

PERMIT IMPLEMENTING AGREEMENT

by and between

LUMBERMEN'S INVESTMENT CORPORATION

and the

U.S. FISH AND WILDLIFE SERVICE,

in connection with the

Cibolo Canyon Master Phase II EA/HCP Environmental Assessment/Habitat Conservation Plan for Issuance of an Endangered Species Act Section 10(a)(1)(B) Permit for the Incidental Take of the Golden-Cheeked Warbler (*Dendroica chrysoparia*) by Lumbermen's Investment Corporation During Development and Operation of the Property in Bexar County, Texas, dated _____, 2005.

PERMIT IMPLEMENTING AGREEMENT

by and between

LUMBERMEN’S INVESTMENT CORPORATION,

and the

U.S. FISH AND WILDLIFE SERVICE

This PERMIT IMPLEMENTING AGREEMENT (“Agreement”), made and entered into as of the __ day of _____, 2005, by and between LUMBERMEN’S INVESTMENT CORPORATION (the “Permittee”), and the UNITED STATES FISH AND WILDLIFE SERVICE (the “Service”), hereinafter collectively called the “Parties,” defines the Parties' roles and responsibilities and provides a common understanding of actions that will be undertaken to minimize and mitigate the impacts of the proposed development and operation of the Property (as defined below) on the subject species and its habitat.

1. **RECITALS**

This Agreement is entered into with regard to the following facts:

WHEREAS, the Property has been determined to contain or be in the vicinity of habitat for the federally listed golden-cheeked warbler, *Dendroica chrysoparia* (the “golden-cheeked warbler”); and

WHEREAS, Permittee, with technical assistance from the Service, has developed a series of measures, described in the Habitat Conservation Plan (“HCP”), to minimize and mitigate to the maximum extent practicable the potential impacts of the proposed development and operation of the Property upon the golden-cheeked warbler; and

WHEREAS, the HCP provides for the establishment of a golden-cheeked warbler preserve within a portion of the Property;

THEREFORE, the Parties hereto do hereby agree as follows:

2. **DEFINITIONS AND TERMS USED**

The following terms as used in this Agreement shall have the meanings set forth below:

- 2.1 The term “Permit” shall mean incidental take permit number _____ dated _____, 200_, issued by the Service to the Permittee pursuant to section 10(a)(1)(B) of the Endangered Species Act (ESA).
- 2.2 The term “Property” shall mean Master Phase II, consisting of approximately 1,625 acres generally bounded by Cibolo Creek to the east, Master Phase I to the south, Indian Springs to the west, and _____ to the north, in the City of San Antonio, Bexar County, Texas as described and depicted on Exhibit A attached hereto.
- 2.3 The term “Permit Documents” shall mean the Permit, the HCP, this Agreement, the biological opinion issued by the Service in connection with the Permit, and such other documents as are attached to and agreed to be a part of the Permit.
- 2.4 The term “Permittee” shall mean Lumbermen’s Investment Corporation.
- 2.5 The term “HCP” shall mean the Cibolo Canyon Master Phase II Environmental Assessment/Habitat Conservation Plan dated _____, prepared by the Permittee and approved by the Service.
- 2.6 The term “Covered Species” shall mean species so designated in the Permit, including the golden-cheeked warbler.
- 2.7 The term “Management” shall mean the Permittee or a third party, Service-approved conservation entity who, as more specifically defined in Section 11.0 of this Agreement, may be responsible for operating, monitoring, and managing the Preserve in perpetuity for the benefit of the Covered Species.
- 2.8 The term “No Surprises Rule” shall mean the Service regulation entitled “Habitat Conservation Plan Assurances (“No Surprises”) Rule” published on February 23, 1998 at 63 Fed. Reg. 8859. The terms "unforeseen circumstances" and “changed circumstances” shall have the same meanings as under the No Surprises Rule.
- 2.9 The term “Participant” refers to purchasers of land within the Property who execute an “Agreement of Inclusion” and receive a “Certificate of Inclusion” in accordance with Section 13.0 of this Agreement.
- 2.10 The term “Preserve” refers to the approximately 760-acre golden-cheeked warbler preserve described in Exhibit B to this Agreement.
- 2.11 Terms defined and utilized in the HCP and the ESA shall have the same meaning when utilized in this Agreement, except as specifically noted.

3. **HABITAT CONSERVATION PLAN**

Pursuant to the provisions of section 10(a)(1)(B) of the ESA, the Permittee has prepared the HCP and submitted it to the Service with a complete application, requesting that the Service issue the Permit to allow the golden-cheeked warbler to be incidentally taken by activities within the Property. The HCP establishes a plan to minimize and mitigate to the maximum extent practicable potential impacts to the golden-cheeked warbler.

4. **INCORPORATION OF PERMIT DOCUMENTS**

The Permit Documents are intended to be, and by this reference are, incorporated herein. In the event of any direct contradiction between the terms of this Agreement and the other Permit Documents, the terms of this Agreement shall control. In all other cases, the terms of this Agreement and the terms of the Permit Documents shall be interpreted to be supplementary to each other.

5. **LEGAL REQUIREMENTS**

In order to fulfill the requirements that allow the Service to issue the Permit, the Permit Documents set forth measures that are intended to ensure that any take by the Permittee will be incidental; that the impacts of the take will, to the maximum extent practicable, be minimized and mitigated; that procedures to deal with unforeseen circumstances will be provided; that adequate funding for implementing the HCP will be provided; and that the incidental take will not appreciably reduce the likelihood of the survival and recovery of the golden-cheeked warbler in the wild.

6. **COOPERATIVE EFFORT**

In order that each of the legal requirements as set forth in Section 5.0 of this Agreement are fulfilled, each of the Parties to this Agreement must perform various tasks as more particularly set forth in the HCP. Section 10(a)(1)(B) of the ESA and applicable regulations describes a cooperative program by Federal and private interests to minimize and mitigate the effects of proposed actions on endangered species. Actions and limitations of obligations in the HCP shall be binding on the Parties to the same extent as if the HCP were set forth herein in its entirety.

7. **PURPOSES**

The purposes of this Agreement are:

- 7.1 To implement contractually the agreements, terms, conditions, and assurances provided in the Permit Documents;

- 7.2 To describe remedies and recourse should any Party fail to perform its obligations, responsibilities, and tasks as set forth in this Agreement;
- 7.3 To provide a mechanism for purchasers of land within the Property to receive coverage under the Permit by entering into “Agreements of Inclusion,” and the issuance of “Certificates of Inclusion”; and
- 7.4 As stated in Section 12.3 of this Agreement, to provide, to the extent lawfully allowed, “No Surprises” assurances to the Permittee in accordance with the No Surprises Rule.

8. **TERM**

This Agreement shall become effective on the date that the Service issues the Permit requested in the HCP and shall remain in full force and effect for a period of thirty (30) years or until termination of the Permit, whichever occurs sooner, provided, however, that the obligations of the Permittee or Management, as applicable, with respect to establishment, operation, and maintenance of the Preserve shall be perpetual.

9. **FUNDING**

Subject to the limitations described in the HCP, Permittee will provide such funds as may be necessary to carry out its obligations under the HCP. The Permittee shall notify the Service if the Permittee’s funding resources have materially changed in a way that could affect the Permittee’s ability to carry out its obligations under the Permit Documents, including a discussion of the nature of the change.

10. **RESPONSIBILITIES OF THE PARTIES**

10.1 Responsibilities of the Permittee

- 10.1.1 The HCP will be properly functioning if the terms of the Permit Documents have been or are being implemented in all material respects.
- 10.1.2 Subject to the limitations described in the HCP, the Permittee shall undertake all activities required of the Permittee in the HCP in order to comply with the terms of the HCP and comply with the Permit, including without limitation annual reports as described in Section 15.0 of this Agreement.
- 10.1.3 The Permittee shall report any and all failures on the part of the Permittee to meet the terms and conditions of the Permit and/or Permit Documents to the Service upon detection.

10.1.4 The Permittee will ensure that any instrument transferring or conveying the Preserve will be recorded in the Real Property Records of Bexar County, Texas.

10.2 Responsibilities of the Service

10.2.1 The Service shall promptly and fully perform the actions contemplated to be performed by the Service under the HCP and this Implementing Agreement and will cooperate fully with the Permittee and Management in the implementation of the HCP; provided, however, that nothing in this Agreement shall require the Service to act in a manner contrary to the requirements of law, including without limitation the Anti-Deficiency Act.

10.2.2 After issuance of the Permit, the Service may monitor the implementation thereof, including each of the terms of this Agreement and the HCP in order to ensure compliance with the Permit Documents.

11. **TRANSFER OF THE PRESERVE**

The Permittee shall have the right, in the Permittee's discretion, from time to time to transfer and convey the Preserve to Management, including, without limitation, the following entities that have been approved by the Service: **[Bexar County, The City of San Antonio, The Trust for Public Land, The Nature Conservancy, The Edwards Aquifer Authority, The Bexar Land Trust, The State of Texas,]** and/or any other parties as may be hereafter approved by the Service as qualified to manage the Preserve, for perpetual management, operation, and monitoring in substitution of the Permittee. The entities listed above by name have been identified by the Parties as having abilities and resources sufficient to operate, manage, and monitor the Preserve in accordance with the Permit, the HCP, and this Agreement, and the Service has agreed that they would be acceptable permanent managers of the Preserve in place of the Permittee. The Service agrees that upon the request of the Permittee, the Service will promptly evaluate the qualifications of a proposed transferee other than those named above. A proposed transferee other than those named above must be approved by the Service prior to transfer and conveyance of the Preserve. The Permittee shall promptly provide to the Service written notice of the conveyance and transfer of the Preserve, which notice shall include the name and contact information of Management transferee, a copy of the deed or other transfer instrument, and a copy of a written agreement of the transferee to perform all obligations under the Permit with respect to the Preserve. Such written agreement will name FWS as a third-party beneficiary with direct enforcement rights. The obligations of any Management transferee will be made binding covenants that run with the Preserve. Failure of such notice of conveyance and transfer of the Preserve to comply with the requirements of this Agreement shall constitute a breach of this Agreement and the Permit, curable by providing a conforming notice of conveyance and transfer. Upon the Service's receipt of a notice of conveyance and transfer (or, if applicable, a conforming notice of conveyance and transfer), Management shall be deemed for all purposes to be the party responsible for operation, management, and monitoring of the Preserve. Management will assume its obligations in a written

agreement with the Permittee and the Service. Upon full and complete transfer or conveyance of the preserve and its associated funding for its perpetual management, Permittee shall have no further obligation of funding, operation, management, and monitoring of the Preserve. The failure of Management to carry out such obligations under and in accordance with the Permit Documents shall subject Management to enforcement by the Service, but shall not be a basis for revocation, termination, or suspension of the authorization for development and operation of the Property pursuant to the Permit. Separation of the obligations of a pre-approved Management entity from the authorizations relative to development of the Property is based upon the size and capability of the pre-approved Management entities, the above requirement that they agree to be bound to perform all obligations under the Permit and the HCP with respect to the Preserve, and such separation is in order to facilitate the transfer of the Preserves to these highly qualified and stable entities. Assumption of the management obligations by these entities, with direct right of enforcement by the Service and LIC, is believed to provide adequate assurance that the operation, management and monitoring obligations with respect to the Preserve will, in fact, be carried out. Notwithstanding anything contained herein to the contrary, to the extent Permittee may agree with a Management transferee to provide any funding to such Management transferee, such agreement shall be considered a binding obligation of Permittee hereunder.

12. **REMEDIES AND ENFORCEMENT**

12.1 Remedies in General. Except as set forth below, each Party shall have all remedies otherwise available to enforce the terms of the Permit Documents to seek remedies for any breach hereof, subject to the following:

12.1.1 No Monetary Damages

No Party shall be liable in damages to any other Party or other person for any breach of this Agreement, any performance or failure to perform a mandatory or discretionary obligation imposed by this Agreement, or any other cause of action arising from this Agreement. Notwithstanding the foregoing, nothing contained in this Agreement is intended to limit the authority of the United States government to seek civil or criminal penalties or otherwise fulfill its enforcement responsibilities under the ESA.

12.1.2 Injunctive and/or Temporary Relief

The Parties acknowledge that injunctive and/or temporary relief may be appropriate to ensure compliance with the terms of this Agreement.

12.2 Permit Suspension or Revocation

Except as otherwise provided for under the terms of the Agreement, the Permit may be suspended or revoked only in conformance with the provisions of 50 CFR 13.27 through

13.29 (1999, as amended), or other permit revocation regulations that may be issued by the Service from time to time applicable to revocation of incidental take permits issued pursuant to section 10(a)(1)(B) of the ESA including without limitation 50 CFR 17.22(b) and 17.32(b), as amended from time to time. In the event of suspension or revocation, Permittee's obligations under this Agreement and the HCP will continue until the Service determines that all take of covered species that occurred under the permit has been fully mitigated in accordance with the HCP.

12.3 No Surprises Assurances

The Service has found that the golden-cheeked warbler is “adequately covered” (as such term is defined in the No Surprises Rule) by the HCP. The Service agrees that the golden-cheeked warbler shall be listed on the Permit as required by the No Surprises Rule. Section 6.9 of the HCP contains a more detailed statement regarding the assurances provided to the Permittee. Except as otherwise provided in this Agreement, the Service agrees that the Permittee is entitled to all rights, benefits, and privileges that may accrue to it under the No Surprises Rule with respect to the golden-cheeked warbler or any other Covered Species.

13. ADDITIONAL PARTICIPANTS

It is expected that from time to time the Permittee will sell and convey portions of the Property to third parties for their development, use, and occupation. In order to provide an efficient and effective means to assure that such third parties are obligated to comply with the relevant provisions of the Permit Documents and benefit from the authorizations granted in the Permit, the Service agrees that the Permittee, may, at the Permittee’s election, enter into with purchasers “Agreements of Inclusion” whereby such purchasers agree to be bound by and comply with those terms and conditions of the Permit applicable to the land they are purchasing within the Property. Sample forms of an Agreement of Inclusion and a Certificate of Inclusion are attached as Exhibit C and Exhibit D to this Agreement. A purchaser signing an Agreement of Inclusion and receiving a Certificate of Inclusion in the same forms as the samples provided in Exhibit C and Exhibit D shall be referred to as a “Participant.” The Service agrees that so long as the Permit remains in effect and a Participant is in compliance with the Agreement of Inclusion, that Participant shall be deemed, with respect to that Participant’s property within the Property, to have with respect to the Participant’s property the full benefits and authorities of the Permit. The Service further agrees that, after the Preserve has been dedicated by appropriate legal mechanisms, in the event that the Permit is suspended, terminated, or revoked for reasons not the fault of a Participant, and that Participant is in compliance with the terms of its Agreement of Inclusion, the Service will issue to such Participant a permit conferring the same rights, benefits, and responsibilities with respect to the Participant’s property as provided under the Permit, without additional requirements or conditions beyond those applicable to the Participant under its Agreement of Inclusion. The Service agrees that so long as Permittee utilizes reasonable efforts and diligence to cause Participants to comply with and perform their obligations under the applicable Agreements of Inclusion, a breach of those obligations or

terms of the Permit or the HCP by a Participant will not be considered a violation by the Permittee of the Permit. In the event a Participant has materially breached its Agreement of Inclusion and, after reasonable notice and opportunity to cure, such Participant fails to cure, remedy, rectify, or adequately mitigate the effects of such breach, then Permittee may, and shall if so directed by the Service, terminate that Participant's Agreement of Inclusion.

The Permittee will submit copies of all Agreements of Inclusion and Certificates of Inclusion to the Service within 15 days of the last signature thereof.

14. **AMENDMENTS**

Except as otherwise set forth herein, this Agreement may be amended consistent with the ESA and with the written consent of each of the parties hereto. The Service agrees to process requests for amendments in a timely manner. Reference is made to Section 6.9 of the HCP for additional provisions respecting amendment of this Agreement and the HCP. Amendments to any of the Permit Documents occurring subsequent to entering into an Agreement of Inclusion by a participant or issuance of a Certificate of Inclusion to a participant shall in no way impair that Participant's rights and obligations under its Agreement of Inclusion.

15. **REPORTING**

15.1 During the term of this Agreement, the Permittee shall provide to the Service by October 1 annually written annual reports of management and monitoring, including implementation of mitigation measures, management actions taken, and presence absence survey results for the golden-cheeked warbler. All reports will include the following certification from a responsible official who supervised or directed preparation of the report: I certify that, to the best of my knowledge, after appropriate inquiries of all relevant persons involved in the preparation of this report, the information submitted is true, accurate, and complete.

15.2 The Service may conduct inspections and monitoring in connection with the permit in accordance with its regulations (50 CFR 13.47).

16. **MISCELLANEOUS PROVISIONS**

16.1 No Partnership

Except as otherwise expressly set forth herein, neither this Agreement nor the HCP shall make or be deemed to make any party to this Agreement the agent for or the partner of any other party.

16.2 Successors and Assigns

This Agreement and each of its covenants and conditions shall be binding on and shall inure to the benefit of the Parties hereto and their respective successors and assigns in conformance with the provisions of applicable regulations. Participants shall not be considered successors and assigns of Permittee solely by reason of their participation through an Agreement of Inclusion but shall have the rights as elsewhere set forth in this Agreement including Section 13 of this Agreement.

16.3 Notice

Any notice permitted or required by this Agreement shall be delivered personally to the persons set forth below or shall be deemed given five (5) days after deposit in the United States mail, certified and postage prepaid, return receipt requested, and addressed as follows or at such other address as any Party may from time to time specify to the other Parties in writing:

Regional Director
United States Fish and Wildlife Service
Region 2, Room 4012
500 Gold Ave., S.W. (zip-87102)
P.O. Box 1306
Albuquerque, NM 87103-1306

with a copy to:

Austin Ecological Services Field Office
10711 Burnet Road, Suite 200
Compass Bank Building
Austin, Texas 78758
Attn: Field Supervisor

Lumbermen’s Investment Corporation

_____, Texas _____
Attn: _____

with a copy to:

_____, TX 78_____

Attn: _____

16.4 Entire Agreement

This Agreement, together with the Permit Documents, constitutes the entire Agreement between the Parties. It supersedes any and all other Agreements, either oral or in writing among the Parties with respect to the subject matter hereof and contains all of the covenants and Agreements among them with respect to said matters, and each party acknowledges that no representation, inducement, promise or Agreement, oral or otherwise, has been made by any other Party or anyone acting on behalf of any other Party that is not embodied herein.

16.5 Elected Officials Not to Benefit

No member of or delegate to Congress shall be entitled to any share or part of this Agreement, or to any benefit that may arise from it.

16.6 Availability of Funds

Implementation of this Agreement and the HCP by the Service is subject to the requirements of the Anti-Deficiency Act and the availability of appropriated funds. Nothing in this Agreement will be construed by the parties to require the obligation, appropriation, or expenditure of any money from the U.S. Treasury. The parties acknowledge that the Service will not be required under this Agreement to expend any Federal agency's appropriated funds unless and until an authorized official of that agency affirmatively acts to commit to such expenditures as evidenced in writing.

16.7 Multiple Originals

This Agreement may be executed in any number of multiple originals. A complete original of this Agreement shall be maintained in the records of each of the Parties hereto.

16.8 Third-Party Beneficiaries

Without limiting the applicability of the rights granted to the public pursuant to the provisions of 16 U.S.C. §1540(g), this Agreement shall not create any right or interest in the public, or any member thereof, as a third party beneficiary hereof, nor shall it authorize anyone not a Party to this Agreement to maintain a suit for personal injuries or property damages pursuant to the provisions of this Agreement. The duties, obligations, and responsibilities of the Parties to this Agreement with respect to third parties shall remain as imposed under existing Federal or State law.

16.9 Relationship to the ESA and Other Authorities

The terms of this Agreement shall be governed by and construed in accordance with the ESA and other applicable laws. In particular, nothing in this Agreement is intended to limit the authority of the Service to seek penalties or otherwise fulfill its responsibilities under the ESA. Moreover, nothing in this Agreement is intended to limit or diminish the legal obligations and responsibilities of the Service as an agency of the Federal government.

16.10 References to Regulations

Except as otherwise provided in this Agreement, any reference in this Agreement or the Permit Documents to any regulation or rules of the Service, shall be deemed to be a reference to such a regulation or rule in existence at the time an action is taken.

16.11 Applicable Laws

All activities undertaken pursuant to this Agreement, the HCP, the Permit, and all other Permit Documents must be in compliance with all applicable State and Federal laws and regulations.

16.11.1 Minor Modifications

[To be provided]

IN WITNESS WHEREOF, THE PARTIES HERETO have executed this Implementing Agreement to be in effect as of the date last signed below.

UNITED STATES FISH AND WILDLIFE SERVICE

By: _____
Regional Director
Albuquerque, New Mexico

Date: _____

LUMBERMEN'S INVESTMENT CORPORATION

By: _____
Name: _____
Title: _____

Date: _____

Exhibits:

- A: Property Description
- B: Preserve Property Description
- C: Agreement of Inclusion
Attachment A
Attachment B
- D: Certificate of Inclusion

EXHIBIT A TO THE IMPLEMENTING AGREEMENT

Property Description

EXHIBIT B TO THE IMPLEMENTING AGREEMENT

Preserve Property Description

EXHIBIT C TO THE IMPLEMENTING AGREEMENT

Agreement of Inclusion

**CIBOLO CANYON HABITAT CONSERVATION PLAN
AGREEMENT OF INCLUSION**

COUNTY OF BEXAR §
 §
STATE OF TEXAS §

RECITALS

The Bexar County region of South-Central Texas is home to the golden-cheeked warbler listed as endangered under the federal Endangered Species Act of 1973, as amended, 16 U.S.C. § 1531, et seq. (“ESA”).

In order to obtain authorization for potential impacts to listed golden-cheeked warbler in connection with construction and operation of the master planned development in San Antonio, Bexar County, Texas, known as “_____,” Lumbermen’s Investment Corporation (“LIC”) applied for a permit under section 10(a)(1)(B) of the ESA. The United States Fish and Wildlife Service (“Service”) issued Permit Number _____ (the “Permit”), to LIC on _____, 200_.

Pursuant to provisions of that certain Permit Implementing Agreement dated _____, 200_, by and between LIC and the Service (the “Implementing Agreement”), in exchange for committing to the implementation of various conservation measures described in the Permit and the associated Cibolo Canyon Master Phase II Environmental Assessment/Habitat Conservation Plan (the “Cibolo Canyon HCP”), LIC is authorized to assign certain Permit inclusion rights (hereinafter referred to as “Inclusion Rights”) to purchasers of land within the area covered by the Permit (“Participants”). Through inclusion in the Cibolo Canyon HCP, Participants are considered covered by the Permit to the extent and as provided in the Implementing Agreement.

AGREEMENT

This Cibolo Canyon Habitat Conservation Plan Agreement of Inclusion (“Agreement”) is entered into this ___ day of _____, 20___, by and between _____, hereinafter referred to as “Participant,” and LIC.

For and in consideration of the mutual covenants and considerations set forth herein, LIC and Participant hereby agree with respect to the assignment of certain Inclusion Rights as provided by the Permit and the Implementing Agreement as follows:

ARTICLE I.
PARTICIPANT'S PROPERTY

Participant is the owner of a tract or tracts of land consisting of approximately _____ acres situated within the property covered by the Permit in Bexar County, Texas, and more fully described and depicted in Attachment A (the "Participant's Property").

ARTICLE II.
ASSIGNMENT OF INCLUSION RIGHTS

LIC hereby assigns unto Participant certain Inclusion Rights for the exclusive use and benefit of the Participant's Property. These Inclusion Rights are assigned to the Participant for their use and benefit only with respect to the Participant's Property and in connection with the issuance of the Permit for the Cibolo Canyon HCP pursuant to section 10(a)(1)(B) of the Endangered Species Act, 16 U.S.C. § 1531, et seq. The term "Inclusion Rights" shall mean and refer to any and all authorizations, benefits, rights, credits, offsets, or other privileges or entitlements that may be utilized by Participants in conjunction with the Cibolo Canyon HCP Permit relating to the existence, dedication, conservation, maintenance, or preservation of the golden-cheeked warbler covered by the Permit.

This assignment is expressly made subject to the provisions and requirements of the Endangered Species Act of 1973, as amended, 16 U.S.C. § 1531, et seq.; Title 50 of the Code of Federal Regulations, including Parts 13, 17, and 21; the Permit; and the Cibolo Canyon HCP as provided by the Permit and including the conditions and requirements provided in the Cibolo Canyon HCP and the Implementing Agreement.

ARTICLE III.
CONSIDERATION

For and in consideration of its assignment of these Inclusion Rights, the Participant has paid to LIC \$10.00 and given other good and valuable consideration.

ARTICLE IV.
ADDITIONAL RESPONSIBILITIES OF PARTICIPANT;
SPECIAL TERMS

For and in consideration of the assignment of Inclusion Rights, the Participant agrees that it shall comply with the terms and conditions of this Agreement and those special conditions approved by the Service and set forth in Attachment B, attached hereto and incorporated herein for all purposes. Participant shall provide

any assistance to LIC necessary or appropriate to allow LIC to comply with the Permit, such as providing information relative to the Property that may be required for any reports to the Service.

ARTICLE V.
BREACH BY PARTICIPANT

In the event of any breach by Participant, LIC shall have the right, after providing Participant notice and opportunity to cure, remedy, rectify, or mitigate the effects of such breach, to pursue any and all remedies that may be available to LIC at law, in equity, or both, which remedies shall, in the case of a material breach of this Agreement by Participant, include the right to terminate this Agreement. Notification of breach shall be made by LIC to the Participant in writing at the address provided in ARTICLE XI below.

ARTICLE VI.
OBLIGATIONS OF LIC

LIC shall comply with the terms of the Permit and take such actions as are necessary to maintain the effectiveness of the Permit.

Notwithstanding anything to the contrary herein, LIC shall not be responsible to, nor liable to, Participant for any damages resulting from any rules, regulations, action(s), or inaction(s) by the U.S. Department of the Interior and/or the U.S. Fish and Wildlife Service promulgated, vacated, modified, or taken that would in any way impair or render ineffective, either partially or in its entirety, any or all benefits to the Participant's Property that accompany the assignment of the Inclusion Rights herein.

ARTICLE VII.
COVENANTS RUN WITH THE LAND; RECORDATION

Participant agrees that promises and covenants provided herein, including, without limitation, the Special Conditions attached hereto, as amended from time to time, are intended to be binding upon any heirs, successors, and assigns in interest to the Participant's Property. Upon any transfer of any ownership rights to all or part of the Participant's Property, this Agreement shall not terminate as to the particular property transferred, but rather shall continue in full force and effect and shall be fully binding upon any heirs, successors, and assigns in interest to the Participant's Property, or any portion thereof. Upon execution of this agreement by LIC and Participant, this Agreement shall be acknowledged and recorded in the Real Property Records of Bexar County, Texas.

ARTICLE VIII.
VENUE AND CHOICE OF LAW

The obligations and undertakings of each of the parties to this Agreement shall be performable in Bexar County, Texas, and this Agreement shall be governed by and construed in accordance with the laws of the State of Texas.

ARTICLE IX.
MODIFICATION

Any oral representations or modifications concerning this Agreement shall be of no force or effect, excepting subsequent amendments or modifications from time to time in writing signed by the parties hereto, or their respective successors and assigns. Any such written amendments or modifications to this Agreement, including any amendment to the Special Conditions, shall amend the terms and conditions of this Agreement, including the terms and conditions of the Special Conditions herein, as set forth in any such amendment.

ARTICLE X.
SUCCESSORS AND ASSIGNS

This Agreement, as amended from time to time, shall be binding upon and inure to the benefit of the successors and assigns of the respective parties hereto, where authorized pursuant to this Agreement.

ARTICLE XI.
NOTICE

Any notice to be given hereunder by either party to the other shall be in writing and may be effected by personal delivery in writing, or registered or certified mail, return receipt requested, when mailed to the proper party, at the following addresses:

PARTICIPANT:

LIC:

Lumbermen’s Investment Corporation

_____, Texas 78_____

with a copy to:

Each party may change the address for notice to it by giving notice of such change in accordance with the provisions of this paragraph.

ARTICLE XII.
TERM OF AGREEMENT

This Agreement shall terminate upon the expiration or termination of the Permit, or on _____, whichever is sooner.

ARTICLE XIII.
HEADINGS

The headings at the beginning of the various provisions of this Agreement have been included only in order to make it easier to locate the subject covered by each provision and are not to be used in construing this Agreement.

ARTICLE XIV.
NUMBER AND GENDER DEFINED

As used in this Agreement, whenever the context so indicates, the masculine, feminine, or neutral gender and the singular or plural number shall each be deemed to include the others.

ARTICLE XV.
MULTIPLE COUNTERPARTS

This Agreement may be executed in multiple counterparts, each of which shall constitute a duplicate original hereof, but all of which together shall constitute one and the same instrument.

ARTICLE XVI.
TIME OF ESSENCE

Time is of the essence in the Agreement.

EXECUTED AS OF THE LAST DAY SET FORTH BELOW.

LIC:

PARTICIPANT:

LUMBERMEN'S INVESTMENT CORPORATION

By: _____

Name: _____

Title: _____

Date: _____

Name: _____

Title: _____

Date: _____

ACKNOWLEDGEMENTS

STATE OF TEXAS §
COUNTY OF BEXAR §

This instrument was acknowledged before me on this ___ day of ___, 200_, by ___ of Lumbermen’s Investment Corporation, a ___ corporation, on behalf of said corporation.

NOTARY PUBLIC

STATE OF TEXAS §
COUNTY OF BEXAR §

This instrument was acknowledged before me on this ___ day of ___, 200_, by ___ of ___ a ___ corporation, on behalf of said corporation.

NOTARY PUBLIC

**Attachment A to the Agreement of Inclusion
(Legal Description of Participant's Property and Map)**

**Attachment B to the Agreement of Inclusion
(Special Conditions)**

1. Participant agrees to provide plans and specifications for Participant's proposed development of Participant's Property to LIC for review and approval as consistent with the terms of the Permit, the Implementing Agreement, and the Cibolo Canyon HCP. Such plans and specifications include without limitation those necessary for (a) approvals and permits such as zoning, subdivision, site plan, streets, utilities, drainage, and (b) other building and related infrastructure construction.

2. **[Additional Special Conditions to be provided based on final permit conditions.]**

EXHIBIT D TO THE IMPLEMENTING AGREEMENT

Certificate of Inclusion

**CIBOLO CANYON HABITAT CONSERVATION PLAN
CERTIFICATE OF INCLUSION**

The following tract or parcel of land _____
_____ (tract address, tax parcel id #,
and size of tract), has complied with requirements of the federal Endangered Species Act (16 U.S.C. §1531 et seq.) through participation under Endangered Species Act section 10(a)(1)(B) Permit Number _____ issued by the U.S. Fish and Wildlife Service to the Lumbermen’s Investment Corporation on _____, 200_. _____ (owner’s name) entered into an Agreement of Inclusion (“Agreement”) with Lumbermen’s Investment Corporation on _____ 200_. Said Agreement is recorded in the Real Property Records of Bexar County, Texas. Participation in the Cibolo Canyon Habitat Conservation Plan is subject to the terms and conditions of the Agreement.

This Certificate of Inclusion is issued By Lumbermen’s Investment Corporation to _____ on _____, 200_.

LUMBERMEN’S INVESTMENT CORPORATION

By: _____
Name: _____
Title: _____

This Certificate of Inclusion or a facsimile must be posted at the property from the time vegetation clearing begins until construction is completed. For residential development, completed construction is when all roads and utilities are completed to the extent that they meet the applicable acceptance criteria of the City of San Antonio or Bexar County. For commercial/industrial/multi-family developments, completed construction is when buildings are suitable for occupancy. For more information about the certificate, agreement, or the permit contact: Lumberman’s Investment Corporation, _____, Suite ____, _____, Texas 7_____. For information about the participating tract contact:

(On the line above, the participant must provide the name, address, and telephone of the responsible party for the participating tract)