

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

CONSERVATION EASEMENT

STATE OF TEXAS §
§
COUNTY OF WALKER §

Date: December 12, 2011

Grantor: Rancho Spellbottom, LLC.
1600 Normal Park
Huntsville, Texas 77340

Grantee: Texas Land Conservancy
P.O. Box 162481
Austin, TX 78716

This Grant of Conservation Easement ("Conservation Easement") is made by Rancho Spellbottom, LLC, with an address of 1600 Normal Park, Huntsville, Texas, 77340 ("Grantor"), to Texas Land Conservancy, a non-profit corporation organized and existing under the laws of the State of Texas, with an address of P. O. Box 162481, Austin, Travis County, Texas 78716-2481 ("Grantee"). Grantor and Grantee shall hereinafter be collectively referred to as the "Parties" and singularly as "Party".

The following Exhibits are attached to this Conservation Easement and incorporated by reference:

Exhibit A Legal description of the Property

PROPERTY: Located in Walker County, Texas, hereinafter referred to as the "Property"; and more particularly described as follows: 851.2 acres, more or less, as described on Exhibit "A," attached hereto and incorporated herein. Grantor and Grantee acknowledge that Grantor does not hold title to the mineral fee and royalty interests in the Property (the "Mineral Rights"), and that such Mineral Rights are held by a third party or parties. Therefore, this Conservation Easement is subject to the Mineral Rights as reflected in the official public records of Walker

County, Texas. Grantor agrees that it shall not enter into any modifications, amendments, extensions, or other alterations of any instruments relating to or evidencing the Mineral Rights without the prior written approval and consent of the Grantee.

The Property possesses natural, scenic, forested, open space, scientific, biological, or ecological values of prominent importance to the Grantor, the Grantee, and the public. These values are referred to as the "Conservation Values" in this Conservation Easement.

CONVEYANCE: The Grantor conveys and warrants for full and fair consideration to the Grantee this assignable Conservation Easement over the Property in perpetuity. Grantor also warrants that Grantor has good and sufficient title to the surface interest in the Property, free from all encumbrances that may materially and adversely affect the Conservation Values of the Property as described herein, and hereby promises to defend the same against all claims that may be made against the Property. The scope of this Conservation Easement is set forth in this instrument. This conveyance is a grant of rights by the Grantor to the Grantee.

THE OWNER AND THE GRANTEE AGREE TO THE FOLLOWING:

1. PURPOSES OF THIS CONSERVATION EASEMENT AND COMMITMENTS OF THE OWNER AND THE GRANTEE.

- A. This Conservation Easement assures that the Property will be preserved in its predominately **natural, scenic, forested, undeveloped and open** condition in perpetuity. The Purposes of this Conservation Easement (collectively, the "Purposes") are: (i) to protect the Property's natural resource and watershed values, biodiversity, and relatively natural and high quality habitat for native plants and animals; (ii) to maintain and enhance the natural features of the Property; and (iii) to serve as a mitigation bank pursuant to the regulations and guidelines of the U.S. Environmental Protection Agency and the U.S. Army Corps of Engineers ("USACE") promulgated under authority of Section 404 of the Clean Water Act (33 USC § 1344, et seq.) and Section 10 of the Rivers and Harbors Act of 1899 (33 USC § 403, et seq.). Any uses of the Property that may impair or interfere with these Purposes and the Conservation Values are prohibited.
- B. The Grantor is the fee owner of the surface interest in the Property and is committed to preserving the Conservation Values of the Property. The Grantor agrees to confine use of the Property to activities consistent with the Purposes of this Conservation Easement and the preservation of the Conservation Values.
- C. The Grantor agrees that, other than in connection with a mitigation bank established pursuant to the Spellbottom Mitigation Bank Mitigation Banking Instrument or other legally binding document executed by owner in furtherance of a mitigation banking program or project authorized under the

statutes referenced in Section 1.A.(iii), above, or successor statutes thereto, (i) 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, permissible lot yield, or open space requirements under otherwise applicable laws, regulations or ordinances controlling land use and building density; and (ii) 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.

- D. The Grantee is a qualified recipient of this Conservation Easement as defined under the Texas Natural Resources Code, Section 183.001, et seq. and Section 170(h) of the Internal Revenue Code or any successor provisions thereof, is committed to preserving the Conservation Values of the Property and has the resources to uphold the terms of this Conservation Easement. The Grantee protects natural habitats of fish, wildlife, plants, and the ecosystems that support them. The Grantee also preserves open spaces, including ranches, farms and forests, where such preservation is for the scenic enjoyment of the general public or pursuant to clearly delineated governmental conservation policies and where it will yield a significant public benefit.

2. **CONSERVATION VALUES.** The Conservation Values of the Property are the following:

A. **PUBLIC POLICY:**

The Property is preserved pursuant to a clearly delineated federal, state, or local conservation policy and yields a significant public benefit. Legislation, regulations, and policy statements that establish relevant public policy include, but are not limited to the following:

- * Conservation easements, as stipulated in the Texas Natural Resources Code, § 183.001(1) et seq.;
- * Protection of all wild animals as property of the State of Texas as stipulated in the Texas Natural Resources Code, § 1.011 et seq.;
- * Conservation of water resources as stipulated in the Texas Water Code, §16.016 et seq., § 16.053 et seq., § 16.054 et seq., § 26.003 et seq. and § 26.012 et seq.;

B. **WILDLIFE HABITAT:**

- (i) The Property contains significant natural riverine forested and emergent bottomland habitat in which wetland and aquatic fish,

wildlife, plants, or the ecosystems that support them, thrive in a relatively natural condition, in close proximity to the Sam Houston National Forest, the U. S. Fish and Wildlife Service designated Priority Five Area West Fork of the San Jacinto River, and upstream of segments of the West Fork of the San Jacinto River that meet Texas Parks and Wildlife's biological, hydrologic, and riparian conservation area criteria

- (ii) The Property contains and supports sustainable habitat for a biologically diverse collection of animals and plants, including an population of the rare endemic Neches River rosemallow (*Hibiscus dasycalyx*), a candidate species for Federal listing;
- (iii) The property contains approximately 784.2 acres of forested bottomland communities, emergent wetland communities, non-wetland forested and non-forested habitat, and includes, 24,817.0 linear feet of unnamed intermittent stream and 24,756.5 linear feet of the West Fork of the San Jacinto River; of which 13,857.7 linear feet exists as the Property's south western most boundary and 10,898.8 linear feet is wholly contained within the bounds of the Property.
- (iv) The Property contains additional natural wetland areas that provide unique communities for aquatic invertebrates, reptiles, amphibians, and aquatic and/or emergent vegetation;
- (v) Valued mature native forestland exists on the Property, which includes diverse species of mature oaks, hickories, ash, and elms represented by diverse age classes and contributing to structural diversity, including a multi-story canopy, standing dead trees and downed logs;
- (vi) The Property contains natural areas that represent high quality examples of terrestrial and aquatic communities; and
- (vii) The Property contains a diversity of plant and animal life in an unusually broad range of habitats for a property of its size.

C. SOURCE WATER PROTECTION:

The Property contains approximately 784.2 acres of bottomland habitat and includes, 24,817.0 linear feet of unnamed intermittent stream and 24,756.5 linear feet of the West Fork of the San Jacinto River; of which, 13,857.7 linear feet exists as the Property's south western most boundary.

D. INCORPORATION OF PURPOSE AND RECITALS

NOW THEREFORE, in consideration of the foregoing, the Grantor and Grantee have established a Conservation Easement on, over and across the Property consisting of the foregoing purposes and recitals, and the following terms, covenants, and restrictions granted to Grantee, which shall run with and bind the Property in perpetuity.

3. **BASELINE DOCUMENTATION.** Specific Conservation Values of the Property have been documented in a natural resource inventory and recorded in a baseline documentation report titled "Spellbottom Mitigation Bank: Conservation Easement Baseline Documentation Report", dated May 9, 2011, on file at the U. S. Army Corps of Engineers and at the office of Grantee, and incorporated and referenced herein for all purposes as the "Baseline Documentation Report". The Baseline Documentation Report consists of maps, a depiction of all existing human-made modifications, prominent vegetation, identification of flora and fauna, land use history, distinct natural features, and photographs. The Parties acknowledge that the Baseline Documentation Report is an accurate representation of the Property at the time of this conveyance. The Parties also acknowledge that the Baseline Documentation Report is intended to serve as an objective information baseline for monitoring compliance with the terms of this conveyance, but that it is not intended to preclude the use of other evidence to establish the present condition of the Property if there is a controversy over its use.

4. **PROHIBITED ACTIONS AND PROPERTY USES.** Any activity on, or use of, the Property that is inconsistent with the Purposes of this Conservation Easement or that is detrimental to the Conservation Values is prohibited. By way of example, but not by way of limitation, the activities and property uses that are explicitly prohibited are set forth in Section 4 of this Conservation Easement and are further described in the Spellbottom Mitigation Bank Mitigation Banking Instrument (the "Mitigation Banking Instrument") on file at the U. S. Army Corps of Engineers and at the office of Grantee. The terms and conditions of the Mitigation Banking Instrument are incorporated herein by reference for all purposes.

Neither Grantor, nor Grantee, their agents, assigns, successors, or personal representatives, nor any purchasers, lessees or other users of the Property may use, disturb or allow through intent or negligence, the use or disturbance of the Property in any manner that is inconsistent with the purposes of this Conservation Easement. Without limiting the generality of the foregoing, the following is a listing of activities and uses, which are expressly allowed or expressly prohibited. Grantor and Grantee have determined that the allowed activities may be conducted in a manner that does not permanently impair the Conservation Values of the Property. Additional retained rights of Grantor are set forth in Section 5 below.

A. **Subdivision.** The Property may not be further divided, subdivided or partitioned or pledged for a debt except in its current configuration as a single entity.

B. **Commercial Development.** Commercial or industrial activities or uses of the Property are not permitted.

C. Maintenance of Existing Improvements. Grantor may maintain, remodel, and repair existing buildings, structures, fences, wells, dams and reservoirs, utilities, soft-surface roads, and other improvements, as described in the Baseline Documentation Report and in the event of their destruction, to reconstruct or replace said improvements with another of similar size, function, capacity, location and material that does not materially alter the existing footprint of such structures. Maintenance of existing roads shall be limited to removal of dead vegetation, necessary pruning or removal of obstructing trees and plants, and/or application of permeable materials (e.g. sand, gravel, crushed stone) as necessary to correct or prevent erosion. Construction of additional structures is prohibited, unless approved in advance in writing by Grantee, and only then when necessary to protect Conservation Values on the Property.

D. Biocides. There shall be no use of pesticides, including but not limited to insecticides, fungicides, rodenticides and herbicides, except as expressly allowed in the Mitigation Banking Instrument to control problem animals, invasive species or other species detrimental to the Conservation Values of the Property.

E. Disturbance of Natural Habitat. There shall be no removing, destroying, cutting, trimming, mowing, shredding, clearing, altering of any vegetation, or disturbing or changing in any way the natural habitat existing on the Property, except as expressly allowed in the Mitigation Banking Instrument and in order to fulfill the objectives and standards of the Mitigation Banking Instrument.

Grantor may remove diseased, invasive or non-native trees, shrubs, or plants; cut and mow firebreaks and road rights-of-way; and remove trees, shrubs, or plants to accommodate maintenance of permitted improvements or other uses expressly permitted under the terms of this Conservation Easement. With written approval of Grantee, Grantor may remove exotic or other potentially invasive plants from the Property for habitat management purposes consistent with the intent of this Conservation Easement. Except as necessary for activities expressly permitted in this Conservation Easement and with written permission from Grantee, there shall be no farming, tilling, or destruction and removal of native vegetation on the Property.

F. Dumping. There shall be no dumping or storing of any unsightly or potentially unhealthful material, such as trash, wastes, rubbish, ashes, sewage, garbage, scrap material, sediment discharges, oil and petroleum by-products, leached compounds, toxic materials or fumes, or any "hazardous substances" (as hereinafter defined). For the purposes of this paragraph, the phrase "hazardous substances" shall be defined as in the federal Comprehensive Environmental Response Compensation and Liability Act (42 U.S.C. § 9601 et seq.) and/ or a substance whose manufacture, processing, distribution in commerce, use, possession or disposal is banned, prohibited or limited pursuant to the federal Toxic Substances Control Act (15 U.S.C. § 2601 et seq.).

G. Vehicle Traffic. Off-road use of automobiles, trucks, vans or other motor vehicles on the Property is prohibited, except as expressly permitted under the Mitigation Banking Instrument or as is necessary for inspection, construction or maintenance of permitted improvements, fire protection or emergency purposes, or for any other use not inconsistent with the Mitigation Banking Instrument and this Conservation Easement.

H. Signage. Construction or placement of any signs, billboards or other advertising displays on the Property is not permitted, except that signs whose placement, number and design do not significantly diminish the scenic character of the Property may be placed to state the name and address of the Property and the names of persons living on the Property, to advertise or regulate permitted on-site activities, to advertise the Property for sale or rent, to post the Property to control unauthorized entry or use, or to identify the property as being protected by this Conservation Easement.

I. Invasive Species. There shall be no further planting of invasive or potentially invasive non-native plant species anywhere on the Property.

J. Predator and Nuisance Species Control. Grantor shall have the right to control, destroy, or trap predatory, exotic, invasive and problem animals that pose a material threat to people, livestock, other animals, or habitat condition in accordance with the Mitigation Banking Instrument and applicable state and federal laws and requirements.

K. Excavation and Mineral Extraction. Unless approved in writing by the Grantee, as expressly provided in the Mitigation Banking Instrument, or pursuant to existing, recorded rights of others as of the date of this Conservation Easement, there shall be no (i) change in the topography of the Property, (ii) filling, excavating, grading, dredging, mining, or alteration of the Property except as necessary to extract deep minerals by the owner of the mineral estate in the Property, or (iii) mining or exploitation of topsoil, peat, sand, gravel, rock, or other minerals of the surface estate, including near-surface lignite, iron, or coal, or other materials.

L. Pollution, Disturbance to Hydrology. There shall be no pollution, alteration, depletion, or extraction of surface water, natural water courses, lakes, ponds, marshes, wetlands, subsurface water or any other water bodies, nor shall activities be conducted on the Property that are inconsistent with the Mitigation Banking Instrument and would be detrimental to water purity or that could alter the natural water level or flow in or over the Property, except as may be permitted pursuant to existing, recorded rights of others as of the date of this Conservation Easement. All commercial sales, leases, or other conveyances of surface or subsurface water or water rights are prohibited.

M. Hunting, Fishing or Trapping. Grantor may conduct hunting, fishing or trapping activities in accordance with appropriate federal, state and local laws and restrictions.

N. Livestock. There shall be no livestock grazing on the Property.

Grantee or its successors in interest may determine that a disturbance at the Property is necessary to maintain the Conservation Values for the life of this Conservation Easement. In normal circumstances, Grantor shall make requests for such a disturbance in writing and receive Grantee's and USACE's advance written approval. Additionally, in the event of an emergency, for example, a wildfire, Grantee or its successors in interest may determine that a disturbance at the Property is necessary to reduce an imminent and immediate threat to human health or the environment. Grantor shall provide notice and take action that is reasonable under the circumstances, seeking Grantee's and USACE's written approval of such action as soon as the imminent and immediate threat is abated. No approvals may enlarge permitted uses under this Easement or result in its termination.

If, owing to unforeseen or changed circumstances, any of the prohibited activities listed in Section 4, Prohibited Actions and Property Uses, are deemed desirable by both Grantor and Grantee, the Grantee may, subject to pre-approval by the District Engineer of the Galveston District of the USACE, give permission for such activities, subject to the limitations herein. Such requests for permission and grants of permission for activities requiring the Grantee's consent shall be in writing and shall describe the proposed activity in sufficient detail to allow the Grantee to judge the consistency of the proposed activity with the purpose of this Conservation Easement. The Grantee may give its permission only if it determines, at its sole discretion, that such activities 1) do not violate the purpose of this Conservation Easement, 2) either enhance or do not impair any significant conservation interests associated with the Property, and 3) do not result in impermissible inurement or private benefit to Grantor or any other parties. Notwithstanding the foregoing, the Grantor and Grantee have no right or power to agree to any activities that would result in the termination of this Conservation Easement.

Grantor or Grantor's agents, assigns, successors, or personal representatives, or potential or actual purchasers, lessees or other users of the Property shall notify Grantee of any activities on the Property, regardless of cause, that are inconsistent with the intended purpose of this Conservation Easement.

5. **GRANTOR'S RESERVED RIGHTS.** The Grantor retains all ownership rights that are not prohibited by or inconsistent with this Conservation Easement. By way of example and not limitation, the Grantor reserves the sole and exclusive right to operate the Property as a mitigation bank and to sell credits or similar entitlements or other interests in order to carry out the business of mitigation banking. In addition, subject to the limitations of Section 4, the Grantor reserves the activities and uses described in the Mitigation Banking Instrument, and it is expressly agreed that such uses are not in violation of this Conservation Easement or its Purposes and do not adversely affect the Conservation Values of the Property.

6. **GRANTOR'S OBLIGATIONS.** The Grantor, its heirs, successors, and assigns shall comply with the terms and provisions of this Conservation Easement in perpetuity.

7. **RIGHTS OF THE GRANTEE.** The Grantor confers the following rights upon the Grantee to maintain the Conservation Values of the Property in perpetuity:

A. **Right to Enter.** The Grantee, its employees or agents have the right to enter the Property at reasonable times and with no less than 48 hours prior notice to Grantor to monitor the Property by way of an Access Easement between Grantor and Grantee of even date herewith to be filed of record in the official public records of Walker County, Texas. Furthermore, the Grantee has the right to enter the Property at reasonable times and with no less than 48 hours prior notice to Grantor in connection with enforcing compliance (pursuant to Section 8, below) with, or otherwise exercise its rights under, this Conservation Easement. Under emergency circumstances, such as Grantee's reasonable belief that a violation of this Easement is ongoing or is imminent, Grantee shall provide notice of entry and inspection that is reasonable under the circumstances, consistent with the conservation purposes hereof. The Grantee may not, however, unreasonably interfere with the Grantor's permitted uses of the Property. The Grantee has no right to permit others to enter the Property. The general public is not granted access to or any other rights in the Property under this Conservation Easement.

B. **Right to Preserve.** The Grantee has the right, through the remedies set forth in Section 8, below, to prevent any activity on or use of the Property that is inconsistent with the Purposes of this Conservation Easement or detrimental to the Conservation Values of the Property.

C. **Right to Require Restoration.** The Grantee has the right, through the remedies set forth in Section 8, below, to require the Grantor to restore the areas or features of the Property that are damaged by any activity that is inconsistent with this Conservation Easement. The Grantor agrees to promptly restore the damaged area or feature to its prior condition. Before undertaking restoration work, the Grantor shall:

- (i) confer with the Grantee regarding a plan for the restoration of the Property;
- (ii) prepare and provide to the Grantee a detailed restoration plan; and
- (iii) obtain the Grantee's prior written approval of the proposed restoration plan, which approval shall not be unreasonably withheld, conditioned, or delayed.

8. **GRANTEE'S REMEDIES.** This section addresses cumulative remedies of the Grantee and limitations on these remedies.

- A. **Delay in Enforcement.** A delay in enforcement shall not be construed as a waiver of the Grantee's right to eventually enforce the terms of this Conservation Easement.
- B. **Acts Beyond Grantor's Control.** The Grantee may not bring an action against the Grantor for modifications to or damage of the Property, or for a violation of this Conservation Easement, resulting from causes beyond the Grantor's control, including, but not limited to, unauthorized actions by third parties,

natural disasters such as unintentional fires, floods, storms, or natural earth movement, or Grantor's well-intentioned action in response to an emergency that may unintentionally result in a technical violation of this Conservation Easement provided that such modification or damage does not materially affect the conservation purposes of the property in a negative manner. The Grantor has no responsibility under this Conservation Easement for such unintended modifications, unless Grantor fails to take reasonable action to cure any material damage in accordance with the notice and demand provision below. Grantor shall not knowingly permit violations of this Conservation Easement by third parties.

In the event the terms of this Conservation Easement are violated by unauthorized actions of third parties, the Grantor may, but is not required to, at the Grantee's request, allow the Grantee to join in any suit, to assign the Grantor's right of action to the Grantee, or to appoint the Grantee as the Grantor's attorney-in-fact, for the purposes of pursuing an enforcement action against the responsible parties.

- C. Notice and Demand. If the Grantee believes that the Grantor is in violation of this Conservation Easement, or that a violation is threatened, the Grantee shall provide sixty (60) days written notice to the Grantor (the "Notice Period"). The written notice will identify the alleged violation and request corrective action to cure the violation and, where the Property has been injured, to restore the Property within a reasonable timeframe. If the Grantor fails to cure the violation within the Notice Period, Grantee may pursue its remedies to protect, restore, or compensate for the Conservation Values of the Property. However, if at any time the Grantee reasonably believes that the violation constitutes immediate and irreparable harm for which an immediate remedy is needed, no prior written notice is required. The Grantee may then immediately pursue its remedies to prevent or limit harm to the Conservation Values of the Property. If the Grantee believes that this Conservation Easement is, or is expected to be, violated, and the Grantee's good-faith and reasonable efforts to notify the Grantor are unsuccessful, the Grantee may pursue its lawful remedies to mitigate or prevent harm to the Conservation Values without prior notice and without awaiting the Grantor's opportunity to cure. The Grantor agrees to reimburse all reasonable and actual documented costs, including reasonable and actual attorneys' fees, associated with this effort in the event of an actual violation of this Conservation Easement as determined by a court of competent jurisdiction or by agreement of the Parties, subject to the provision of Section 8.B, above.

The Grantor agrees that the Grantee reserves the right to assert the following hierarchy of corrective actions to any and all material violations of this Conservation Easement (subject to the provisions of 8.B, above):

- (i) Grantor shall restore, according to a plan approved by the Grantee, the damaged area or feature of the Property (the "Damaged Portion") to its

- condition prior to the violation; or
- (ii) if the Grantee determines that restoration is not likely to be successful on all of the Damaged Portion, then to the extent reasonably practicable, the Grantor shall convey, within one year of the notice of violation, a new Conservation Easement acceptable to and approved by the Grantee on a nearby parcel of land possessing the equivalent Conservation Values that existed on the Damaged Portion prior to the violation; or
 - (iii) if the Grantee, in its good faith judgment, determines that options (i) or (ii) will not be effective, then the Grantor shall provide a cash settlement to the Grantee equivalent to the combined sum value necessary to effectively complete the actions described in options (i) or (ii), which cash settlement shall not exceed the Conservation Easement Valuation (as defined below) with respect to such Damaged Portion. However, in no case shall a cash settlement be less than any monetary benefit Grantor, or any third party authorized by Grantor, receives from a violation of this Conservation Easement.

If actions of the Grantor, or those of any third party authorized by the Grantor, render it impossible, as determined by Grantee, to fulfill the Purposes or substantially diminish the Conservation Values of this Conservation Easement on the Property or a Damaged Portion, then the Grantee shall be compensated by the Grantor for such loss with respect to the Property or a Damaged Portion by an amount equivalent to (a) the current market value of the Property unencumbered with this Conservation Easement, less (b) the current market value of the Property encumbered with this Conservation Easement, multiplied by (c) a fraction, the numerator of which is the area expressed in acres of the Damaged Portion and the denominator of which is the area expressed in acres of the Property, plus (d) reasonable and actual attorneys' fees (such formula, the "Conservation Easement Valuation"). However, in no case shall such compensation be less than any monetary benefit Grantor, or any third party authorized by Grantor, receives from a violation of this Conservation Easement.

- D. Failure to Act. If, within 60 days after written notice, the Grantor does not implement corrective measures requested by the Grantee, the Grantee may bring an action in law or in equity to enforce the terms of the Conservation Easement. In the case of immediate or irreparable harm the Grantee may invoke these same remedies without notification and/or awaiting the expiration of the 60-day period.

The Grantee is entitled to enjoin the violation through temporary restraining order or through temporary or permanent injunctive relief and to seek specific performance, declaratory relief, restitution, reimbursement of expenses, and/or an order compelling the Grantor to restore the Property. If the court

determines that the Grantor has failed to comply with this Conservation Easement, the Grantor shall also reimburse the Grantee for all reasonable litigation costs and reasonable attorney's fees.

- E. Actual or Threatened Non-Compliance. The Grantee's rights under this Section, Grantee's Remedies, apply equally in the event of either actual or threatened violations of the terms of this Conservation Easement. The Grantor agrees that the Grantee's claim for money damages for any violation of the terms of this Conservation Easement is inadequate. The Grantee shall also be entitled to affirmative and prohibitive injunctive relief and specific performance, both prohibitive and mandatory.
- F. Cumulative Remedies. The preceding remedies of the Grantee are cumulative. The Grantee may invoke any, or all, of the remedies if there is an actual or threatened violation of this Conservation Easement.

9. NOTIFICATION OF PERMITTED ACTIVITIES. The purpose of requiring the Grantor to notify the Grantee prior to undertaking certain permitted activities is to afford the Grantee an opportunity to review and approve, conditionally approve, or object to the activities in question and to enable the Grantee to ensure that any such activities are designed and will be carried out in a manner not inconsistent with the Purposes of this Conservation Easement. This notification requirement applies only to the permitted activities listed in the Mitigation Banking Instrument as requiring notice by Grantor, unless otherwise provided herein.

Whenever notice is required, the Grantor shall notify the Grantee in writing within the time period specified in the MBI for such activity prior to the date the Grantor intends to undertake the activity in question. The notice shall describe the proposed activity in sufficient detail to permit the Grantee to make an informed judgment as to the proposed activity's consistency with the Purposes of this Conservation Easement. If the Grantee fails to respond within thirty (30) days after it receives the written request, then its approval shall be deemed given.

In addition, the Grantor shall notify the Grantee in writing no less than thirty (30) days prior to the closing of the sale or gift of the Property to any other party. Grantor shall pay Grantee a transfer fee of one hundred dollars (\$100.00) upon any such transfer. The failure of Grantor to perform any act required by this Section shall not impair the validity of this Easement or limit its enforceability in any way.

10. CONSERVATION EASEMENT REQUIREMENTS UNDER TEXAS LAW AND UNITED STATES TREASURY REGULATIONS.

- A. This Conservation Easement is created pursuant to Chapter 183 of the Texas Natural Resources Code - § 183.001 et seq.
- B. This Conservation Easement is established for conservation purposes pursuant to the Internal Revenue Code, as amended at Title 26, U.S.C.A., Section

170(h)(1)-(6) and Sections 2031(c), 2055, and 2522, and under Treasury Regulations at Title 26 C.F.R. 1.170A-14 et seq., as amended.

- C. The Grantee is qualified to hold conservation easements pursuant to these statutes.

11. **OWNERSHIP COSTS AND LIABILITIES.** In accepting this Conservation Easement, the Grantee shall have no liability or other obligation for costs, liabilities, taxes, assessments, fees, charges of whatever description, or insurance of any kind related to the Property, unless such costs or liabilities are the result of Grantee's negligence or willful misconduct. Upon request by the Grantee, the Grantor shall provide satisfactory evidence of payment of all such costs and liabilities. The Grantee's rights do not include the right, in absence of a judicial decree, to enter the Property for the purpose of becoming an owner or operator of the Property or becoming an arranger with respect to the Property within the meanings of the Comprehensive Environmental Response, Compensation, and Liability Act, or the Texas Solid Waste Disposal Act. The Grantee, its members, trustees or directors, officers, employees, and agents have no liability arising from injury or death to any person or physical damage to any personal property on the Property, except to the extent such injury or death results from Grantee's negligence or willful misconduct. The Grantor remains solely responsible for obtaining any applicable governmental permits and approvals for any activity or use allowed by this Conservation Easement, and all such activities or uses shall be undertaken in accordance with all applicable federal, state and local laws, regulations, and requirements. Excluding liens which may be characterized as purchase money mortgage liens or other similar liens created in connection with the financing or re-financing of the Property, the Grantor shall keep the Property free of any liens of any nature. Any such mortgage liens or other liens shall be subordinate to this Conservation Easement. In no event may foreclosure of any lien created after the date this Conservation Easement is recorded in the real property records of Walker County result in the extinguishment of the Conservation Easement, affect its duration in perpetuity, or affect Grantee's rights in any manner.

12. **INDEMNIFICATION.** Grantor acknowledges that Grantee has no possessory rights in the Property, nor any responsibility or right to control, maintain, or keep up the Property. If Grantee is ever required by a court to pay damages, costs, or fees resulting from personal injury, property damage, governmental regulatory actions, or the presence of polluting substances, that occur on the Property, Grantor shall indemnify and reimburse Grantee for these payments, as well as for reasonable attorneys' fees and other expenses of defending itself, except to the extent that any such loss, cost or damage is determined by a court to have been caused by the negligence or willful misconduct of Grantee or its agents. If Grantor is ever required by a court to pay damages, costs, or fees resulting from personal injury, property damage, or the presence of polluting substances, that occur on the Property, that are determined by a court to have been caused by the negligence or willful misconduct of Grantee or its agents, Grantee shall indemnify and reimburse Grantor for these payments, as well as for reasonable attorneys' fees and other expenses of defending itself.

13. **HAZARDOUS MATERIALS.** The Grantor warrants that the Grantor has no actual knowledge of the deposition, release or storage of hazardous substances or hazardous wastes, as defined by any local, state or federal law, on the Property.

14. **LITIGATION.** The Grantor warrants that the Grantor has no actual knowledge of any pending or threatened litigation relating in any way to the Property. The Grantor also warrants that the Grantor has no actual knowledge of any civil or criminal proceedings or investigations against Grantor that have at any time related to the Property.

15. **TERMINATION.** This Conservation Easement may be extinguished only by a change in condition that causes it to be impossible to fulfill the Conservation Easement's Purposes, or by exercise of eminent domain, as described below.

- A. **Unexpected Change in Conditions.** If subsequent circumstances render the Purposes of this Conservation Easement impossible to fulfill, then this Conservation Easement may be partially or entirely terminated only by judicial proceedings. Neither the Grantor or Grantee, nor their successors, attorneys, agents, or assigns will initiate any judicial action that could affect the Conservation Easement in any way without providing written notification to the USACE at least 60 days in advance of any such filing with any judicial body.
- B. **Eminent Domain.** If the Property is taken, in whole or in part, by power of eminent domain or acquired by purchase in lieu of condemnation so as to render it to be impossible to fulfill the Purposes (or any Purpose) of this Conservation Easement, then Grantor and the Grantee shall act jointly to realize the action most favored by the Grantee according to the following hierarchy:
 - (i) avoiding the Property and preserving it in its present condition: both Parties shall jointly take actions to formally request that the intended proceeding completely avoid the taking of this Property;
 - (ii) minimizing and supplementing the loss to the Property: if the Property cannot be wholly preserved as a result of the intended proceeding, both Parties shall jointly take actions to formally request that the intended proceeding minimize its taking of this Property and supplement, on at least a 1:1 acreage basis of nearby land possessing equivalent over-all value, including without limitation Conservation Values and mitigation credit values, the loss of the Property with a supplemental Conservation Easement conveyed to the Grantee within one year of notice of the intended proceeding;
 - (iii) mitigating the loss of the Property: if options (i) and (ii) are not acceptable to the Grantee, both Parties shall jointly take actions to formally request that the intended proceeding mitigate its taking of this Property, on at least a 1:1 acreage basis of nearby land possessing equivalent over-all value, including without limitation Conservation Values and mitigation credit values, by conveying a replacement

Conservation Easement to the Grantee within two (2) years of notice of the intended proceeding; or

- (iv) recover full value: if any of options in (i), (ii) or (iii) above are not acceptable to the Grantee, both Parties shall jointly take action to recover the full value of the interests in the Property subject to the taking or in lieu purchase (such Property interests, the "Taken Property") and all direct or incidental damages resulting from the taking or in lieu purchase. Following the receipt of a condemnation award (or sales price in an in lieu purchase) for any Taken Property, the proceeds shall be distributed to Grantor and Grantee in the following manner: (a) first to Grantor in an amount equal to the number of authorized and unsold mitigation credits lost by the taking or in lieu purchase, times the Per Credit Value (as defined below), and (b) then to Grantee in an amount not to exceed (I) the current market value of the Property unencumbered with this Conservation Easement, less (II) the current market value of the Property encumbered with this Conservation Easement, multiplied by (III) a fraction, the numerator of which is the area expressed in acres of the Taken Property and the denominator of which is the area expressed in acres of the Property; and (c) then all remaining proceeds to Grantor. The "Per Credit Value" shall be determined by using the per mitigation credit value from the most recent sale of mitigation credits; provided, however, that if no sale of mitigation credits has occurred in the preceding 2 years, the Per Credit Value shall be determined by appraisal. All appraisals required for calculating values under this subparagraph (iv) shall be obtained at the sole cost and expense of Grantor.

16. **AMENDMENTS.** If circumstances arise under which an amendment to or modification of this Conservation Easement would be appropriate, the Grantor and the Grantee may jointly agree to amend this Conservation Easement. However, no amendment shall be allowed that a) is not approved by the USACE, after coordination with the IRT, and b) will affect the qualification of this Conservation Easement or the status of the Grantee under any applicable laws, including Chapter 183 of the Texas Natural Resources Code or Section 170(h) of the Internal Revenue Code of 1954, as amended. Further, any amendment shall be consistent with the Purposes of this Conservation Easement, shall not diminish the Conservation Values of the Property, shall not affect the ability of the Property to be used as a mitigation bank, shall not result in private inurement or impermissible private benefit to any person, and shall not affect, in perpetuity, the duration of this Conservation Easement and shall not be inconsistent with the Mitigation Banking Instrument. Any such amendment shall be recorded in the official public records of Walker County, Texas, and at the expense of the Party initiating or causing the need for the amendment.

17. **LIBERAL CONSTRUCTION.** This Conservation Easement shall be liberally construed in favor of maintaining the use of the Property as a mitigation bank, maintaining the Conservation Values of the Property and in accordance with Conservation Easements, Chapter 183 of the Texas Natural Resources Code - §183.001 et seq.

18. **NOTICES.** For purposes of this agreement, notices may be provided to either Party by personal delivery, private courier, or by mailing a written notice to the Party (at the last known address of a Party) by certified mail, return-receipt requested. Notice may also be given by electronic mail with confirmed receipt. All notices shall be deemed delivered and effective upon actual receipt if given personally, or by private courier, or three days after deposit with the United States Postal Service if given by mail in accordance with the limitation cited hereinabove. Such deeming of notice shall not be construed to prevent proof of lack of receipt of notice. Any party providing notice shall make a good faith attempt to determine that notice was actually received.

19. **SEVERABILITY.** If any portion of this Conservation Easement is determined to be invalid, the remaining provisions will remain in force.

20. **SUCCESSORS.** Grantor may transfer, sell, or otherwise convey the Property to a third party, so long as such conveyance is expressly made subject to the terms of this Conservation Easement. This Conservation Easement is binding upon, and inures to the benefit of, the Grantor's and the Grantee's successors in interest. All subsequent owners of the Property are bound to all provisions of this Conservation Easement to the same extent as the Grantor.

21. **ASSIGNING THIS CONSERVATION EASEMENT TO ANOTHER HOLDER.** The Grantee may transfer this Conservation Easement to a similar entity upon the consent of the USACE, but the Grantee may only assign its rights and obligations under this Conservation Easement to a qualified organization as defined under Section 170(h) of the Internal Revenue Code (or any successor provision then applicable), and authorized to acquire and hold conservation easements under Chapter 183 of the Texas Natural Resources Code (or any successor provision then applicable) and any applicable laws of the United States. Any assignment of this Conservation Easement shall obligate the Grantee to (i) require that the Purposes of the Conservation Easement continue to be carried out, and (ii) transfer to the new holder the balance of easement stewardship funds allocated to this Conservation Easement. The Grantee agrees to give written notice and request for assignment to Grantor at least sixty (60) days prior to the date of such proposed assignment. If Grantor fails to respond to Grantee's request for consent within thirty (30) days of receipt of such request, Grantor shall be deemed to have consented to such request.

22. **TERMINATION OF RIGHTS AND OBLIGATIONS.** A Party's rights and obligations under this Conservation Easement terminate upon transfer of that Party's interest in the Property. In the event of a transfer in land ownership by Grantor, the Grantor will make a reasonable effort to ensure that the property is conveyed to an environmentally responsible party. Liability for acts or omissions occurring prior to transfer will survive the transfer.

23. **TEXAS LAW.** This Conservation Easement will be construed in accordance with Texas and Federal law.

24. **ENTIRE AGREEMENT.** This Conservation Easement sets forth the entire agreement of the Parties. It is intended to supersede all prior discussions or understandings. No alteration or variation of this Conservation Easement shall be valid or binding unless contained in an amendment that complies with Section 16.

25. TITLE. Grantor covenants and represents that Grantor is the sole owner and is seized of the surface interest in the Property in fee simple and has good right to grant and convey 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. The Parties acknowledge that the Grantor is not seized of the subsurface or mineral interests in the Property, that other parties are vested with such interests pursuant to instruments recorded prior to the date of this Conservation Easement, and that this Conservation Easement is subordinate to such interests.

26. MERGER. The Parties agree that the terms of this Conservation Easement shall survive any merger of the fee and Conservation Easement interest in the Property.

27. ENFORCEMENT BY USACE: All rights and remedies with respect to this Conservation Easement held by the Grantee are also held by the United States Army Corps of Engineers and its successor agencies. All notices required to be sent to either Party must also be sent to the USACE, Galveston District. All plans and contingencies mentioned in this document that require either Parties' approval shall also require approval of the USACE. Should any provision of this Conservation Easement conflict with or contradict the Permit No. SWG-2008-00997 (the "Permit") (Mitigation Banking Instrument, Spellbottom Mitigation Bank, Walker County, Texas), the Permit shall control, although in the event a provision in the Conservation Easement has greater requirements than the Permit, Grantor shall comply with the Conservation Easement unless doing so would violate the Permit. The USACE does not assume the obligations of the Grantee, including the indemnification provision in Section 12. Nothing contained herein shall constitute a grant of interest in real property to the USACE. Additionally, before any action by either party is taken to void or modify this Conservation Easement, Mitigation Banking Instrument, or other long-term protection plan mechanism, including transfer of title to, or establishment of any other legal claim to the Spellbottom Mitigation Bank, the party wishing to take such action to void or modify shall give 60 days written notice to the USACE district engineer for the Galveston District.

TO HAVE AND TO HOLD the said Conservation Easement unto the said Grantee and its successors and assigns forever.

Grantor:

By: *Robert A. Flack*

Robert A. Flack
Manager

STATE OF TEXAS

§

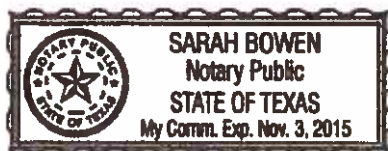
COUNTY OF WALKER

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Before me, the undersigned authority, on this day personally appeared Robert A. Flack, a Manager of Rancho Spellbottom, LLC, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for and on behalf of Rancho Spellbottom, LLC, for the consideration therein expressed and in the capacity therein stated.

Given under my hand and seal of office this 14 day of December, 2011.



Sarah Bowen

Notary Public, State of Texas

My commission expires on: Nov 3, 2015

Grantee:

By: Mark Steinbach

Mark Steinbach

Executive Director

STATE OF TEXAS

§

§

COUNTY OF TRAVIS

§

Before me, the undersigned authority, on this day personally appeared Mark Steinbach, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for and on behalf of Texas Land Conservancy, for the consideration therein expressed and in the capacity therein stated.

Given under my hand and seal of office this 16th day of December, 2011.



Kathryn K. Vickery
Notary Public, State of Texas
My commission expires on: 5/24/14

19

Bk

Vol

Ps

00008530

OR

1005

420

EXHIBIT A

Property Description

20

Bk

Vol

Ps

00008530

OR

1005

421

WEAVING, DYEING, & FINISHING PLANTS
Manufacturing, Wholesale, Retail, Service

ADAMS SURVEYING CO.
SURVEYORS

STEVE & ADAMS
SURVEYING & MAPPING, INC.
P.O. BOX 174
COLUMBIA, TEXAS 77218
281/331-1003

