

CONSERVATION EASEMENT (sample document)

Note: This form supplied by The Nature Conservancy is intended as an example only, and is not intended to replace legal advice. It does not purport to be complete or to comply with all requirements of relevant state or federal law, or with IRS requirements if the easement is intended to be a charitable donation. Neither is it necessarily recommended for your easement. Each easement is unique and should be drafted to reflect the circumstances and conservation purposes of your particular situation, as well as be consistent with the mission and goals of the land trust organization. The only conservation purpose that is covered in this easement is “natural habitat” – this form does not attempt to address any other conservation purpose (such as open space). Any conservation easement should be drafted with sound legal representation of the parties involved.

GRANT OF CONSERVATION EASEMENT

STATE OF _____ §

COUNTY OF _____ §

This Grant of Conservation Easement ("Conservation Easement") is made on this _____ day of _____, 20__, by _____, with an address of _____ ("Grantor"), and _____, with an address of _____ ("Grantee").

R E C I T A L S:

A. Protected Property. Grantor is the sole owner in fee simple of the property ("Property") legally described in Exhibit A, attached hereto and incorporated by this reference, which consists of approximately _____ acres located in _____ County, State of Texas and is generally known as _____.

B. Conservation Values. The Property possesses significant natural, ecological, and aesthetic values for conservation purposes (collectively, the “Conservation Values”) which are of importance to Grantor and Grantee, to the people of the county or counties in which the Property is located, and to the people of the State of Texas, and which include, but are not necessarily limited to, natural resource, ecological, and scientific values, including wildlife and plant resources. The Property is also a natural area which qualifies as a “relatively natural habitat of fish, wildlife, or plants, or similar ecosystem”, as that phrase is used in Section 170(h)(4)(A)(ii) of the Internal Revenue Code of 1986 (as amended).

The Conservation Values of the Property include (but are not necessarily limited to) habitats essential to maintaining various natural communities of plant and animal species. The

protection of the Property will also help to support many plant and animal species which are dependent on the water sources, nesting habitat, and food sources found on the Property; and will help to ensure that this area and its existing features will continue to be available for its natural habitat values. Some of the natural systems to be protected that are well represented in the Property include, without limitation: _____.

C. Easement Documentation Report. The characteristics of the Property, its current use and state of improvement, are described in a report entitled Easement Documentation Report of _____, dated _____, mutually agreed upon by the parties, prepared by Grantee for Grantor, and signed and acknowledged by both parties. Grantor worked with Grantee to ensure that the report is a complete and accurate description of the Property as of the date of this Conservation Easement. It establishes the baseline condition of the Property as of the Effective Date and includes reports, maps, photographs and other documentation.

D. Grantor and Grantee have the common purpose of conserving the above-described conservation values of the Property in perpetuity, and the State of Texas has authorized the creation of Conservation Easements pursuant to Chapter 183 of the Texas Natural Resources Code, TEX. NAT. RES. CODE ANN. §§ 183.01, *et. seq.*, and Grantor and Grantee wish to avail themselves of the provisions of that law.

NOW, THEREFORE, Grantor, for and in consideration of the facts recited above and of the mutual covenants, terms, conditions and restrictions contained herein and as an absolute and unconditional gift, hereby gives, grants, bargains, sells and conveys unto Grantee a Conservation Easement in perpetuity over the Property of the nature and character as follows:

1. **PURPOSE.** The purpose of this Conservation Easement is to ensure that the Property will be retained forever predominantly in its natural condition; to protect native plants, animals, or plant communities on the Property; to prevent any use of the Property that will significantly impair or interfere with the Conservation Values of the Property, while allowing for traditional uses on the Property that are compatible with and not destructive of the Conservation Values of the Property, such as limited residential construction, selective timber harvesting, ranching and farming of existing pastures and fields, and hunting, all subject to the terms of this Conservation Easement.

Grantor will not perform, nor knowingly allow others to perform, any act on or affecting the Property that is inconsistent with the purposes of this Conservation Easement. However, unless otherwise specified below, nothing in this Conservation Easement shall require Grantor to take any action to restore the condition of the Property after any act of God or other event over which Grantor had no control. Grantor understands that nothing in this Conservation Easement relieves them of any obligation or restriction on the use of the Property imposed by law.

2. **PROPERTY USES.** Any activity on or use of the Property inconsistent with the purposes of this Conservation Easement is prohibited. Without limiting the generality of the

foregoing, the following is a listing of activities and uses which are expressly prohibited or which are expressly allowed. Additional retained rights of Grantor are set forth in Paragraph 3 below.

- 2.1 Subdivision. [The Property may not be divided, subdivided or partitioned, nor conveyed or pledged for a debt except in its current configuration in its entirety.]
OR

[The Property may be divided, partitioned, subdivided, or conveyed into no more than _____ tracts by Grantor, after which the Property shall not be further divided, subdivided or partitioned. Each of these tracts shall continue to be bound by and subject to this Conservation Easement. [The minimum allowable size of a subdivided tract shall be _____ acres.] Whenever a subdivided tract is created or designated, the tract designation shall include: (i) the boundaries of the subdivided tract; (ii) the number of Development Areas (defined below), that will be assigned to that tract, together with the acreage size in accordance with section 2.2(c) below; and (iii) the apportionment of impervious cover to the tract if not apportioned pro rata based on acreage; and (iv) *[anything else relevant to a subdivided tract – ex. stocking rate apportionment]*. The tract designation (by division, partition, subdivision or conveyance) shall become effective upon recording in the real property records, with a recorded copy provided to Grantee.

- 2.2 Construction.

ALTERNATIVE I – No construction:

There shall be no construction allowed on the Property [except for minor improvements such as hunting blinds, subject to Grantee’s prior approval].

ALTERNATIVE II – Minor construction, impervious cover limit:

There shall be no construction allowed on the Property except in accordance with this Section.

- (a) Impervious Cover Limit. Notwithstanding anything to the contrary in this Conservation Easement, no more than _____ square feet of the Property (inclusive of all improvements, including new construction as well as existing improvements) may have an impervious cover. As used herein, “impervious cover” means and includes all improvements or materials that are impermeable as to water which in any way cover or are placed above the natural surface of the land. Examples of impervious cover include, without limitation, roof tops, driveways, and any other forms of paving (which includes any roadways improved either with pavement, concrete, caliche, soil consisting primarily of clay, or asphalt placed on top of the natural surface of the land). Examples of pervious cover include, without limitation, permeable decks, gravel, crushed rock, porous brick paving stones, or rock-base. The total amount of impervious cover on the

Property due to existing improvements as of the date of the grant of this Easement is _____ square feet.

- (b) New Construction. Grantor shall have the right to construct _____

[Example for drafting: Grantor may construct driveways, utilities, minor agricultural structures and a well to serve the buildings. Minor agricultural structures include, but are not limited to, coops, hutches, corrals, fish pond, greenhouse, rainwater collection system, water lines, tanks, etc. which are to be used solely for permitted agricultural or home business purposes to the extent set forth in Paragraph ___ below and which do not significantly impair or interfere with the Conservation Values.] No other structures may be placed or constructed on the Property except as allowed herein. Furthermore, there shall be no constructing or placing of any recreational court, airplane landing strip, utility pole (other than those necessary to service the Property's improvements), utility tower, conduit or line on or above the Property. Grantor may construct a windmill, wind turbine or other wind powered electrical generation system to service the Property for the activities allowed in this Conservation Easement so long as these improvements do not significantly impair or interfere with the Conservation Values.

- (c) Existing Improvements. Grantor shall have the right to maintain, remodel, remove, replace and repair existing structures, water tanks, fences, corrals, water wells, header dams, utilities, and other improvements, and in the event of their destruction, to reconstruct any such existing improvements with another of similar function, capacity, location and material, unless otherwise approved by Grantee.
- (d) Preservation of Conservation Values. Grantor shall at all times use best efforts and practices in the construction of improvements to minimize impact on the Conservation Values. All new construction shall be sited as to cause the least disturbance to the Conservation Values of the Property. Grantor agrees to use best efforts to site any new construction in such a manner to take advantage of existing trees, access to utilities, water, public roads and existing drainages, and to minimize disturbance to the Conservation Values.
- (e) No Other Construction. Except as expressly set forth in this Section 2.2 or elsewhere in this Conservation Easement, no other structures or improvements may be placed or constructed on the Property.

ALTERNATIVE III – Impervious Cover Limit, No Development Zones, Development Areas:

- (a) Impervious Cover Limit. Notwithstanding anything to the contrary in this Conservation Easement, no more than _____ square feet [*or percent*] of the Property (inclusive of all improvements, including new construction as well as existing improvements) may have an impervious cover. As used herein, “impervious cover” means and includes all improvements or materials that are impermeable as to water which in any way cover or are placed above the natural surface of the land. Examples of impervious cover include, without limitation, roof tops, driveways, and any other forms of paving (which includes any roadways improved either with pavement, concrete, caliche, soil consisting primarily of clay, or asphalt placed on top of the natural surface of the land). Examples of pervious cover include, without limitation, permeable decks, gravel, crushed rock, porous paving stones, rock-base or clean soil. The total amount of impervious cover on the Property due to existing improvements as of the date of the grant of this Easement is _____ square feet [which amounts to ___ percent of the Property].

[The impervious cover limit set forth in this Section 2.2(a) shall be pro rata apportioned among any tracts resulting from the division, partition, subdivision, or conveyance of the Property under Section 2.1 above on an acreage basis as determined by the total acreage of the partitioned tract, unless another method of apportionment is applied by Grantor; provided, however, that any such other method of apportionment (i) shall be done at the time of the division, partition, subdivision or conveyance, (ii) shall become effective upon recording of any document memorializing the division, partition, subdivision or conveyance in the county real property records and the delivery of a copy of the same to Grantee, and (iii) shall not thereafter be subject to change by Grantor without the approval of Grantee.]

- (b) No Development Zones. Notwithstanding anything to the contrary in this Conservation Easement, no construction (other than minor improvements described below subject to Grantee’s approval) shall occur and no new improvements may be located in any of the following areas (collectively, the "No Development Zones") which are generally shown on the map attached hereto as Exhibit B and incorporated herein by reference: [*Insert sensitive areas. Here are examples:*

- (i) any part of the Property located within _____ feet of the centerline of the _____ River; and

- (ii) any part of the Property located within the habitat of the golden-cheeked warbler as shown on the attached Exhibit B.]

Only minor improvements (such as trails and hunting blinds) that have minimal surface disturbance and are approved by Grantee may be constructed in a No Development Zone.

- (c) Development Area. The Property may have up to ____ (___) "Development Areas". Each of the Development Areas shall not exceed [five (5)] acres in size. The location and configuration of the Development Areas shall not include any part of a No Development Zone, but may otherwise be designated by Grantor at any time by written notice to Grantee and shall be subject to the prior written approval of Grantee. Within each Development Area, Grantor reserves the right to construct, reconstruct, remodel, rebuild, and maintain the following improvements: one single-family¹ residential compound and attendant outbuildings (such as a garage, barns, swimming pool, tennis court, guest house, or shed) and any other improvements necessary for ranching, recreational uses, or other permitted uses of the Property. No billboards, or other advertising display, cell phone or similar towers, aboveground utility lines and poles (other than those above or below ground lines and poles necessary to service the Property's permitted improvements) may be constructed.
- (d) Roads. Within the Development Areas, new roads may be constructed and maintained as necessary to support the activities expressly permitted herein. Outside of the Development Areas, [one (1)] new road may be built to each Development Area[, and ___ additional new roads may be built]; provided, however, no new roads shall be located within a No Development Zone. No additional new roads shall be constructed on the Property unless approved by Grantee. Existing roads may be maintained and repaired.

Grantor may construct 2-Tracks (defined below) to the limited extent necessary for the activities and to access the improvements expressly permitted in this Conservation Easement; provided, however, that any new 2-Tracks in the No Development Zone shall be subject to Grantee's prior approval. Grantee reserves the right to expressly limit the number or location of 2-Tracks if Grantee determines in its discretion that the Conservation Values may be adversely impacted. "2-Tracks" means avenues of vehicle access delineated on the natural surface of the land as two (2) parallel wheel tracks and that have not been improved by any

¹ Single-family residence means a residence that is not legally divided into units of separate ownership or possession, such as with a duplex, condominium or apartment.

building, construction, installation, or placement of any materials thereon.

- (e) Other Improvements. Structures or other construction outside the Development Areas shall be limited to traditional ranching improvements in the county area, such as fences, corrals, pens, hunting blinds, water tanks and troughs, and other improvements related to the activities permitted by this Conservation Easement, but only to the extent such improvements do not impair or interfere with the Conservation Values and are not located within the No Development Zones unless existing as of the date hereof or otherwise approved as set forth in section 2.2(b) above. Septic systems and leach fields shall meet county codes and other applicable laws, and shall not be built or installed within 200 feet of any surface waters or springs, flowing streams, rivers and tributaries. Grantor may construct, maintain, repair, and replace drainage ditches, trails, utilities and wells to serve the new and existing improvements and buildings; provided, however, that any such improvements shall be limited to an amount reasonably necessary to serve the new and existing buildings and shall not significantly impair or interfere with the Conservation Values. Grantee reserves the right to limit the amount of structures and improvements if Grantee determines in its discretion that the Conservation Values may be adversely impacted.
- (f) Existing Improvements. Grantor shall have the right to maintain, remodel, remove, replace and repair existing structures, water tanks, fences, corrals, water wells, header dams, utilities, and other improvements, and in the event of their destruction, to reconstruct any such existing improvements with another of similar function, capacity, location and material, unless otherwise approved by Grantee.
- (g) Preservation of Conservation Values. Grantor shall at all times use best efforts and practices in the construction of improvements to minimize impact on the Conservation Values. All new construction shall be sited as to cause the least disturbance to the Conservation Values of the Property. Grantor agrees to use best efforts to site any new construction in such a manner to take advantage of existing trees, access to utilities, water, public roads and existing drainages, and to minimize disturbance to the Conservation Values.
- (h) No Other Construction. Except as expressly set forth in this Section 2.2 or elsewhere in this Conservation Easement, no other structures or improvements may be placed or constructed on the Property.

2.3 Mineral Extraction. There shall be no exploration, development, production, extraction, or transportation of oil, gas or other mineral substances (whether such

other mineral substances be part of the mineral estate or part of the surface estate) on, from, or across the Property (“Mineral Activities”) except in accordance with this section; provided, however, that this section does not apply to water, which is addressed elsewhere in this Conservation Easement.

- (a) No Surface Mining. Mineral Activities shall not be conducted by any surface mining methods. Surface mining is strictly prohibited.

ALTERNATIVE I – No Oil and Gas Activities on the Property:

- (b) Other Mineral Activities Off-Site. Grantor has the right and retains its interests in all oil, gas and other mineral substances (whether such other mineral substances be part of the mineral estate or part of the surface estate) in and under the Property; provided, however, it is understood and agreed by Grantor and Grantee that, in conducting any Mineral Activities on the Property, Grantor shall not use or occupy any portion of the surface estate of the Property and shall not place any facilities, fixtures, equipment, building, structures, pipelines, rights of way or personal property of any kind or nature whatsoever on the surface of the Property or in the subsurface within the depth interval of 1000 feet below the surface of the Property or on or in any portion thereof. Grantor agrees that any and all Mineral Activities shall be strictly on a “no-drill” basis, except for directional or horizontal drilling below said subsurface interval from a surface location off the Property, and on a “no-operations” basis, and, accordingly, Grantor hereby waives any rights whatsoever to the use of the surface and said subsurface interval of the Property in connection with any Mineral Activities on the Property. Notwithstanding anything above to the contrary, Grantor shall not be prohibited to conduct exploratory activities that are non-invasive and do not otherwise damage or negatively impact the watersheds or aquifer. To the extent Grantor elects to explore for or otherwise extract or exploit any oil, gas or other minerals in or under the Property from a surface location off the Property, Grantor shall use its best efforts to minimize any damage or other negative impact on the watersheds or aquifer by such activity.]

ALTERNATIVE II – Restricted Oil and Gas Activities Allowed on the Property:

- (b) Oil and Gas Mineral Activities. Further, there shall be no Mineral Activities on the Property, except for oil and gas (together with such other liquid or gaseous hydrocarbons, sulfur, and substances as are necessarily produced through the wellbore with and incidental to the production of oil or gas from wells producing from the Property) (“Oil and Gas Mineral Activities”); provided, however, that such Oil and Gas Mineral Activities above shall not include the installation or operation of any amine or other hydrogen sulfide or sulfur treatment or removal facilities, gas processing

facilities, refining facilities, or cathodic protection facilities, all of which facilities are strictly prohibited on the Property.

Oil and Gas Mineral Activities may be accomplished only by methods that will have a limited and localized impact on, and not significantly impair or interfere with, the Conservation Values and the purposes of this easement.

The person conducting any Oil and Gas Mineral Activities shall at all times use best efforts and practices to prevent damage or impairment of natural values and shall restore any area damaged to its original condition.

All facilities relating to any Oil and Gas Mineral Activities must be concealed or otherwise located so as to be compatible with existing topography and landscape to the greatest extent practical. Grantee must be given written notice of any actual or proposed Oil and Gas Mineral Activities at least forty-five (45) days prior to entering into any contract or lease, and, if no such contract or lease, prior to beginning any work. Grantor shall, prior to entering into any contract or lease (or prior to beginning any work if there is no contract or lease), consult with Grantee and incorporate conditions or restrictions as Grantee may reasonably determine are required in order to prevent a significant impairment or interference with the Conservation Values (such as limiting the number and location of facilities, roads, pipelines, etc.). *[Insert any special limitations, such as no activity in sensitive areas, specific limit on number of well sites, etc.]* Any and all subsequent mineral contracts, mineral conveyances, and mineral leases shall be bound by the provisions hereof.

INSERT IF MINERALS ARE OWNED IN WHOLE OR IN PART BY A THIRD-PARTY:

- (c) Third-Party Minerals. In the event all or part of the oil, gas or other mineral substances (whether such other mineral substances be part of the mineral estate or part of the surface estate) are owned by third parties as of the date of the grant of this Conservation Easement, the following provisions shall apply to such third party oil, gas and other mineral substances to the extent this Conservation Easement is deemed subordinated (by law or otherwise) to such oil, gas and other mineral substances ownership rights: Whenever such third party owners are required by applicable law or pursuant to any existing or future contract, conveyance or lease to obtain any consent from Grantor with respect to any access to, operation on, physical alteration of, or improvement to the Property, Grantor shall, prior to giving any such consent, consult with Grantee and use its best efforts to incorporate conditions or restrictions on such consent as Grantee may reasonably determine are required in order to prevent a significant impairment or interference with the Conservation Values. In the event Grantor at any time becomes the owner of any of such third party ownership rights, then such rights shall be deemed

immediately subject to this Conservation Easement (including without limitation, paragraphs (a) and (b) of this section), and any and all subsequent Mineral Activities, contracts, conveyances and leases of or relating to such ownership rights shall be bound by the provisions of this easement.

- 2.4 Agricultural Use. **[Co-ordinate use of this paragraph with use of 2.5 Timber Harvest and 2.6 Grazing]** There shall be no agricultural activities on the Property except in accordance with this section and section 2.7 below. Grantor shall have the right to (i) plant, raise and harvest crops in existing fields identified on the map attached hereto as Exhibit B, and (ii) to perform primary processing, store and sell, including direct sales to the public, of crops and products (excluding timber) harvested and produced principally on the Property.
- 2.5 Timber Harvest. Timber harvesting on the Property is prohibited except as allowed herein. [Grantor shall have the right to harvest timber from the Property in order to provide firewood for residences allowed on the Property and for maintaining allowed structures and improvements on the Property, such as residences, barn, corrals, fences, etc. No additional timber harvesting shall be allowed.] OR [Grantor shall have the right to harvest timber from the Property pursuant to a Forest Management Plan, to be updated at least every _____ years, that is prepared by a registered professional forester and approved by Grantee and that is designed to insure the maintenance of good quality growing stock of _____, while protecting soil stability, water quality and other conservation values of the Property, including without limitation scenic, riparian and wildlife habitat values.]
- 2.6 Grazing. [Grantor shall not graze or pasture domestic animals on the Property.]
OR
[Grantor shall have the right to breed, raise, graze and pasture domestic animals in existing fields and pastures identified on the map attached hereto as Exhibit B. No level of grazing may be allowed that would result in an unreasonable deterioration of the pastures or other Conservation Values of the Property.]
OR
[Grantor shall have the right to graze and pasture animals pursuant to the grazing plan attached hereto as Exhibit C (the “Grazing Plan”) [OR that is prepared by a range management specialist and shall be subject to the approval of Grantor and Grantee]. It is intended that the Grazing Plan will be updated at least every 5 years, with any changes subject to the approval of Grantor and Grantee; provided, however, in the event the Grazing Plan is not so updated, the plan then in existence shall continue in effect. The Grazing Plan is designed to ensure the maintenance of a good quality mix of grasses while protecting soil stability, water quality and other Conservation Values of the Property.]

Grantor may not establish or maintain any commercial feedlot on the Property, which is defined for the purpose of this easement as a confined area or facility within which the land is not grazed or cropped at least annually and which is used to receive livestock that has been raised off the Property for feeding and fattening for market.

- 2.7 Home Businesses. Any business that is conducted by, and in the home of, a person residing on the Property, and which does not require or result in any surface alteration or other development or disturbance of the land and that do not adversely affect the Conservation Values, is allowed.
- 2.8 Recreational Uses. Grantor shall have the right to engage in and permit others to engage in recreational uses of the Property, including, without limitation, hunting and fishing, that do not require or result in any surface alteration or other development or disturbance of the land and that do not adversely affect the Conservation Values. No off-road use of vehicles for recreation is allowed. Further, pursuit of wildlife by any form of motorized transportation is not allowed.
- 2.9 Vehicles. There shall be no operation of snowmobiles, dune buggies, motorcycles, all-terrain vehicles (ATVs) or other types of motorized recreational vehicles on the Property, except in conjunction with activities otherwise allowed by this Conservation Easement. Cars, trucks, ATVs and other ranch vehicles shall not be considered as recreational vehicles when used for the agricultural purposes allowed by this Conservation Easement. All permitted vehicle use shall be conducted in a manner that minimizes damage to the Conservation Values of the Property. *[Insert any limits that may be necessary in the No Development Zones.]*
- 2.10 Excavation. Except as necessary to accommodate the activities expressly permitted under this easement, there shall be no ditching, draining, diking, filling, excavating, dredging, removal of topsoil, sand, gravel, rock, minerals or other materials, mining, drilling or removal of minerals, nor any building of roads or change in the topography of the Property or disturbance in the soil in any manner. Notwithstanding the foregoing, nothing in this section shall be deemed to authorize surface mining (including, without limitation, the removal of gravel, sand or caliche) or any other activity expressly prohibited elsewhere in this Conservation Easement.
- 2.11 Destruction of Plants, Disturbance of Natural Habitat. Without prior approval of Grantee, Grantor shall have the right to: (i) cut and remove non-native trees, shrubs, or plants, (ii) cut and remove dead, dying or diseased native trees, shrubs and plants, (iii) cut or prune trees and brush to the limited extent that they constitute a hazard to permitted road and trail usage, *[and (iv) cut and remove trees, shrubs or plants to accommodate the structures and improvements expressly*

permitted under this easement so long the Conservation Values are not significantly impaired or interfered with. *Limit this clause as appropriate.*] With the prior approval of Grantee, Grantor shall have the right to (i) cut firebreaks, except that such approval shall not be required in case of emergency firebreaks, and (ii) cut and remove native trees, shrubs, or plants in order to preserve or enhance natural communities or other Conservation Values of the Property or other reasonable purposes that do not adversely impact the Conservation Values. There shall be no additional removal, harvesting, destruction, or cutting of native trees, shrubs, or plants. [Except for use around improvements or in gardens within the Development Areas,] there shall also be no planting of non-native trees, shrubs or plants on the Property.

- 2.12 Non-Native Plants and Animals. There shall be no intentional introduction of non-native plants or animals on the Property except as may be otherwise expressly allowed elsewhere in this Conservation Easement.
- 2.13 Hydrology. [Other than the construction of wells to serve allowed improvements or for activities expressly allowed in this easement,] there shall be no alteration, depletion or extraction of surface water, natural water courses, lakes, ponds, marshes, subsurface water or any other water bodies on the Property.
- 2.14 Signage. No signs or billboards or other advertising displays are allowed on the Property, except that signs whose placement, number and design do not significantly diminish the scenic character of the Property.
- 2.15 Biocides. There shall be no use of pesticides or biocides including but not limited to insecticides, fungicides, rodenticides, herbicides, and fertilizers, except as approved by Grantee.
- 2.16 Dumping. There shall be no storage or dumping of trash, garbage, or other unsightly or offensive material, hazardous substance, or toxic waste, nor any placement of underground storage tanks in, on, or under the Property; there shall be no changing of the topography through the placing of soil or other substance or material such as land fill or dredging spoils, nor shall activities be conducted on the Property that could cause erosion or siltation on the Property.
- 2.17 Pollution. There shall be no pollution of surface water, natural water courses, lakes, ponds, marshes, subsurface water or any other water bodies, nor shall activities be conducted on the Property that would be detrimental to water purity or that could alter the natural water level or flow in or over the Property.
- 2.18 Predator Control. Grantor shall have the right to control, destroy, or trap predatory and problem animals which pose a material threat to livestock, humans or the Conservation Values by means and methods approved by Grantee. The

method employed shall be selective and specific to individuals, rather than broadcast, nonselective techniques.

2.19 Commercial Development. Any commercial or industrial use of or activity on the Property, other than those relating to [agriculture, recreational, home businesses or mineral extraction] to the extent permitted in this Conservation Easement is prohibited. No rights of passage shall be granted or retained across or upon the Property if that right of passage is used in conjunction with prohibited activities.

2.20 [*Optional: Density*. Neither the Property nor any portion of it shall be included as part of the gross area of other property not subject to this Conservation Easement for the purposes of determining density, lot coverage, or open space requirements under otherwise applicable laws, regulations or ordinances controlling land use and building density. No development rights that have been encumbered or extinguished by this Conservation Easement shall be transferred to any other lands pursuant to a transferable development rights, scheme cluster development arrangement or otherwise; provided, however, that with prior written permission of Grantee, this paragraph shall not preclude such transfer of development rights resulting from the destruction or demolition of any existing residential building on the Property.]

3. **ADDITIONAL RIGHTS RETAINED BY GRANTOR.** Grantor retains the following additional rights:

3.1 Existing Uses. The right to undertake or continue any activity or use of the Property not prohibited by this Conservation Easement. Prior to making any change in use of the Property, Grantor shall notify Grantee in writing to allow Grantee a reasonable opportunity to determine whether such change would violate the terms of this Conservation Easement.

3.2 Transfer. The right to sell, give, mortgage, lease, or otherwise convey the Property subject to the terms of this Conservation Easement.

3.2 Habitat Restoration and Enhancement. With the prior written approval of Grantee, the right to restore and enhance native plant and wildlife habitat, consistent with approved wildlife management and soil conservation practices and all applicable laws and regulations governing such practices.

4. **NOTICE/APPROVAL OF EXERCISE OF GRANTOR'S RESERVED OR RETAINED RIGHTS.**

4.1 Notice. For activities for which Grantee's prior approval is not expressly required, Grantor hereby agrees to notify Grantee in writing fifteen (15) days before exercising any reserved or retained right under this easement that may have an adverse

impact on the Conservation Values (unless a different time period is otherwise expressly required in this easement).

4.2 Approval. When Grantee's approval is required prior to Grantor engaging in any activity, Grantor's request for approval shall be in writing and contain detailed information regarding the proposed activity. Such request shall be delivered to Grantor at least sixty (60) days prior to the anticipated start date of such activity. Grantee agrees to use reasonable diligence to respond to the request within said 60 days; provided, however, that approval shall not be deemed in the event of Grantee's delay in response.

[4. *Optional: MANAGEMENT PLAN*. As used in this Conservation Easement, the "Management Plan" shall mean and refer to that certain Wildlife Management Plan to be developed by the joint efforts of Grantor and Grantee, and approved by Grantee (the "Management Plan"). In the event the Management Plan is not developed or approved, then the activity for which the Management Plan is referred to herein, shall be prohibited unless otherwise permitted under this Conservation Easement or Grantee's prior approval is given. The Management Plan shall be reviewed every five years by Grantor and Grantee, and modified to the extent mutually agreeable by Grantor and Grantee. In the event the Management Plan is not reviewed and/or updated every five years, then the then existing Management Plan shall control. Further, in the event there is any conflict between any provision of this Conservation Easement and the Management Plan, the provisions of this Conservation Easement shall control.]

5. **GRANTEE'S RIGHTS**. To accomplish the purpose of this Conservation Easement, the following rights are granted to Grantee by this Conservation Easement:

5.1 Right to Enforce. The right to preserve and protect the Conservation Values of the Property and enforce the terms of this Conservation Easement.

5.2 Right of Entry.

(a) The right of Grantee to enter the Property at reasonable times for the purposes of (i) inspecting the Property to determine if there is compliance with the terms of the Conservation Easement, and (ii) obtaining evidence for the purpose of seeking judicial enforcement of this easement. Grantee agrees that this entry will be done in a manner that will not interfere unreasonably with Grantor's permitted uses of the Property. Grantee also agrees to provide advance written notice to Grantor prior to entering the Property, except in any case where immediate entry is necessary or desirable to prevent, terminate, or mitigate damage to, or the destruction of, the Conservation Values, or to prevent, terminate or mitigate a violation of the terms of this easement.

(b) The right of Grantee's staff, contractors and associated natural resource management professionals to enter the Property at least two (2) times per year at a mutually convenient time (with any additional visits requiring Grantor's consent)

for the purposes of: (i) ecological monitoring, biological surveys, inventories and research as described below, and (ii) management of exotic and invasive plants and animals. This right of entry shall be done in a manner as will not disturb the quiet enjoyment of the Property by Grantor.

5.3 Monitoring and Research. The right, but not the obligation, to monitor the plant and wildlife populations, plant communities and natural habitats on the Property. Grantor shall cooperate with Grantee in establishing, at no expense to Grantor, a written Monitoring and Research Plan, if desired by Grantee, to direct the monitoring of and research on plant and wildlife populations, plant communities and natural habitats on the Property.

5.4 Management of Exotics and Invasive Species. The right, but not the obligation, to control, manage or destroy exotic non-native species or invasive species of plants and animals that threaten the Conservation Values of the Property. Such activities shall be in accordance with management practices of Grantee and may include, but shall not be limited to, application of pesticides, mowing, fencing, trapping and prescribed burning. Grantee will consult with Grantor prior to implementing management activities.

6. **RESPONSIBILITIES OF GRANTOR AND GRANTEE NOT AFFECTED.** Other than as specified herein, this Conservation Easement is not intended to impose any legal or other responsibility on Grantor, or in any way to affect any existing obligation of Grantor as owners of the Property. Among other things, this shall apply to:

6.1 Taxes. Grantor shall be solely responsible for payment of all taxes and assessments levied against the Property.

6.2 Upkeep and Maintenance. Grantor shall be solely responsible for the upkeep and maintenance of the Property, to the extent it may be required by law. Grantee shall have no obligation for the upkeep or maintenance of the Property.

7. **ACCESS.**

7.1 Public Access. No right of access by the general public to any portion of the Property is conveyed by this Conservation Easement. However, the public has the right to view the Property from adjacent publicly accessible areas such as public roads and waterways.

7.2 Grantee's Access to the Property. Without limiting the generality of the grant of this Conservation Easement to Grantee, Grantor expressly conveys and assigns to Grantee the rights of ingress and egress to and through the Property as an assignee of a partial interest in the Property solely as an easement holder by virtue of this grant of Conservation Easement, including without limitation, rights of access

pursuant to the following easements:

[*Insert to confirm third-party easement access:* (a) Non-exclusive right of way and easement described in Right of Way and Easement dated _____, recorded at _____ in the Real Property Records of _____, _____; and]

[*Insert if access needed across Grantor's adjacent property:*(b) Non-exclusive easement over and across the [adjacent property owned by Grantor more particularly described on Exhibit D] (the "Adjacent Property") which is hereby GRANTED AND CONVEYED, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and by these presents Grantor does GRANT AND CONVEY unto Grantee, a non-exclusive easement upon and across the Adjacent Property, for the purpose of providing ingress and egress to the Property for all purposes related to this Conservation Easement. The easement, rights and privileges herein granted shall be perpetual, shall be an easement appurtenant to the Property and this Conservation Easement, and shall exist in favor of Grantee, its successors, assigns, and other transferees of this Conservation Easement. Grantor hereby binds itself and assigns, to WARRANT AND FOREVER DEFEND the access easement and rights unto Grantee, its successors and assigns. Grantor reserves the right to specifically locate the easement across the Adjacent Property so long as such located easement provides reasonable access to Grantee to the Property [and each tract thereof].]

8. **EASEMENT ENFORCEMENT.** Grantee shall have the right to prevent and correct violations of the terms of this Conservation Easement. The following provisions shall be applicable to enforcement of this Conservation Easement:

- 8.1 Notice of Violation. If Grantee becomes aware that a violation of the terms of this Conservation Easement has occurred or is threatened to occur, Grantee may at its discretion take appropriate legal action. Except when an ongoing or imminent violation could substantially diminish or impair the Conservation Values, Grantee shall give a written notice of the violation to Grantor.
- 8.2 Corrective Action. Upon the giving of a notice of violation, Grantor shall promptly commence, and thereafter diligently pursue to completion, corrective action sufficient to cure the violation (if there is a violation) and, where the violation involves injury to the Property, to restore the portion of the Property so injured.
- 8.3 Default. Grantor shall be in default of this Conservation Easement if it fails to so cure the violation within sixty (60) days after the notice of violation is given; provided that, if more than sixty (60) days is reasonably required for the corrective action, then, if Grantor promptly begins the corrective action within such sixty

(60) day period, no default shall exist as to the violation for so long thereafter as Grantor is diligently pursuing such cure to completion. The fact that a default does not exist under the foregoing provisions shall in no event, however, absolve Grantor from any liability under this Conservation Easement with respect to the violation.

- 8.4 Remedies. In the event of a violation, Grantee shall have all remedies available at law or in equity to enforce the terms of this Conservation Easement, including (but not limited to) the right to: (i) seek a temporary or permanent injunction with respect to any activity causing a violation; (ii) force the restoration of that portion of the Property affected by the violation to a condition similar or equivalent to the condition that existed prior to the violation, by restoring soils, replanting suitable domestic vegetation, or taking such other action as is reasonably necessary to achieve such restoration; and (iii) recover any additional damages arising from the violation; provided, however, that, except in the event of emergency enforcement, Grantee shall not enforce its rights under clauses (i) or (ii) above after the giving of a notice of violation until such time as a default exists under the foregoing provisions. The foregoing remedies shall be cumulative and shall be in addition to all other remedies existing at law or in equity with respect to the violation.
- 8.5 Costs of Enforcement. In any action, suit or other proceeding undertaken to enforce any right or obligation under this Conservation Easement, or to interpret any of the provisions of this Conservation Easement, the prevailing party shall be entitled to recover from the non-prevailing party the costs and expenses of such proceeding, including (but not limited to) the court costs and attorneys' fees and expenses incurred by the prevailing party (whether incurred at the trial, appellate, or administrative level), in such amount as the court or administrative body may judge reasonable, all of which may be incorporated into and be a part of any judgment or decision rendered in such action, suit or other proceeding.
- 8.6 Emergency Enforcement. The foregoing provisions notwithstanding, if Grantee reasonably determines that a violation has occurred or is about to occur and circumstances require immediate action to prevent, terminate, or mitigate significant damage to or the destruction of any of the Conservation Values, or to prevent, terminate, or mitigate a significant violation of a material term of this Conservation Easement, such party may give a notice of violation to the extent reasonably practicable under the circumstances (which may be given orally in such cases or not at all depending on the circumstances) and Grantee may then pursue its remedies under this Conservation Easement without waiting for the period to cure the violation which is provided for above.
- 8.7 Discretion. The failure of Grantee to discover a violation or to take action under this Conservation Easement with respect to a violation shall not bar it from doing so at a later time, and shall not be deemed or construed to be a waiver of

Grantee's rights in the event of any subsequent occurrence of that or any other violation.

9. **TRANSFER OF EASEMENT.** The parties recognize and agree that the benefits of this easement are in gross and assignable. Grantee shall have the right to transfer or assign this Conservation Easement to a "qualified organization" under Section 170(h) of the U.S. Internal Revenue Code (which qualified organization must also be qualified to hold the Conservation Easement under applicable state law), and the organization expressly agrees to assume the responsibility imposed on Grantee by this Conservation Easement. If Grantee ever ceases to exist or no longer qualifies under Sec. 170(h) or applicable state law, a court with jurisdiction shall transfer this easement to another qualified organization having similar purposes that agrees to assume the responsibility.

[In the event Grantee transfers or assigns this Conservation Easement, in whole or in part, Grantee is hereby granted the right to reserve a third-party right of enforcement if Grantee so elects at the time of the transfer.]

10. **TRANSFER OF PROPERTY.** Any time the Property, or any interest therein, is transferred by Grantor to any third party, Grantor shall notify Grantee in writing at least thirty (30) days prior to the transfer of the Property, and the document of conveyance shall expressly refer to this Conservation Easement.

11. **AMENDMENT OF EASEMENT.** This Conservation Easement may be amended only with the written consent of Grantor and Grantee. Any such amendment shall be consistent with the purposes of this Conservation Easement and shall comply with Sec. 170(h) of the Internal Revenue Code, or any regulations promulgated in accordance with that section. Any such amendment shall also be consistent with Chapter 183 of the Texas Natural Resources Code, TEX. NAT. RES. CODE ANN. §§ 183.01, *et. seq.*, or any regulations promulgated pursuant to that law. Grantor and Grantee have no right or power to agree to any amendment that would affect the enforceability of this Conservation Easement.

12. **TERMINATION OF EASEMENT.** If it is determined that conditions on or surrounding the Property have changed so much that it is impossible to fulfill the conservation purposes set forth above, a court with jurisdiction may, at the joint request of both Grantor and Grantee, terminate this Conservation Easement.

If condemnation of a part of the Property or of the entire Property by public authority renders it impossible to fulfill any of these conservation purposes, the Conservation Easement may be terminated through condemnation proceedings.

At the time of the conveyance of this Conservation Easement to Grantee, this Conservation Easement gives rise to a real property right, immediately vested in Grantee. If the easement is terminated and the Property is sold or taken for public use, then, as required by Sec. 1.170A-14(g)(6) of the IRS regulations, Grantee shall be entitled to a percentage of the gross sale

proceeds or condemnation award (minus any amount attributable to new improvements made after the date of this conveyance, which amount shall be reserved to Grantor) equal to the ratio of the appraised value of this easement to the unrestricted fair market value of the Property, as these values are determined on the date of this Conservation Easement. Grantee shall use the proceeds consistently with the conservation purposes of this Conservation Easement.

13. **INTERPRETATION.** This Conservation Easement shall be interpreted under the laws of the State of Texas, resolving any ambiguities and questions of the validity of specific provisions so as to give maximum effect to its conservation purposes.

14. **TITLE.** Grantor covenants and represents that Grantor is the sole owner and is seized of the Property in fee simple and has good right to grant and convey this Conservation Easement; that the Property is free and clear of any and all encumbrances, including but not limited to, any mortgages not subordinated to this Conservation Easement, and that Grantee shall have the use of and enjoy all of the benefits derived from and arising out of this Conservation Easement. *[NOTE: If any mortgages exist, they must be subordinated.]*

15. **NOTICES.** Any notices required by this Conservation Easement shall be in writing and shall be personally delivered or sent by first class mail, to Grantor and Grantee, respectively, at the following addresses, unless a party has been notified by the other of a change of address.

To Grantor:

To Grantee:

16. **HAZARDOUS WASTE.** Grantor represents and warrants that no hazardous substance or toxic waste exists or has been generated, treated, stored, used, disposed of, or deposited in or on the Property, and that there are not now any underground storage tanks located on the Property. Without limitation of any other indemnity or release set forth in this Conservation Easement, Grantor and its successors and assigns release and shall indemnify, defend and hold Grantee harmless from any liability related to Grantor's representations and warranties in this paragraph or related to the use, deposit or release of any hazardous substance or toxic waste on the Property.

Nothing contained in this Conservation Easement shall give rise, in the absence of a judicial decree, to any right or ability of Grantee to become the operator of the Property within the meaning of the Comprehensive Environmental Response, Compensation and Liability Act by exercising physical control over the day-to-day operations of Grantor or becoming involved in management decisions of Grantor regarding the generation, handling or disposal of hazardous substances.

17. **COMPLIANCE WITH APPLICABLE LAWS.** Grantor shall comply with all statutes, laws, ordinances, rules, regulations, codes, orders, guidelines, or other restrictions, or requirements applicable to the Property. Nothing herein shall be construed to allow Grantor to engage in any activity which is restricted or prohibited by law, restrictions or other requirements applicable to the Property.

18. **SEVERABILITY.** If any provision of this Conservation Easement is found to be invalid, the remaining provisions shall not be altered thereby.

19. **PARTIES.** Every provision of this Conservation Easement that applies to Grantor or Grantee shall also apply to their respective heirs, executors, administrators, assigns, and all other successors as their interest may appear.

20. **RE-RECORDING.** In order to ensure the perpetual enforceability of the Conservation Easement, Grantee is authorized to re-record this instrument or any other appropriate notice or instrument.

21. **MERGER.** The parties agree that the terms of this Conservation Easement shall survive any merger of the fee and easement interest in the Property.

22. **SUBSEQUENT LIENS ON PROPERTY.** No provisions of this Conservation Easement should be construed as impairing the ability of Grantor to use this Property as collateral for subsequent borrowing, provided that any mortgage or lien arising from such a borrowing is subordinate to this Conservation Easement and does not violate the restrictions on subdivision of the Property.

23. **ACCEPTANCE & EFFECTIVE DATE.** As attested by the signature of its authorized representative, Grantee hereby accepts without reservation the rights and responsibilities conveyed by this Conservation Easement. This Conservation Easement is to be effective the date recorded in the _____ County Real Property Records.

[Remainder of page intentionally left blank.]

TO HAVE AND TO HOLD, this Grant of Conservation Easement unto Grantee, its successors and assigns, forever.

IN WITNESS WHEREOF, Grantor and Grantee, intending to legally bind themselves, have executed this Conservation Easement as of the date first written above.

GRANTOR:

By: _____

Name: _____

Title: _____

GRANTEE:

By: _____

Name: _____

Title: _____

[INSERT PROPER NOTARY ACKNOWLEDGEMENTS
FOR GRANTOR AND GRANTEE]

EXHIBITS:

- Exhibit A Property Description
- [Exhibit B Map of No Development Zones (§ 2.2), existing field and pastures (§§ 2.4, 2.6)]
- [Exhibit C Grazing Plan (§ 2.6)]
- [Exhibit D Adjacent Property Description for Access (§ 7.2)]

AFTER RECORDING, RETURN TO:
