

DOCUMENT ENVELOPE ID: 61ABFD7E-B55E-405B-9000-700D706C7408

Recreational and Agricultural Lease Agreement

Basic Terms

Effective Date: June 1, 2017

Landlord: **CITY OF SAN ANGELO**, a Texas home rule municipal corporation

Landlord's Address: 72 W. College Avenue, San Angelo, Tom Green County, Texas 76903

Tenant: **BUTLER FARMS ESTATES HOMEOWNERS ASSOCIATION, INC.**, a Texas Nonprofit Corporation, by Tom Hudgins, Vice President

Tenant's Address: P.O. Box 60437, San Angelo, Texas 76906

Home Phone: (325) 650-9746 Email: JTHudge@suddenlink.net

Leased Premises: SURFACE ESTATE ONLY of approximately 80.39 acres of land, situated in San Angelo, Tom Green County, Texas, as described in **Exhibit "A"** ("Leased Premises") attached hereto and being made a part hereof, at or near the waters of Lake Nasworthy or the Concho River (hereinafter "Lake or River").

Expiration Date: May 30, 2022

Permitted Use: Solely for Recreational and Agricultural Use as classified at Section 9.03.003 of the City of San Angelo Code of Ordinances. Maintenance of livestock shall be in compliance with all applicable City ordinances.

Initial Payment: Initial Rent Payment due and payable on execution of this Lease, is the sum of Seven Thousand One Hundred Two Dollars (\$7,102.00), which includes: (a) Two Hundred Seventy-Six Dollars (\$276.00) – one time Granting Fee; and (b) Six Thousand Eight Hundred Twenty-Six Dollars (\$6,826.00) – Annual Rent for June 1, 2017 thru May 30, 2018.

Annual Rent: Annual Rent shall be Six Thousand Eight Hundred Twenty-Six Dollars (\$6,826.00), paid on or before **June 1st** of each year, during the term of this Lease, as computed on **Exhibit "B"** attached hereto and incorporated by reference.

Clauses and Covenants

A. Tenant agrees to—

1. Lease the Premises for the entire Term beginning on the Effective Date and ending on the Termination Date.
2. Obey all laws, ordinances, rules and regulations relating to Tenant's use and maintenance of the Leased Premises, including those certain ordinances of the City Council of the City of San Angelo, ("Council"), adopted April 2, 1951, as amended from time to time and known as the Lake Nasworthy-Twin Buttes Ordinances. Tenant

understands and agrees that this Lease Agreement does not exempt Tenant from application of any of the ordinances, rules and regulations now or hereafter applicable to Lake Nasworthy. Any breach of said ordinances, rules or regulations shall be deemed a default of this Lease Agreement, and, at the option of the Landlord, may result in termination of this Lease.

3. Pay in advance the Initial Rent Payment, and on or before June 1st of each year during the term of this Lease, the Annual Rent to Landlord at Landlord's Address, 72 W. College, San Angelo, Texas 76903.

4. Pay to Landlord a late charge or interest for any rent received by Landlord after the date that the rent is due in accordance with applicable ordinances, provided however, that acceptance by Landlord of late charges or interest shall not be construed as a waiver of the right of Landlord to terminate this Lease at its option as authorized herein.

5. Pay all taxes on Tenant's property located on the Leased Premises.

6. Use the Leased Premises for recreational use only and uses incidental thereto.

7. At Tenant's sole expense, keep and maintain improvements, now on the Leased Premises or constructed thereon as may be permitted pursuant to this Lease, in good condition, maintain landscape, and keep said Premises clean and cleared of all objectionable matter, including accumulations of trash, personal property, brush, and accumulations of dead vegetation. In the event Tenant shall fail to maintain Leased Premises in a manner acceptable to Landlord as herein required, after notice of default to Tenant, Landlord may enter upon the Leased Premises without further notice and cause Leased Premises to be cleaned, cleared, and mowed, and may dispose of all objectionable matter in the manner deemed appropriate by Landlord. Tenant expressly authorizes the cost of any such clearing, cleaning, mowing and disposal to be billed to Tenant separately rent or added to the next Annual Rent payment due, interest at the ten percent (10%) per annum, beginning thirty (30) days from the date on which the work was completed, and continuing until such cost is paid in full.

8. Maintain the pecan trees on Leased Premises. Pecans produced from said trees shall be the property of Tenant during the term of this Lease.

9. Tenant Agreement to Indemnify, Defend, and Hold Harmless Landlord:

TENANT AGREES TO INDEMNIFY, DEFEND, AND HOLD CITY, ITS COUNCIL MEMBERS, BOARD AND COMMISSION MEMBERS, OFFICIALS, AGENTS, GUESTS, INVITEES, CONSULTANTS AND EMPLOYEES FREE AND HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, PROCEEDINGS, SUITS, JUDGMENTS, COSTS, PENALTIES, FINES, DAMAGES, LOSSES, ATTORNEYS' FEES AND EXPENSES ASSERTED BY ANY PERSON OR PERSONS, INCLUDING AGENTS OR EMPLOYEES OF TENANT OR CITY, BY REASON OF DEATH OR

~~INJURY TO PERSONS, OR LOSS OR DAMAGE TO PROPERTY, RESULTING FROM OR ARISING OUT OF, THE VIOLATION OF ANY LAW OR REGULATION OR IN ANY MANNER ATTRIBUTABLE TO ANY ACT OF COMMISSION, OMISSION, NEGLIGENCE OR FAULT OF TENANT, ITS AGENTS OR EMPLOYEES, OR THE JOINT NEGLIGENCE OF TENANT AND ANY OTHER ENTITY, AS A CONSEQUENCE OF ITS EXECUTION OR PERFORMANCE OF THIS AGREEMENT OR SUSTAINED IN OR UPON THE LEASED PREMISES, OR AS A RESULT OF ANYTHING CLAIMED TO BE DONE OR ADMITTED TO BE DONE BY TENANT HEREUNDER. THIS INDEMNIFICATION SHALL SURVIVE THE TERM OF THIS AGREEMENT AS LONG AS ANY LIABILITY COULD BE ASSERTED. NOTHING HEREIN SHALL REQUIRE TENANT TO INDEMNIFY, DEFEND OR HOLD HARMLESS ANY INDEMNIFIED PARTY FOR THE INDEMNIFIED PARTY'S OWN GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.~~

10. Maintain Insurance as follows:

a. Tenant shall obtain and maintain continuously in effect at all times during the term hereof, at Tenant's sole expense, the kinds and minimum coverage of insurance as provided in the "Insurance Addendum to Lease" attached hereto and made a part hereof for all purposes. General liability insurance shall be an occurrence-type policy written in comprehensive form and shall protect Landlord against liability which may accrue against Landlord by reason of Tenant's occupancy or control over the Leased Premises, or wrongful conduct incident to the use thereof, resulting from any accident or event occurring on or about the Leased Premises. All insurance policies required herein shall be drawn in the name of Tenant, with Landlord, its council members, officials, officers, directors, agents and employees named as additional insureds.

b. Tenant shall furnish Landlord with certificates of insurance as evidence that all of the policies required herein are in full force and effect and provide the required coverages and limits of insurance. The certificates shall provide that any company issuing an insurance policy shall provide not less than 30-days advance notice in writing of cancellation, non-renewal or material change in the policy of insurance. In addition, Tenant shall immediately provide written notice to Landlord upon receipt of notice of cancellation of an insurance policy, or of a decision to terminate or alter any insurance policy. All certificates of insurance shall clearly state that all applicable requirements have been satisfied including certification that the policies are of the "occurrence" type. Certificates of insurance for Landlord shall be mailed in accordance with the notice provisions of this Lease Agreement.

c. Tenant shall require its insurance carrier, with respect to all insurance policies, to waive all rights of subrogation against the City of San Angelo, its council members, members of boards and commissions officers, officials, agents and employees.

d. The procuring of such policies of insurance shall not be construed to be a limitation upon Tenant's liability or as a full performance of its obligations under the indemnification provisions of this Lease. Tenant's obligations are, notwithstanding said policies of insurance, for the full and total amount of any damage, injury or loss caused by or attributable to its occupation or control over the Leased Premises pursuant to this Lease or any extension thereof.

11. Vacate the Leased Premises on the last day of the Term.

B. Tenant agrees not to—

1. Use the Leased Premises for any purpose other than the Permitted Use, including that:

a. No improvements or construction work, including but not limited to living quarters, buildings, pump houses, water wells, storage buildings, excavations, fills, or other types of structures or improvements shall be built or placed on the Leased Premises.

b. No storage of personal property shall be permitted on the Leased Premises, including equipment, machinery, vehicles, appliances, temporary electrical wiring, materials, or supplies.

2. Create or allow any nuisance or waste on Leased Premises.

3. Alter the Leased Premises, including:

a. Clearing new roads, or locating on Leased Premises any type of manufactured housing or mobile home.

b. Removing any trees from Leased Premises without first obtaining permission from Landlord.

4. Allow a lien to be placed on the Leased Premises.

5. Assign this Lease or sublease any portion of the Leased Premises without Landlord's written consent.

6. Hunt on the Leased Premises or allow anyone else to do so.

7. Litter or leave trash or debris on the Leased Premises.

C. Landlord agrees to—

Lease to Tenant the Leased Premises beginning on the Commencement Date and ending on the Termination Date unless earlier terminated as herein provided, subject to: easements of record, Landlord's reservation of right to execute and deliver mineral leases, and Landlord's reservation of right to grant utility easements and rights-of way for streets and alleys, and further subject to Tenant's compliance with the terms and conditions of this Lease.

D. Landlord agrees not to—

Allow any use of the Leased Premises inconsistent with Tenant's Permitted Use, subject to the reservations of rights herein stated, and so long as Tenant is not in default.

E. Landlord and Tenant mutually agree to the following:

1. *Rent Adjustment.* Landlord and Tenant agree Landlord shall have the right to make an adjustment in the Annual Rent upon any extension or renewal of this Lease.

2. *Temporary Improvements.* Tenant may place temporary improvements on Leased Premises only with the prior, written approval of Landlord. Such improvements shall be for purposes of recreation only. Temporary improvements for other purposes are prohibited. Nothing shall be constructed, placed, or planted on Leased Premises which will in any way obstruct the natural flow of drainage or of rising water. Temporary improvements shall not include walls or be more than ten (10) feet in height. Tenant shall secure any required permits prior to placement of any temporary improvement on the Leased Premises. Temporary improvements shall be constructed in compliance with all applicable codes, laws, rules or regulation. Improvements permitted and erected by Tenant shall be Tenant's property during the Term of this Lease. Prior to termination of this Lease, Tenant shall remove all alterations, additions and improvements erected by Tenant and restore the Leased Premises to its original condition by the date of Lease termination or upon earlier vacating of the Leased Premises. However, Landlord shall have the right to elect, during the thirty (30) days prior to termination or earlier vacating of the Leased Premises, that any such alterations, additions and improvements shall become the property of Landlord as of the date of termination or upon earlier vacating of the Leased Premises, and that they shall not be removed by Tenant. If any property which is required to be removed is not removed, then Landlord, in addition to all other rights or remedies may, at its election, deem that the property has been abandoned by Tenant to Landlord, but no such election shall relieve Tenant of the cost to remove the property or repair any damage.

3. *Water Usage.* Tenant, may, upon receipt of an annual water use permit from Landlord, as provided in City of San Angelo Code of Ordinances, use water from the Lake or River for domestic purpose and watering of existing trees and shrubs, but no water is to be removed from or transported off Leased Premises. Use of water for irrigation is expressly prohibited. Tenant shall use water in a conservative manner taking any drought conditions into consideration. Any abusive use of water shall be grounds for Landlord in denying the use of water to Tenant. Tenant shall pay raw water use charges as set by Landlord.

4. *Conditional Grant of Lease.* This Special Recreational Lease Agreement is granted to Tenant under the condition that Tenant is the owner or Leaseholder of real property adjacent to Leased Premises. Should Tenant not be or cease to be the owner or Leaseholder of real property adjacent to Leased Premises, this Lease shall automatically terminate, and Landlord shall not be liable for refunding to Tenant any prepaid Annual Rent or other lease fees.

5. *Flooding or Other Water Damage or Destruction.* The parties hereto acknowledge that the Leased Premises are within an area subject to flooding and variations in Lake or River water level. It is expressly agreed between the parties that neither Landlord nor any of its officers, officials, council members, agents or employees shall be liable to Tenant for any damages caused in any manner, negligent or otherwise, by water, flooding, water run-off variation in level of Lake or River waters, or overflow of the rivers, creeks, or channels which serve as sources of water supply to the Lake or River, nor by reason of any work or maintenance by Landlord, deemed necessary or desirable in Landlord's sole judgment, for the maintenance of said Lake or River, Lake or River level, or its sources of water supply. Any such damages that may be occasioned thereby during the term of this Lease Agreement or any extension thereof are hereby waived by Tenant, and Tenant does hereby forever release and discharge Landlord from liability for any such loss or claim of loss.

6. *Release of Claims.* Tenant expressly releases Landlord, its officials, officers, agents, and employees from any and all claims and damages of any kind whatsoever by reason of the condition of Leased Premises, or any improvements thereon, or any damages or loss incurred by Tenant relating to Tenant's use of the Leased Premises or exercise of the privileges granted hereunder.

7. *Reservations.* Landlord reserves the privilege and right for itself and its assignees, to execute and deliver oil, gas and other mineral leases upon the Leased Premises, right-of-way easements for gas, oil, water, or wastewater pipelines, sewer mains, telephone, telegraph or electric pole transmission lines, or other utility easements, and right-of-ways for streets or alleys, on, under, over or across said Leased Premises, or any part thereof, and in such event this lease shall be subject and subordinate to the rights, terms and privileges of any such mineral leases, utility easements or street and alley right-of-ways.

8. *Termination of Lease for Public Purposes.* If Landlord shall deem that Leased Premises are required for any public purpose during the term of this Lease, Landlord shall have the right to terminate this Lease by giving ninety (90) days written notice to Tenant of Landlord's election to terminate the Lease. Tenant shall promptly deliver possession of Leased Premises to Landlord on the effective date of termination.

9. *No Encumbrances.* Tenant shall not have the right to encumber the Leased Premises.

10. *Transfer, Assignment and Subletting.* Tenant may not transfer, assign or sublet the Leased Premises, in whole or in part, without the prior written consent of the Landlord, which consent may be withheld in the sole discretion of Landlord.

11. *Debts Related to Leased Premises.*

a. ~~Utilities: Any utility charges relating to Tenant's occupancy, control or use of the Leased Premises shall be paid in full by Tenant when due. Failure to timely pay such charges shall, at the option of Landlord, result in termination of this Lease.~~

b. Taxes: It is further understood and agreed that Tenant shall pay and discharge all taxes, general and special assessments, and other charges of every description which during the term of this Lease may be levied on or assessed against the Leased Premises and all interest therein and all improvements and other property thereon, whether belonging to Landlord or Tenant, or to which either of them may become liable. Tenant shall pay all such taxes, charges, and assessments to the public officer charged with the collection thereof not less than fifteen (15) days before the same shall become delinquent, and Tenant agrees to indemnify and save harmless Landlord from all such taxes, charges and assessments. Failure to pay such taxes and special assessments as provided herein shall, at the option of Landlord, result in termination of this Lease.

12. *Default by Tenant/Events.* The following shall constitute events of default by Tenant:

- a. failing to timely pay Annual Rent; or,
- b. failing to comply within thirty (30) days after written notice with any provision of this Lease Agreement other than failing to timely pay Annual Rent.

13. *Default by Tenant/Landlord's Remedies.* Landlord's remedy for Tenant's default, after compliance with the notice provisions hereof, is to terminate this Lease Agreement by written notice, take possession of the Leased Premises, and seek judicial relief for costs, rents due and such other damages or relief to which Landlord may be entitled. Landlord may enter and take physical possession and control over the Leased Premises on termination of this Lease by self-help, and may prohibit the Tenant in default or any other person who may be occupying the Leased Premises, from access thereto or the use thereof, and shall not be liable in trespass or for damages therefore.

14. *Default/Waiver/Mitigation.* It is not a waiver of default if the Landlord fails to declare immediately a default or delays in taking any action. Pursuit of any remedy set forth in this Lease does not preclude pursuit of other remedies under this Lease or provided by law.

15. *Reimbursement of Landlord's Expenses.* Tenant shall pay on demand all of Landlord's expenses including, but not limited to, attorney's fees and court costs incurred in enforcing any of Tenant's obligations under this Lease or in terminating this Lease and retaking physical possession of the Leased Premises on Tenant's default.

16. *Amendment of Lease.* This Lease may be amended only by an instrument in writing signed by Landlord and Tenant.

17. *Disclaimer of Warranties.* ALL WARRANTIES OF LANDLORD THAT MAY ARISE IN COMMON LAW ARE EXCLUDED LANDLORD GIVES NO WARRANTY, EXPRESS OR IMPLIED, AS TO THE CONDITION OF THE LEASED PREMISES OR ANY IMPROVEMENTS THEREON, INCLUDING WARRANTY OF HABITABILITY OR FITNESS FOR A PARTICULAR USE. THERE ARE NO IMPLIED WARRANTIES OF MERCHANTABILITY, OF FITNESS FOR A PARTICULAR PURPOSE, OR OF ANY OTHER KIND ARISING OUT OF THIS LEASE AGREEMENT, AND THERE ARE NO WARRANTIES THAT EXTEND BEYOND THOSE EXPRESSLY STATED IN THIS LEASE.

18. *Notices.* Any notice required or permitted under this Lease must be in writing and delivered to the address for the recipient party. Any notice required by this Lease will be deemed to be delivered (whether actually received or not) on the third day after deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the intended recipient at the address below. Notice may also be given by personal delivery or commercial courier delivery and will be effective when actually received. Any address for notice may be changed by written notice delivered to the other party as provided herein.

LANDLORD:
City of San Angelo
Real Estate Division
72 W. College Ave.
San Angelo, Texas 76903

TENANT:
Butler Farms Estates Homeowner Assoc, Inc
P.O. Box 60437
San Angelo, Texas 76906

19. *Entire Agreement.* This Lease Agreement constitutes the entire agreement of the parties concerning the lease of the Premises by Landlord to Tenant. There are no representations, warranties, agreements, or promises pertaining to the lease of the Leased Premises by Landlord to Tenant that are not in this Lease Agreement.

[Signature Page to Follow]

EXECUTED in duplicate originals the 16th day of May, 2017.

TENANT:
BUTLER FARMS ESTATES HOMEOWNERS
ASSOCIATION, INC

DocuSigned by:
Tom Hudgins
By: Tom Hudgins, Vice President

LANDLORD:
CITY OF SAN ANGELO

DocuSigned by:
Daniel Valenzuela
By: Daniel Valenzuela, City Manager

Attest:

DocuSigned by:
Bryan Kendrick
Bryan Kendrick, City Clerk

APPROVED AS TO FORM

APPROVED AS TO RISK

DocuSigned by:
Dan Saluri
Dan Saluri, Deputy City Attorney

DocuSigned by:
Charles Hagen
Charles Hagen, Risk Manager

Insurance Addendum to Lease

Lease:

Effective Date: May ____, 2017

Landlord: City of San Angelo, a home rule municipal corporation

Tenants: **BUTLER FARMS ESTATES HOMEOWNERS ASSOCIATION, INC.,**

This insurance addendum is part of the Lease.

Tenant agrees to—

1. Maintain the liability insurance policies required below (mark applicable boxes) during the Term and any period before or after the Term when Tenant is present on the Leased Premises:

Type of Insurance	Minimum Policy Limit	
<input checked="" type="checkbox"/> Homeowners Liability	Per occurrence:	\$100,000.00
	Aggregate:	\$100,000.00

[End of Insurance Addendum]

EXHIBIT "A"

Legal Description

EXHIBIT "A"

DESCRIPTION OF TRACT

BEGINNING at a point on the North bank of the South Concho River 450' South of the Southwest corner of a 106.014 acre tract heretofore sold to F. R. Butler;
THENCE N. 450 ft. to a point on the City of San Angelo reservation fence line;
THENCE with said reservation fence as follows: N. 84° 58' E. for a distance of approximately 3,212 ft.;
THENCE N. 30° 57' E. for a distance of 2,131.5 ft.;
THENCE N. 19° 03' W. 2,285 ft. to the northeast corner of 256.369 acre tract heretofore sold to F. R. Butler;
THENCE N. 89° 54' E. for a distance of 380 ft. to a point on the West bank of the South Concho River;
THENCE up the river with its meanders to the place of beginning and containing 80.39 acres of land more or less.

EXHIBIT "B"

LEASE FEE:

80.390 acres x \$14.00 per acre = \$1,126.00

16 units x \$75.00 per unit = \$1,200.00

Recreational Fee = \$250.00

RIVER FRONTAGE FEE:

8,500.00 feet x \$0.50 per foot = \$4,250.00

Total Annual Fee = \$6,826.00