entitled to maintain upon the Leased Premises such signs as the Landlord shall deem necessary and appropriate. The Tenant shall not place any signage upon the Leased Premises except upon prior approval by the Landlord. The Tenant shall be responsible for maintaining in a neat and orderly appearance any signage erected upon the Leased Premises by the Tenant.

13. **Security of Leased Premises**. Tenant will keep all perimeter gates to the Leased Premises closed and locked. Ingress and egress from the Leased Premises shall be at those places designated by the Landlord. Tenant shall not change the Landlord's lock system without permission of the Landlord.

14. **Liens and Indemnification**. Tenant shall not permit the Leased Premises to become the subject of any mechanic's, laborer's, or materialman's lien on account of laboror material furnished to Tenant or claimed to have been furnished to Tenant in connection with work of any character performed or claimed to have been performed on the Leased Premises by, or at the discretion or sufferance of Tenant. Tenant shall have no authority to place any lien on the Leased Premises, and any attempt to do so will be void and of no effect.

IN THE EVENT THE LEASED PREMISES BECOMES THE SUBJECT OF ANY SUCH LIEN, TENANT SHALL INDEMNIFY AND HOLD HARMLESS LANDLORD FROM ALL COSTS, LOSSES, OR EXPENSES (INCLUDING ATTORNEY'S FEES) WITH RESPECT THERETO. Tenant shall have the right to contest in good faith and with reasonable diligence the validity of any such lien or claimed lien if Tenant shall give the Landlord such security as Landlord may deem satisfactory to insure payment

thereof and to prevent any sale, foreclosure, or forfeiture of the Leased Premises by reason of non-payment thereof; provided further, however, that on final determination of the validity of the lien or claim for lien, Tenant shall immediately pay any judgment rendered, with proper costs and charges, and shall immediately have the lien released and any judgment satisfied.

If Tenant shall fail to contest the validity of any lien or claimed lien and give security to Landlord to insure payment thereof, or having commenced to contest the same and having given such security, shall fail to prosecute such contest with diligence, or shall fail to have the same released and satisfy any judgment rendered thereon, then Landlord may, at its election (but shall not be required to do so), remove or discharge such lien or claim for lien (with the right, in its sole discretion, to settle or compromise the same), and any amounts advanced by Landlord for such purposes shall constitute additional rental due from Tenant to Landlord immediately after any such payment, with interest (except as to said attorneys' fees) at the highest lawful rate, from the date of the advance to the date of repayment by Tenant to Landlord.

15. **Environmental**.

(a) **Limitations on the Use and Handling of Hazardous Materials**. Save in accordance with normal and usual agricultural practices, the Tenant shall not use, and shall not permit any servant, contractor, licensee, employee, agent, or invitee to use any portion of the Leased Premises for the placement, storage, manufacture, disposal, application, or handling of any "Hazardous Materials" (as herein defined). With respect to Hazardous Materials, Tenant shall store, manage, handle, and provide safeguards for the Leased Premises and all persons coming to the Leased Premises in accordance with all rules, regulations, orders, guidelines, and other instructions or directives of the State of Texas, the United States of America, and any political subdivision of either of such governmental entities, or any other governmental entity having authority to regulate such Hazardous Materials. Tenant shall not apply, store, use, transport, handle, or spray any pesticide, predacide, rodenticide, herbicide, fertilizer, or other agricultural chemical (hereinafter collectively "Agricultural Chemicals") upon the Leased Premises save in accordance with:

(1) All requirements of the TEX. AGRIC. CODE, TEX. WATER CODE, and TEX. NATURAL RES. CODE, and all regulations adopted thereunder;

(2) All labeling restrictions on any such Agricultural Chemical;

(3) All statutory or regulatory requirements administered or promulgated by the Environmental Protection Agency, Texas Department of Agriculture, U. S. Department of Agriculture, Texas Natural Resources Conservation Commission, Office of the Texas State Chemist, and the Texas Feed and Fertilizer Control Service;

(4) All requirements of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. § 136, *et seq.* "FIFRA") and all regulations adopted thereunder; and

(5) The standards of good agricultural husbandry.

All Agricultural Chemicals brought upon the Leased Premises shall be purchased or acquired from a licensed distributor of such product and shall be applied only by a person duly licensed and bonded for the application of such product. Any applicator of Agricultural Chemicals on the Leased Premises shall keep all required records relating to such application and these shall be made available to the Landlord upon request. No Agricultural Chemicals shall be incinerated, disposed of, or spilled upon the Leased Premises. Tenant shall be responsible for all cleanup procedures necessitated by the disposal or spill of any such product including the removal of any contaminated soil, vegetation, or water. Upon expiration of this Lease, Tenant shall be responsible for removing from the Leased Premises in a safe and prompt manner all Agricultural Chemicals remaining on the Leased Premises and any containers thereof. In the event of any accident or spill involving Agricultural Chemicals, the Tenant shall immediately notify the Landlord in writing of the details of such accident or spill inclusive of the identity of the product, volume of the spill, and exact location of the spill or accident. Upon reasonable request of the Landlord, the Tenant shall provide the Landlord with copies of all hazardous waste manifests and all inventory and application records maintained by the Tenant which are required by law or are customary agricultural practice for the use of such products.

(b) **Discovery and Removal of Hazardous Materials**. In the event that the Tenant or the Landlord discovers any Hazardous Materials in or on the Leased Premises which are not being properly used, applied, stored, maintained, or contained in accordance with all applicable laws, rules, and regulations, Tenant shall immediately undertake such removal and remediation work as necessary to correct any such violation. Tenant represents and warrants that the Tenant or its agents will competently perform and supervise any removal or remediation work that is determined to be necessary under the terms hereof. Tenant shall proceed with reasonable diligence to effect the removal, abatement, or remediation of any such Hazardous Materials in or on the Leased Premises.

(c) **Costs**. Tenant shall be responsible for the costs of any removal, abatement, or remediation of any Hazardous Materials placed, stored, manufactured, disposed of, or handled by the Tenant or the Tenant's agents, contractors, or licensees, or invitees, in or on the Leased Premises and for the cost of any removal, abatement, or remediation of any Hazardous Materials which might be disturbed or released as a result of any work performed on the Leased Premises by the Tenant. Such costs shall include, without limitation, the cost of any consultant retained by the

Landlord in connection with such work.

(d) **INDEMNITY**. TENANT SHALL INDEMNIFY AND HOLD HARMLESS LANDLORD AND ITS AGENTS, SUCCESSORS, AND ASSIGNS FROM AND AGAINST ANY LOSS, COSTS, LIABILITY, OR EXPENSE (INCLUDING REASONABLE ATTORNEYS' FEES, EXPENSES, AND COURT COSTS) ARISING OUT OF THE PLACEMENT, APPLICATION, STORAGE, MANUFACTURE, DISPOSAL, HANDLING, REMOVAL, SPILL, DISPOSAL, ABATEMENT, OR REMEDIATION OF ANY HAZARDOUS MATERIALS BY TENANT, OR ANY REMOVAL, ABATEMENT, OR REMEDIATION OF HAZARDOUS MATERIALS REQUIRED HEREUNDER TO BE PERFORMED OR PAID FOR BY TENANT. THE PROVISIONS OF THIS SECTION SHALL SURVIVE THE TERMINATION OF THIS LEASE.

(e) **Definition of Hazardous Materials**. The term "Hazardous Materials" as defined herein shall mean:

(1) any substance the presence of which requires special handling, investigation, notification, or remediation under any federal, state, or local statute, regulation, ordinance, order, action, policy, or common law;

(2) any substance which is or becomes defined as a "hazardous waste," "hazardous substance," "pollutant," or" contaminant" under any federal, state, or local statute, regulation, rule, or ordinance or amendments thereto;

(3) any substance which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic, or otherwise hazardous under any regulations by any governmental authority, agency, department, commission, board, agency, or instrumentality of the United States, the State of Texas, or any political subdivision thereof;

(4) any substance the presence of which on the Leased Premises causes or threatens to cause an erosion, contamination, drainage, or nuisance problem on the Leased Premises or any adjacent properties, public roads, or rights-of-way, or poses or threatens to pose a hazard to the health or safety of persons, livestock, or vegetation in or about the Leased Premises or adjacent properties;

(5) any substance which contains gasoline, diesel fuel, or other petroleum hydrocarbons; and

(6) any substance which contains polychlorinated biphenyls, asbestos, or urea formaldehyde foam insulation.

16. **Tenant Not to Misuse**. Tenant shall not allow the Leased Premises to be used for any purpose that will increase the rate of insurance thereon, nor for any purpose

other than that herein specified. Tenant will not permit the Leased Premises to be used for any unlawful purpose, or for any purpose that will injure the reputation of the Leased Premises or increase the fire hazard of the Leased Premises. Tenant shall pay to Landlord as additional rent immediately upon receipt of a bill by Landlord, any increase in Landlord's insurance premiums due to the acts of Tenant or Tenant's agents, employees, invitees, assignees, or sublessees.

17. **Assignment and Subletting**. Tenant shall not assign, mortgage, or encumber this Lease, nor sublet, nor suffer or permit the Leased Premises or any part thereof to be used by other persons without the prior written consent of Landlord. Any attempted or purported assignment, subletting, or conveyance shall be void and or no force or effect. If the Landlord does consent, Landlord's consent to any subletting or assignment shall not be consent to any other subletting or assignment by the Tenant. Landlord may, as a condition to consent require a guaranty from a creditworthy party or other security for the performance of the assignee's obligations under this Lease. The making of any assignment or subletting, in whole or in part, shall not relieve Tenant from Tenant's obligations hereunder without the written consent of the Landlord.

If this Lease is assigned to any person or entity pursuant to the provisions of the Bankruptcy Code, 11 U.S.C. §§ 101 et. seq. (the "Bankruptcy Code"), any and all monies or other considerations payable or otherwise to be delivered in connection with such assignment shall be paid or delivered to Landlord, shall be and remain the exclusive property of Landlord and shall not constitute property of the Tenant or of Tenant's estate within the meaning of the Bankruptcy Code. Any person or entity to which this Lease is assigned pursuant to the Bankruptcy Code shall be deemed, without further act or deed, to have assumed all of the obligations arising under this Lease on and after the date of such assignment.

The Landlord may assign, convey, or otherwise transfer its right, title, and interest hereunder or in the Leased Premises, or any portion thereof, without the consent of the Tenant.

18. **GENERAL LIABILITY AND INDEMNIFICATION**. TENANT ASSUMES ALL RISKS AND RESPONSIBILITIES FOR ACCIDENTS, INJURIES, OR DEATH RESULTING FROM SUCH INJURIES OR DAMAGES TO PERSON OR PROPERTY OCCURRING IN, ON, OR ABOUT THE LEASED PREMISES, AND AGREES TO INDEMNIFY AND HOLD HARMLESS LANDLORD AND LANDLORD'S EMPLOYEES, AGENTS, AND ASSIGNS FROM ANY AND ALL CLAIMS, LIABILITIES, LOSSES, COSTS, AND EXPENSES (INCLUDING ATTORNEYS' FEES) ARISING FROM, OR IN CONNECTION WITH, THE CONDITION, USE, OR CONTROL OF THE LEASED PREMISES, INCLUDING THE IMPROVEMENTS AND EQUIPMENT THEREON, DURING THE TERM OF THIS LEASE. TENANT SHALL BE LIABLE TO LANDLORD FOR ANY DAMAGES TO THE LEASED PREMISES, INCLUDING THE IMPROVEMENTS AND EQUIPMENT THEREON, AND FOR ANY ACT DONE BY TENANT OR ANY EMPLOYEE, AGENT, INVITEE, LICENSEE, OR CONTRACTOR OF TENANT.

TENANT SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS LANDLORD

FROM ALL COSTS, LOSSES, LIABILITIES, CLAIMS, PENALTIES, OR EXPENSES (INCLUDING ATTORNEYS' FEES) IMPOSED UPON OR INCURRED BY OR ASSERTED AGAINST LANDLORD BY REASON OF: (I) ANY FAILURE ON THE PART OF TENANT TO PERFORM OR COMPLY WITH ANY OF THE TERMS OF THIS LEASE; (II) ANY ENFORCEMENT OR REMEDIAL ACTION TAKEN BY LANDLORD IN THE EVENT OF A FAILURE TO PERFORM OR COMPLY WITH THE TERMS OF THIS LEASE; OR (III) ANY LITIGATION, NEGOTIATION, OR TRANSACTION IN WHICH LANDLORD BECOMES INVOLVED OR CONCERNED (WITHOUT LANDLORD'S FAULT) RESPECTING THIS LEASE, THE LEASED PREMISES, OR THE USE, MANAGEMENT, CONTROL, OR OCCUPANCY OF THE LEASED PREMISES BY TENANT, INCLUDING CLAIMS ARISING OUT OF ANY NEGLIGENCE, GROSS NEGLIGENCE, OR INTENTIONAL ACT OF THE TENANT OR THE TENANT'S AGENTS, INVITEES, LICENSEES, OR CONTRACTORS. LANDLORD'S RIGHT OF INDEMNIFICATION FROM TENANT SHALL NOT BE LIMITED BY THE AMOUNT OF INSURANCE MAINTAINED BY THE TENANT. THE PROVISIONS OF THIS PARAGRAPH SHALL SURVIVE THE TERMINATION OF THIS LEASE WITH RESPECT TO ANY CLAIM ARISING BEFORE SUCH TERMINATION.

19. **Insurance**. During the entire Term of this Lease, Tenant shall procure and maintain, at its own expense, public liability and property damage insurance, insuring Landlord and Tenant with provisions and coverages acceptable to Landlord, and with such increases in limits as Landlord may from time to time request. Initially, Tenant shall provide for coverage including ranch liability coverage for personal injury to or death of any one person of not less than $ 1,000,000.00 for personal injury to or death of more than one person of not less than $1,000,000.00, and coverage for property damage liability of not less than $250,000. The aforesaid insurance shall be obtained from a company satisfactory to Landlord and licensed to do business in the State of Texas. Such insurance policy or policies shall name Landlord as an additional insured and provide for at least 10 days' written notice to Landlord prior to cancellation, termination, modification, or change of any policy. The original insurance policy (or certificates thereof satisfactory to Landlord), together with satisfactory evidence of payment of the premiums thereon, shall be deposited with Landlord on or before the commencement date of this Lease. All insurance policies insuring personal property owned by Tenant shall contain a provision waiving all rights of subrogation against Landlord.

20. **Default Remedies**. Tenant agrees that any one or more of the following events shall be considered Events of Default under this Lease:

(a) Tenant's filing or admission to the jurisdiction of the court and the material allegations contained in any petition in bankruptcy or any petition pursuant or purporting to be pursuant to the Bankruptcy Code as now or hereafter amended, or under the laws of any state, or Tenant's institution of any proceedings or consenting to the institution of any proceedings for any relief under any bankruptcy or insolvency laws or any laws relating to the relief of debtors, readjustment of indebtedness, reorganization, arrangement, composition, or extension;

(b) Tenant making any assignment for the benefit of creditors or Tenant applying for or consenting to the appointment of a receiver for Tenant or any of the property of Tenant;

(c) the levying upon or attachment of Tenant's interest in the Leased Premises;

(d) the making or issuance of a decree or order appointing a receiver of the property of Tenant, which decree or order shall not have been vacated or set aside within thirty (30) days from the date of entry or granting thereof;

(e) Tenant's abandonment of the Leased Premises during the Term hereof;

(f) the default in any payment of Rent or in any other payment required to be made by Tenant hereunder when due;

(g) Tenant's failure to contest the validity of any lien or claimed lien which purports to have priority over the security interest or Landlord's lien held by Landlord, or failure to prosecute such contest with diligence or failure to have the same released or subordinated to the security interest of Landlord; or

(h) Tenant's default in keeping, observing, or performing any of the other covenants or agreements herein contained to be kept, observed, and performed by Tenant.

Upon the occurrence of any one or more of such Events of Default, Landlord may, at its election, accelerate any and all payments due under this Lease and/or terminate this Lease upon written notice to Tenant. Upon termination of this Lease, Tenant shall surrender possession of and vacate the Leased Premises immediately and shall deliver possession thereof to Landlord, and Tenant hereby grants to Landlord the full and free right, without demand or notice of any kind to Tenant, to enter into and upon the Leased Premises in such event with or without process of law and to repossess the Leased Premises as Landlord's former estate and to expel or remove Tenant and any others who may be occupying or within the Leased Premises without being deemed in any manner guilty of trespass, eviction, or forcible entry or detainer, without incurring any liability for any damage resulting therefrom, and without relinquishing Landlord's rights to Rent or any other right given to Landlord hereunder or by operation of law. Upon termination of this Lease by Landlord, Tenant shall have no right to return to the Leased Premises nor to harvest the crops remaining, if any, without the prior written consent of the Landlord. Landlord reserves the right to supervise any harvest by Tenant which Landlord may allow and to impose upon Tenant any terms and conditions Landlord deems appropriate.

Tenant shall be liable for and hereby agrees to pay any and all losses, liabilities, costs, and expenses, including attorneys' fees, which Landlord incurs in connection with any of the aforesaid defaults and the enforcement of Landlord's rights and remedies under this Lease as a result of such default.

No remedy herein or otherwise conferred upon or reserved to Landlord shall be deemed to exclude or suspend any other remedy, but the same shall be cumulative and shall be in addition to every other remedy given hereunder, now or hereafter existing at law or in equity or by statute, and every power and remedy given by this Lease to Landlord may be exercised from time to time and so often as occasion may arise or as may be deemed expedient.

No delay or omission of Landlord to exercise any right or power arising from any Events of Default shall impair any such right or power or be construed to be a waiver of any such Events of Default or any acquiescence therein. No waiver of any breach of any of the covenants of this Lease shall be construed, taken, or held to be a waiver of any other breach, nor as a waiver, acquiescence in, or consent to any further or succeeding breach of the same covenant. The acceptance by Landlord of any payment of Rent or other charges hereunder after the termination by Landlord of this Lease shall not, in the absence of agreement in writing to the contrary by Landlord, be deemed to restore this Lease but shall be construed as a payment on account, and not in satisfaction of damages due from Tenant to Landlord.

21. **Surrender**. Upon the expiration or termination of this Lease, whether by forfeiture, lapse of time, or otherwise, Tenant will surrender and deliver the Leased Premises to Landlord in as good condition and repair as at the time Tenant takes possession of same, reasonable wear and tear excepted. All additions, repairs, and replacements and all improvements in or upon the Leased Premises placed affixed or installed there by Tenant, shall become Landlord's property and shall remain upon the Leased Premises upon such expiration or termination of this Lease, by lapse of time or otherwise, without compensation, allowance, or credit to Tenant.

Upon the expiration or termination of this Lease, by lapse of time or otherwise, Tenant shall remove the Tenant's personal property from the Leased Premises, provided however, that Tenant shall repair any injury or damage to the Leased Premises which may result from such removal. If Tenant does not remove Tenant's personal property from the Leased Premises prior to the normal expiration or earlier termination of this Lease, Landlord may, at its option, remove the same and deliver same to any other place of business of Tenant or warehouse the same, and Tenant shall pay to Landlord on demand the cost of such removal (including the repair or any injury or damage to the Leased Premises resulting from such removal, delivery and warehousing), or Landlord may treat such property as having been conveyed to Landlord with this Lease as a Bill of Sale, without further payment or credit by Landlord to Tenant.

22. **Holdover**. If the Tenant shall remain in possession of the Leased Premises after the expiration or other termination of this Lease term, then the Tenant will be deemed to be occupying the Leased Premises as a tenant at sufferance of the Landlord subject to all terms and conditions of this Lease except that the rent payable during any holdover period will be equal to 150% of the rent applicable during any like period during the Lease Term.

23. **Landlord's Right to Entry During Term of Lease**. Landlord reserves for Landlord, Landlord's agents or employees, the right to enter upon the Leased Premises at any time without notice for the purposes of inspecting the same, for working or making repairs or improvements thereon, for developing mineral resources as provided in Paragraph 24 below, for conducting clearing operations, for evaluating Tenant's performance hereunder, and for performing all other operations on the Leased Premises that Landlord deems necessary. This right of entry is separate and apart from Landlord's right of entry upon the occurrence of an Event of Default. Any such entry shall not constitute an eviction or authorize a reduction in rent. During the 120 days prior to the expiration of the Lease Term, Tenant will permit the Landlord to exhibit the Leased Premises to prospective tenants and to place notices on the Leased Premises advertising the Leased Premises "For Lease".

24. **Mineral Rights**. Nothing in this Lease shall confer upon Tenant any right to minerals underlying the Leased Premises, but same are hereby reserved by Landlord together with the full right to enter upon the Leased Premises and to bore, search, and excavate for same, to work and remove same, and to deposit excavated rubbish, and with full liberty to pass over the Leased Premises with vehicles and to lay down and work any railroad track or tracks, tanks, pipelines, power lines, and structures as may be necessary or convenient for the above purpose.

25. **Eminent Domain**. In the event that all or a part of the Leased Premises is taken or condemned for public or quasi-public use under any statute or by the right of eminent domain or, in lieu thereof, all or a part of the Leased Premises is sold to a public or quasi-public body under threat of condemnation, and such taking, condemnation, or sale renders the Leased Premises unsuitable for agricultural purposes, this Lease shall terminate as to the part of the Leased Premises so taken, condemned, or sold on the date possession is transferred to the condemning authority. All Rent for such part shall be paid up to the date of transfer of possession of the condemning authority, and all compensation awarded or paid for the taking or sale in lieu thereof shall belong to and be the sole property of Landlord, and Tenant shall have no claim against Landlord for the value of any unexpired portion of the Lease Term; provided, however, that Tenant shall be entitled to any award expressly made to Tenant for damages to Tenant's personal property, if any.

26. **Estoppel Certificates**. Tenant shall, at any time and from time to time, upon not less than ten (10) days' prior written notice from Landlord, execute, acknowledge, and deliver to Landlord, in form reasonably satisfactory to Landlord a written statement certifying (if true) that Tenant has accepted the Leased Premises, that this Lease is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified and stating the modifications), that the Landlord is not in default hereunder, the date to which the rental and other charges have been paid in advance, if any, and such other accurate certification as may reasonably be required by Landlord.

27. **Landlord's Right to Cure**. Landlord may, but shall not be obligated to, cure any default by Tenant (specifically including, but not by way of limitation, Tenant's failure to

obtain insurance, make repairs, or satisfy lien claims); and whenever Landlord so elects, all costs and expenses paid by Landlord in curing such default, including without limitation, reasonable attorneys' fees, shall be so much additional rent due immediately after any such payment, together with interest (except in the case of said attorneys' fees) at the highest lawful rate, from the date of the advance to the date of repayment by Tenant to Landlord.

28. **Complete Agreement; Amendments**. THIS LEASE CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE LAND AND THE TENANT. NO PRIOR WRITTEN OR PRIOR OR CONTEMPORANEOUS ORAL PROMISES OR REPRESENTATIONS WILL BE BINDING. None of the covenants, terms, or conditions of this Lease shall in any manner be altered, waived, modified, changed, or abandoned except by a written instrument duly signed and acknowledged by the Parties hereto.

29. **Brokerage**. Tenant warrants that Tenant has had no dealings with any broker or agent in connection with this Lease. Tenant covenants to pay, hold harmless, and indemnify Landlord from and against any and all cost, expense, or liability, any compensation, commissions, and charges claimed by any broker or other agent with respect to this Lease or the negotiation thereof.

30. **Quiet Enjoyment**. Landlord warrants that Landlord has good title to the Leased Premises subject to matters of record and visible easements, roadways, and transmission lines and subject to all existing and future easements, oil, gas, and mineral reservations and leases covering all or any part of the Leased Premises. Landlord reserves the right to any and all monies and other considerations paid or to be paid under and by virtue of the execution of any pipeline, road, railroad, utility, or other easement and any existing oil, gas, and mineral leases upon the above-described lands for the purpose of making geophysical tests, exploring and drilling for oil, gas, and other minerals and the removal of same if found. Subject to the aforesaid, Landlord represents and warrants that so long as Tenant is not in default of this Lease, Tenant may peaceably and quietly have, hold, and enjoy the Leased Premises with all rights and privileges herein provided.

31. **No Implied Waiver**. No acceptance of any sum paid by the Tenant, nor failure by the Landlord to complain of any action, inaction, or Event of Default of Tenant will constitute a waiver by Landlord or any of Landlord's rights or remedies under this Lease or under law. Landlord's waiver of any right or Event of Default shall not constitute a waiver of any other right of Landlord for either a subsequent default of the same obligation or for any other default.

32. **Records**. Tenant agrees to keep and maintain accurate records and grant Landlord access thereto, relating to livestock grazed upon the Leased Premises.

33. **No Partnership Created**. This Lease shall not be construed as creating a relationship of principal and agent or of a joint venture, partnership, or other business association between Landlord and Tenant, it being understood and agreed that no provisions contained in this Lease, nor any acts of the parties hereto, shall be deemed to create any relationship other than that of Landlord and Tenant.

The Tenant operates an independent business. Nothing herein shall be construed as reserving or granting to Landlord the right to exercise any control over the Tenant's business or the manner in which it is conducted subject only to Tenant's obligations to perform the terms and conditions of this Lease.

34. **Successors**. The terms, covenants, and conditions hereof shall be binding upon, and inure to the benefit of, the heirs, personal representatives, successors, or assigns, of the Parties (without altering the terms of Paragraph 22 hereof regarding assignment or subletting).

35. **Notice**. Any notice required under this Lease shall be in writing and sent by personal delivery, expedited delivery service (with proof of delivery), or certified mail, return receipt requested, to the following address:

Landlord: Steve Manilla, County Executive (or Successor)
P.O. Box 1748
Austin, TX 78767

Christopher Gilmore, Assistant County Attorney
P.O. Box 1748
Austin, TX 78767

Charles Bergh, Parks Director
P.O. Box 1748
Austin, TX 78767

or at any such other address as Landlord shall have last designated by notice in writing to Tenant.

Tenant: Darrell Wenzel
13315 Klaus Lane
Elgin, TX 78621

or at any such other address as Tenant shall have last designated by notice in writing to Tenant.

36. **Not Recorded**. This Lease shall not be recorded by Tenant.

37. **Time of the Essence**. Time is of the essence of this Lease, and all provisions herein relating thereto shall be strictly construed.

38. **Taxes**. Tenant shall pay and discharge when due, as additional rent, all income and other taxes and charges imposed on the conduct of its business on the Leased Premises.

39. **Captions**. The captions of this Lease are for convenience only and are not to be construed as part of this Lease and shall not be construed as defining or limiting in any way the scope or intent of the provisions hereof.

40. **Severability**. If any term or provision of this Lease shall to any extent be held invalid or unenforceable, the remaining terms and provisions of this Lease shall not be affected thereby, but each term and provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.

41. **Applicable Law**. This Lease shall be construed, interpreted, and enforced in accordance with the laws of the State of Texas. The obligations of the Parties are performable and have for any legal action shall lie in Travis County, Texas.

42. **Number, Gender**. The words "Landlord" and "Tenant" wherever used in this Lease shall be construed to mean Landlords or Tenants in all cases in which there is more than one Landlord or Tenant, and to apply to individuals, male or female, or to firms or corporations, as the same may be described as Landlord or Tenant in this Lease, and the necessary grammatical changes shall be assumed in each case as though fully expressed. In the event Tenant means more than one person or entity, all persons and entities to which that term applies shall be jointly and severally liable for the obligation of Tenant hereunder.

43. **Firearms, Fireworks, Hunting and Fishing**. Landlord reserves all hunting and fishing rights and privileges, provided exercise of such rights will not unreasonably interfere with Tenant's farming activity. Neither Tenant nor any third party may exercise hunting or fishing rights without the express written consent of Landlord. Tenant is prohibited from discharging firearms on the Leased Premises, except for purposes of feral animal control. Prior to the commencement of each and any feral animal control activity, Tenant must secure approval from the Chief Park Ranger. Tenant is prohibited from the use of fireworks on the Lease Premises.

44. **No Third-Party Beneficiary**. This Lease shall not be construed so as to confer any benefit on any party not a Party to this Lease nor shall this Lease provide any rights to such third parties to enforce its provisions, terms, or conditions.

45. **Risks**. Tenant is fully aware that this Lease and the agricultural enterprise contemplated by the Tenant upon the Leased Premises involves the high degree of risk inherent in any agricultural enterprise. Risk factors include accidents, predators, pestilence, theft, fluctuations in consumer demand, strikes, transportation difficulties, weather, drought, floods, disease, governmental quarantines, restrictions on sale, change in economic programs, unfavorable market forces, credit problems with purchases of agricultural products or with providers of goods and services necessary to Tenant's operations, and many other factors which may seriously affect the final profit or loss experienced by the Tenant. Tenant is aware that because of the many risk factors inherent, that neither Party can warrant or guarantee that profits will result to Tenant from agricultural enterprises conducted on the Leased Premises or that proceeds

generated by such agricultural enterprises will be sufficient to repay the sums due from Tenant hereunder or otherwise incurred by the Tenant. The Tenant has entered into this Lease of Tenant's own free will and accord without reliance on any representative or warranties of any kind or character not expressly set forth herein.

46. **Tax Consequences**. No representation or warranty is made by Landlord of the tax consequences which may inure to the Tenant in connection with this Lease. Moreover, no assurances have been made that the existing tax laws and regulations will not be amended or modified in the future denying any tax consequences or benefits anticipated by the Tenant.

47. **Chapter 320.** By approving this Lease, the Travis County Commissioners Court orders that Chapter 320 of the Texas Local Government Code applies to the park (Leased Premises).

IN WITNESS WHEREOF, the parties hereto have executed this Lease on the _____ day of _____, 201_.

Landlord:
Travis County, a political subdivision of the State of Texas

By:_____
Samuel T. Biscoe, County Judge

Tenant:

_____
Darrell Wenzel

Attachments: Exhibit A