

**EASEMENT AGREEMENT  
AND RESTRICTIVE COVENANT**

This Easement Agreement and Restrictive Covenant (this “Agreement”) is made as of December 20, 2007, by FRIO CAÑON INVESTMENTS, LLC, a Texas limited liability company whose mailing address is 4019 Spicewood Springs Road, Austin, Texas 78759 (“FCI”), and FRIO CAÑON COMMUNITY ASSOCIATION, a Texas nonprofit corporation whose address is PO Box 1054, Leakey, Texas 78873 (the “Association”).

**DEFINITIONS**

A. As used herein, “Easement Property” means that certain tract or parcel of land in Real County, Texas, containing 123.34 acres, more or less, being approximately 101.17 acres out of Survey No. 1531.4, Abstract No. 566, L. T. Mear, Original Grantee; approximately 0.04 acres out of Survey No. 1536, Abstract No. 103, B. F. Casey, Original Grantee; and approximately 22.13 acres out of Survey No. 1531.4, Abstract No. 988, J. R. White, Original Grantee, Real County, Texas, and being more particularly described in Exhibit “A” attached hereto and made a part hereof for all purposes, save and except those four (4) parcels of land more particularly described in Exhibits “A-1,” “B,” “C,” and “D,” respectively, attached hereto and made a part hereof for all purposes.

B. As used herein, “Easement Purpose” means pedestrian access over and across the Easement Property for members of the Association and their guests, but does not include camping, hunting, or any other activity not generally considered as “pedestrian access.”

C. As used herein, “Easement Term” means the period from the date hereof until the date FCI conveys at least seventy five (75) acres of the Easement Property to the Association for the common use of the members of the Association.

**RECITALS**

A. FCI is the owner of the Easement Property.

B. Subject to the terms and conditions set out in this Agreement, FCI desires to grant to the Association an easement to the Easement Property for the Easement Purpose and to impose a restrictive covenant on a portion of the Easement Property.

**AGREEMENT**

NOW THEREFORE, for good and valuable consideration, FCI hereby agrees as follows:

1. Easement. FCI grants, sells, and conveys to the Association a non-exclusive, irrevocable easement over and across the Easement Property for the Easement Term for

the Easement Purpose, together with all and singular the rights and appurtenances thereto in any way belonging (collectively, the “Easement”), to have and to hold the Easement for the Easement Term. FCI binds itself and its successors and assigns to warrant and defend the title to the Easement for the Easement Term in Association and Association’s heirs, successors, and assigns against every person whomsoever lawfully claiming or to claim the Easement or any part thereof, to the extent that such claim arises by, through, or under FCI but not otherwise.

The following terms and conditions apply to the Easement:

(a) *Duration of Easement.* The Easement will be for the Easement Term.

(b) *Reservation of Rights.* FCI reserves for itself and its successors and assigns the right to continue to use and enjoy the surface of the Easement Property for all purposes that do not interfere with or interrupt the use or enjoyment of the Easement by the Association for the Easement Purposes during the Easement Term. FCI reserves for itself and its successors, and assigns the right to use all or part of the Easement in conjunction with the Association and the right to convey to others the right to use all or part of the Easement in conjunction with the Association, as long as such further conveyance is subject to the terms of this Agreement.

(c) *Improvement and Maintenance of Easement Property.* Neither the Association nor any member of the Association has any right or obligation to alter, amend, improve or maintain any portion of the Easement Property or to eliminate any encroachment into the Easement Property or any portion thereof.

(d) *As-Is.* The Easement is hereby conveyed to and accepted by the Association as is, where is, and with all faults, and without any representations or warranties whatsoever, express or implied, written or oral; it being the intention of FCI and the Association to expressly revoke, release, negate and exclude all other representations and warranties, including, but not limited to, any and all express or implied representations and warranties as to (i) the condition of the Easement or the Easement Property or any aspect thereof, including, without limitations, any and all express or implied representations and warranties related to suitability for habitation, merchantability, or fitness for a particular use or purpose; (ii) the nature or quality of construction, structural design, or engineering of improvements, if any, located on the Easement Property; (iii) the quality of the labor or materials included in the improvements, if any, located on the Easement Property; (iv) the soil conditions, drainage, topographical features, or other conditions of the Easement Property or which affect the Easement Property; (v) any features or conditions of the Easement or Easement Property or which affect the Easement or the Easement Property with respect to any particular purpose, use, developmental potential, or otherwise; (vi) the area, size, shape, configuration, location, quantity, quality, value, condition, composition, authenticity, or amount of the Easement or the Easement Property; (vii) all express or implied representations or warranties created by any affirmation of fact or promise or by any description of the Easement or the Easement Property; (viii) any environmental,

geological, meteorological, structural, or other condition or hazard or the absence thereof heretofore, now, or hereafter affecting in any manner the Easement or the Easement Property; and (ix) all other express or implied warranties and representations by FCI whatsoever.

(e) *Insurance.* Throughout the Easement Term, the Association will maintain general liability insurance for the Easement Property, naming as additional insureds FCI, FRIO CAÑON LAND, LLC, a Texas limited liability company (“FCL”), each principal in FCI, and each principal in FCL, with a waiver of subrogation in favor of FCI, FCL, each principal in FCI, and each principal in FCL, in the amount of at least One Million and No/100ths Dollars (\$1,000,000.00) per occurrence and at least Two Million and No/100ths Dollars (\$2,000,000.00) in the aggregate, together with an umbrella policy or excess liability policy in the amount of at least One Million and No/100ths Dollars (\$1,000,00.00).

2. Restrictive Covenant. Before the expiration of the Easement Term, FCI will grant, sell and convey to the Association, for the common use of all members of the Association, at least seventy five (75) acres of the Easement Property, the quantity, quality, and location of which and additional restrictions pertaining to which will be determined by FCI in its sole discretion. After such grant, sale, and conveyance, the Association will assume the costs of maintenance, taxes, insurance, and compliance with any existing wildlife management plan for the portion of the Easement property so granted, sold and conveyed.

3. Equitable Rights of Enforcement. This Agreement may be enforced by restraining orders and injunctions (temporary or permanent) prohibiting interference and commanding compliance. Restraining orders and injunctions will be obtainable on proof of the existence of interference or threatened interference, without the necessity of proof of inadequacy of legal remedies or irreparable harm, and will be obtainable only by the parties to or those benefited by this agreement; provided, however, that the act of obtaining an injunction or restraining order will not be deemed to be an election of remedies or a waiver of any other rights or remedies available at law or in equity.

4. Attorney’s Fees. If any party retains an attorney to enforce this Agreement, the party prevailing in litigation is entitled to recover reasonable attorney’s fees and court and other costs.

5. Binding Effect. This Agreement binds and inures to the benefit of the parties and their respective heirs, successors, and permitted assigns.

6. Choice of Law. This Agreement will be construed under the laws of the state of Texas, without regard to choice-of-law rules of any jurisdiction. Venue is in the county or counties in which the Easement Property is located.

7. Counterparts. This Agreement may be executed in any number of counterparts with the same effect as if all signatory parties had signed the same document. All

counterparts will be construed together and will constitute one and the same instrument.

8. Waiver of Default. It is not a waiver of or consent to default if the nondefaulting party fails to declare immediately a default or delays in taking any action. Pursuit of any remedies set forth in this Agreement does not preclude pursuit of other remedies in this agreement or provided by law.

9. Indemnity. Each party agrees to indemnify, defend, and hold harmless the other party from any loss, attorney's fees, expenses, or claims attributable to breach or default of any provision of this Agreement by the indemnifying party.

10. Entire Agreement. This Agreement contains the complete agreement of the parties and cannot be varied except by written agreement of the parties. The parties agree that there are no oral agreements, representations, or warranties that are not expressly set forth in this Agreement.

11. Legal Construction. If any provision in this Agreement is for any reason unenforceable, to the extent the unenforceability does not destroy the basis of the bargain among the parties, the unenforceability will not affect any other provision hereof, and this Agreement will be construed as if the unenforceable provision had never been a part hereof. Whenever context requires, the singular will include the plural and neuter include the masculine or feminine gender, and vice versa. Article and section headings in this Agreement are for reference only and are not intended to restrict or define the text of any section. This Agreement will not be construed more or less favorably between the parties by reason of authorship or origin of language.

12. Notices. Any notice required or permitted under this Agreement must be in writing. Any notice required by this agreement will be deemed to be delivered (whether actually received or not) when deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the intended recipient at the mailing address set forth above. Notice may also be given by regular mail, personal delivery, courier delivery, facsimile transmission, or other commercially reasonable means and will be effective when actually received. Any address for notice may be changed by written notice delivered as provided herein.

