

CONSERVATION EASEMENT TEMPLATE

RECITALS:

- A. **WHEREAS**, _____ with an address of _____ (the *Grantors*) the owners in fee simple of certain real property, (the *Protected Property*) that has ecological, scientific, educational and aesthetic value in its present state as a natural area that has not been subject to development or exploitation. The Protected Property is located in _____ County, Texas and is more particularly described on Exhibit *A* which is attached hereto and incorporated by this reference herein for all purposes. Tracts _____ are owned by _____. THE CIBOLO CONSERVANCY, INC. (the *Grantee*) is a non-profit corporation incorporated under the laws of the State of Texas as a tax exempt public charity under Section 501(c)(3)) and 509(a)(1) of the Internal Revenue Code, qualified under section 170(h) of the Internal Revenue Code to receive qualified conservation contributions, and having an address at 25 Spring Creek Road, Boerne, Texas 78006, and whose purposes include, *inter alia*, preservation of natural areas for scientific, charitable, educational and aesthetic purposes; and
- B. **WHEREAS** the Protected Property is a significant natural area that qualifies as a “...relatively natural habitat of wildlife or plants, or similar ecosystem,” as that phrase is used in P.L. 96541, 26 USC 170(h)(4)(A)(ii), as amended, and in regulations promulgated thereunder. Specifically, the Protected Property serves to protect natural habitat for wildlife and plants. The Protected Property lies within (describe property).
- C. **WHEREAS** the Protected Property possesses conservation values which are natural, scenic, open space, ecological, and educational and the property provides a significant habitat for wildlife and plants of importance to the owners, to the people of the Texas Hill Country and to the people of the State of Texas. The area around the Protected Property is rapidly being encroached by suburban residential and potentially commercial development. The open space the easement creates will contribute to the protection of important riparian corridors and viewsheds, as well as prevent the fragmentation of valuable wildlife habitat, and at the same time conserve locally historic ranch land; and
- D. **WHEREAS** the specific conservation values of the Protected Property are further documented in the Baseline Survey Report (“Report”) of the relevant features of the Protected Property, a true and correct copy of which (without exhibits) is attached hereto as Exhibit “B” and incorporated by this reference herein for all purposes. Said Report consists of reports, maps and photographs which the parties agree provide, collectively, an accurate representation of the Protected Property at the time of this grant and which is intended to serve as an objective, though nonexclusive, information baseline for monitoring compliance with the terms of this grant; and
- E. **WHEREAS** The Grantors and Grantee have the common purpose of conserving the above-described conservation values of the Protected Property in perpetuity, and the State of Texas has authorized the creation of Conservation Easements pursuant to

Chapter 183 of the Texas Natural Resource Code and Grantors and Grantee wish to avail themselves of the provisions of that law;

WITNESSETH

NOW, THEREFORE, the Grantors, for and in consideration of the premises recited above and of the mutual covenants, terms, conditions and restrictions contained herein and as an absolute and unconditional gift, subject to all matters of record in _____ County, Texas, or visible on the ground, hereby give, grant, bargain, sell and convey unto the Grantee a Conservation Easement in perpetuity over the Protected Property of the nature and character as follows:

1. Purpose. The Purpose of this Conservation Easement is to ensure that the Protected Property will be retained forever predominantly in its present natural, scenic and open space condition, to protect any native plants, animals, or plant communities on the Protected Property, and to prevent any use of the Protected Property that will significantly impair or interfere with the conservation values or interests of the Protected Property described above. The Grantors intend that this Conservation Easement will restrict the use of the Protected Property to only such activities as are consistent with the purpose of this Conservation Easement, while maintaining traditional uses on the Property that are compatible and not destructive of the purpose of the Conservation Easement, such as agricultural and recreational activities.

Grantors 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. All rights reserved by Grantors and activities not prohibited by this Conservation Easement shall be exercised in a manner that prevents or minimizes damage to the Protected Property. However, unless otherwise specified below, nothing in this Conservation Easement shall require Grantors to take any action to restore the condition of the Property after any act of God or other event over which Grantors had no control. Grantors understand that nothing in this Conservation Easement relieves them of any obligation or restriction on the use of the Property imposed by law.

2. Prohibited Uses. Any activity on or use of the Protected Property that violates this Conservation Easement or materially harms the conservation values of the Protected Property is prohibited. Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited, except as provided in Section 3 and 17 below:

- 2.1 No Construction. Subject to the provisions regarding septic systems as provided for in Section ___ herein, there shall be no construction of or placing of any building, tennis or other recreational court, landing strip, mobile home, swimming pool, fence or sign (other than those required by the Grantee for appropriate information or management), billboard or other advertising display, antenna, utility pole, tower, conduit, line, sodium vapor light or any other temporary or permanent structure or facility on or above the Protected Property except as provided in section ___ herein. However, Grantors may construct blinds, trails,

and other structures so as to view, enjoy, and interpret the wildlife on the Protected Property. Specific construction and siting of such blinds, trails, and viewing structures will be by consent in writing by Grantee, which will not be unreasonably withheld.

- 2.2. No Excavation. There shall be no surface mining, ditching, draining, diking, filling, excavating, dredging, mining or drilling, removal of topsoil, sand, gravel, rock, minerals or other materials, or change in the topography or surface and subsurface hydrology of the Protected Property in any manner, except as may be necessary to restore, maintain, or enhance the natural hydrologic regime of the watershed, for restoration as provided in Section _____ below.
- 2.3. No Cutting. Except as provided in Section ____ herein, there shall be no removal, harvesting, destruction or cutting of trees, shrubs or plants, planting of trees, shrubs or plants, use of fertilizers, plowing, introduction of non-native animals, or disturbance or change in the natural habitat in any manner; however, Grantor may remove hackberry trees and new growth of juniper and mesquite throughout the Protected Property, may remove shrubs and plants in the Building Envelope as defined in Section _____. and may remove shrubs and trees affected by disease, such as live oak decline. The removal of mature old growth cedar shall be prohibited. Also, Grantors may remove by mowing encroaching dominant forbs on the Protected Property. Grantee agrees to allow some Grantor removal of natural vegetation in areas deemed by Grantee as non-sensitive habitat to allow scenic views and visual enjoyment of the Protected Property. Such removal of natural vegetation will be by mutual consent in writing by Grantors and Grantee. There shall be no grazing by domestic animals except as provided below.
- 2.4. No Biocides. Outside of the Building Envelope, there shall be no use of non-organic pesticides or biocides, including but not limited to insecticides, fungicides, rodenticides, and herbicides, except to treat for fire ants and future non-native species that may invade the Protected Property and to treat ball moss on the live oak trees. Grantors may use pesticides within the Building Envelope described in Section _____.
- 2.5. No Dumping. There shall be no storage or dumping of ashes, 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 Protected Property; there shall be no changing of the topography through the placing of soil or other substance or material such as landfill or dredging spoils, nor shall activities be conducted on the Protected Property that could cause erosion or siltation on the Protected Property. Burning of household trash is permitted.
- 2.6. No Pollution. There shall be no pollution, alteration, depletion or extraction of surface water, natural water courses, lakes, ponds, marshes, subsurface water or any other water bodies, nor shall activities be conducted on the Protected Property that would be detrimental to water purity or that could alter the natural water level

or flow in, over, or under the Protected Property, except as may be agreed to by Grantors and Grantee.

- 2.7 No Vehicles. There shall be no operation of dune buggies, motorcycles, bicycles, or all-terrain vehicles off of existing roads. Any other vehicle use shall be limited to existing roads or on any additional roads as approved by Grantee pursuant to Section 4.5 below; provided however, that trucks and tractors may be driven over non-road areas for ranch and permitted purposes only.
- 2.8 Subdivision. The Protected Property may not be divided, partitioned, or subdivided, nor conveyed except in its current configuration as an entire parcel.
- 2.9 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 the Grantee, this paragraph shall not preclude such transfer of development rights resulting from the distribution or demolition of any existing residential building on the Property.
- 2.10 No Goats, Sheep or Pigs. There shall be no goats, sheep or pigs maintained or grazed on the Protected Property.
- 2.11 No Towers. There shall be no cell or radio towers on the Protected Property.
- 2.12 Mineral and Groundwater Protection. No mineral production or exploration shall take place on the surface of the Protected Property. Further, groundwater may not be produced for sale or other purposes off the Protected Property.

Grantors have the right and retain their 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 Grantors and Grantee that, in conducting any mineral activities, Grantors 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.

3. Grantors' Reserved Rights. The prohibited uses of Section __ notwithstanding, the following rights, uses, and activities of or by Grantors are reserved by Grantors and shall be permitted on the Protected Property:
- 3.1 Existing Uses. The right to undertake or continue present uses and activities and any other activities or uses of the Protected Property reserved and/or not prohibited by this Conservation Easement. Prior to making any substantial change in use of the Protected Property which would be inconsistent with the uses permitted herein, the Grantors shall notify the Grantee in writing to allow the Grantee a reasonable opportunity to determine whether such change would violate the terms of this Conservation Easement. Grantors reserve the right to use of the main houses for educational purposes for art, music and wildlife.
- 3.2 Transfer. The right to sell, give, mortgage, lease, or otherwise convey the Protected Property, provided such conveyance is subject to the terms of this Conservation Easement.
- 3.3 Structures. Subject to the terms in Section __, the right to maintain such structures and fences as currently exist on the Protected Property (including the right to remove or replace, with like structures used for the same or similar purposes), provided fences may be relocated or built in order to facilitate other uses permitted hereunder. Grantors may construct minor improvements outside the Building Envelope, including but not limited to wire mesh and five-strand barbed-wire fences, feeders, water troughs, sheds, bird houses, and hunting blinds provided that shall not diminish the conservation values of the Protected Property. Grantors also reserves the right to dismantle or remove existing structures without replacing same. Grantors may add gates as needed. Grantors also reserve the right to add structures to the approximately 3 acres around the existing homestead known as the Building Envelope and as defined in Section _____. Blinds or small structures to observe wildlife are permitted on the Easement.
- 3.4 Diseased Trees and Firebreakers. The right to cut, trench, and remove damaged or diseased trees, shrubs, or plants and to cut firebreaks, as required in exigent circumstances.
- 3.5 Hunting. The right to hunt game birds and animals on the Protected Property. Any such hunting shall be conducted strictly in accordance with applicable game laws and sound wildlife management practices. Grantors and its assignees may erect hunting blinds on the Protected Property.
- 3.6 Farming and Planting. The right to conduct farming and agricultural activities for domestic or commercial purposes and to provide irrigation for such activities. In addition to existing pastures and grasslands used for grazing, Grantors may plant such trees, shrubs or grasses on the Protected Property as Grantors may desire from time to time.

Crops may be irrigated by groundwater from existing or new water wells or from surface waters if permitted by TCEQ (or the appropriate state agency at that time) provided Grantors take reasonable measure to efficiently use groundwater and surface waters and limited water loss and evaporation, such as irrigating according to the Texas Water Development Board's "Agricultural Water Conservation Irrigation Water Use Management Best Management Practices" or a similar technical guidance document. For illustration, examples of measure for efficient irrigation and limiting evaporation which Grantors will consider include choosing crops that require less irrigation, applying compost and mulch, using drip irrigation or other methods that apply water directly to the target plant, timing irrigation for cooler hours in order to minimize evaporation, monitoring soil moisture to determine when and how much to irrigate, and routine maintenance of irrigation improvements. Grantor shall have the right to drill one or more groundwater wells for purposes of supporting permitted activities.

Grantors are allowed to graze, hay, harvest for hay and noncrop seed production, mow, construct fire breaks, conduct fire suppression and rehabilitation activities, and conduct common grazing practices, including cultural practices, constituent with the provisions and conservation purposes of this Conservation Easement. The term "common grazing practices" means those practices customary to the region where the Protected Property is located related to livestock grazing, forage management, and maintenance of infrastructure required to conduct livestock grazing on the Protected Property.

The Property is currently designated as "qualified open-space land" devoted to agricultural use under Article 8, § 1-3-1 of the Texas Constitution and as defined under the Texas Property Tax Code, Title 1, § 23.51(7). If the Agricultural activities permitted under this Conservation Easement are insufficient to qualify the Property for agriculture use designation under the Texas Tax Code, Grantors, upon notice to Grantee reserve the right to undertake Agricultural activities to the extent necessary to qualify the Property, subject to the restrictions set forth in this Section ___ and provided that all Agricultural activities, including but not limited to any grazing activities, shall be conducted pursuant to this Conservation Easement and shall not significantly impair or interfere with the Conservation Values of the Property. Grantors and Grantee agree to reasonably cooperate to ensure that the Conservation Values are protected while also ensuring that the Property remains designated as "qualified open-space land."

Consistent with the terms of this Conservation Easement, Grantors shall have the right to maintain, restore and enhance native plant and wildlife habitat, consistent with Best Management Practices and all Applicable Laws and regulations governing such practices. In particular, Grantors have the express right to preserve native grasses within the Building Envelope set forth in Section ___ herein.

- 3.7 Livestock. The right to run cattle and horses on the Protected Property as detailed in the Management Plan. The Management Plan is attached hereto as Exhibit acre plat & meets & bounds. In no event shall the Protected Property be over-grazed. Land is to remain fenced to prevent external cattle and livestock from entering the property. With the exception of dogs and livestock, there shall be no domestic cats or intentional introduction of exotic wildlife or potentially invasive species on the Property. Livestock introduction is prohibited except as authorized herein or in the Management Plan.
- 3.8 Restoration. The right to restore damage caused by natural disasters such as drought, flooding, tornados and fire, to dredge waterways of debris and silt/gravel deposits caused by flooding, to restore soil levels and contours and replace shrubs and trees lost to natural occurrences or disasters with like or improved species, and to remove shrubs and trees growing adjacent to the river bottom area that have proliferated as a result of any natural or other occurrences. In the event that such damage results in the loss of topsoil, Grantors shall have the right to remove topsoil from other areas of the Protected Property to restore the damage caused by the natural disaster.
- 3.9 Recreational Uses. The right to have limited commercial recreational activities on the Protected Property which are consistent with the purposes of this Conservation Easement and are in compliance with all applicable federal, state and local statutes and regulations, including but not limited to the following: bird watching, sporting clays and hunting (with lead or non-lead ammunition), fishing, canoeing, dog training and trialing, kayaking, tubing, horseback riding, hiking, disc golf, swimming, wildlife observation, ranch tours, hay rides, location filming, agricultural and ecological classes, nature interpretation and educational programs, and other such similar activities provided they do not adversely affect the conservation values.
- 3.10 Control of Predatory Animals, Troublesome Insects and Noxious Plants. The right to control predatory animals, troublesome insects such as fire ants and ticks and noxious plants. This right shall include, but not be limited to the construction of hog traps and cowbird traps.
- 3.11 Wells and Septic Systems. The right to drill for water on the Protected Property and to make available water wells and septic systems and to provide or extend associated utilities for any existing or permitted structures on the Protected Property. Grantors also reserve the right to drill water wells for the protection and/or preservation of wildlife habitat areas and to provide or extend associated utilities to said wells. Grantors also reserve the right to locate water storage tanks on the Protected Property as needed.
- 3.12 Erosion Control. The right to control erosion by the planting of grasses or by other means not inconsistent with the purposes of this Conservation Easement.

- 3.13 Ponds or Lakes. The right to create lakes or ponds for the purpose of agriculture, fire protection, or wildlife habitat enhancement.
- 3.14 Utilities and Roadways. The right to improve and maintain existing roads, including but not limited to, the use of gravel and caliche excavated on the Protected Property of asphalt for purposes of maintenance. The right to use portions of the Protected Property to provide utilities to the parcels reserved by Grantors in Section 17 herein and to provide ingress/egress roadways for said parcels, other property owned by Grantors adjoining the Protected Property and for the recreational uses provided for in Section 3.9 above. Grantors reserve the right to dedicate a twenty foot utility easement for the benefit of all such utilities provided and a sixty foot easement for the benefit of all such roadways. Grantors reserve the right to add unimproved Jeep trails for the purpose of maintaining or monitoring the property. A single improved road may be constructed through the 34.9 acres as an alternative entrance to the property on one of the two possible routes specified on Exhibit _____ acre plat & meets & bounds. Specifically, the right to improve the currently existing two track road beginning at observation point ___ and connect to the already improved road near observation point ___. Additionally, the right to improve the currently existing two track road beginning at observation point ___ and connect to the already improved road near observation point ___.
- 3.15 Berms. The right to construct berms on the Protected Property for safety (e.g., hunting, target practice and sporting clays) and privacy.
- 3.16 Indian Artifacts. The right to hunt and dig for Indian artifacts on the Protected Property.
- 3.17 Composting, Burning and Storing of Plant Material. The right to compost, burn (including controlled burning of fields and pastures) or store plant material and vegetative waste generated by permitted activities and uses and the right to store customary waste generated on the Protected Property by permitted activities and uses.
- 3.18 Leasing. The right to lease all or a portion of the Protected Property for any use permitted under this Conservation Easement, including hunting.
- 3.19 Removal of Grass and Other Vegetation. The right to cut and remove grass or other vegetation and to perform routine maintenance and upkeep immediately around any permitted buildings on the Protected Property, to the extent customary in connection with such buildings and otherwise consistent with the purpose of this Conservation Easement.
- 3.20 Cutting or Clearing Vegetation. The right to engage in the selective cutting or clearing of vegetation and mowing and haying of fields or pastures for habitat

enhancement and protection, fire protection, trail and road maintenance, insect control, the preservation of vistas, or otherwise to preserve the present condition of the Protected Property.

Brush management must be accomplished by hand held tools or by mechanical methods or approved pesticides. Chaining, the use of bulldozers and root plowing are prohibited unless approved. There shall be no additional removal, harvesting, destruction, or cutting of native trees, shrubs or plants.

3.21 Other Vegetation. Grantors expressly reserve the right to plant, cultivate and maintain, as may be reasonably necessary, various trees, vines, shrubs, grasses, etc. on any portion of the Protected Property currently utilized as grassland or pastureland.

3.22 Exterior Lighting. Any exterior illumination must be Fully Shielded, pointed downward, and placed in a manner so as to not be directly visible from, or to create a direct glare into, any adjoining properties or public roadways. In order to limit glare and light trespass into neighboring lands and to limit negative impacts to wildlife, no metal hydride or mercury vapor lamps may be used. Exterior illumination shall be restricted to bulbs with a Correlated Color Temperature of 2,700K or less. As used herein, "Fully Shielded" means no direct uplight (i.e., no light emitted above the horizontal plane of the lighting fixture). Notwithstanding anything herein to the contrary, existing lighting, as documented in the Baseline Report, is permitted.

3.23 Grantors expressly reserve all property rights and appurtenances thereto not expressly conveyed to Grantee, including but not limited to all riparian rights and all rights to surface and subsurface water permitted and contemplated under statutory and common law.

4. Grantee's Rights. To accomplish the purpose of this Conservation Easement, the following rights are conveyed to the Grantee by this Conservation Easement:

4.1 Right to Protect. The right to preserve and protect the conservation values of the Protected Property.

4.2 Right of Entry. On or about each annual anniversary date hereof, Grantee shall have the right to enter the Protected Property at all reasonable and mutually convenient times and with prior notice for the purposes of: (a) inspecting the Protected Property to determine if the Grantors are complying with the covenants and purposes of this Conservation Easement; (b) enforcing the terms of this Conservation Easement; (c) taking any and all actions with respect to the Protected Property as may be necessary or appropriate, with or without order of

court, to remedy or abate violations hereof; and (d) monitoring as described below.

- 4.3 Monitoring. The right, but not the obligation, to monitor the condition of the rare plant and animal populations, plant communities, and natural habitats on and watershed characteristics of the Protected Property during such annual visits, and to manage them, to the extent deemed appropriate by the Grantors and Grantee and in coordination with Grantors, to ensure their continued presence and viability on the Protected Property. If a dispute arises out of or related to the reasonableness of Grantors' non-approval, and if said dispute cannot be settled through direct discussions, the parties agree to first endeavor to settle the dispute in an amicable manner by mediation under the Commercial Mediation Rules of the American Arbitration Association, before resorting to arbitration. Thereafter, any unresolved controversy shall be settled by arbitration in accordance with Commercial Arbitration Rules of the American Arbitration Association, and judgment upon the decision tendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. Arbitrator(s) must be residents of Kendall County.
- 4.4 Enforcement. The right to prevent any activity on or use of the Protected Property that is inconsistent with the purpose and reservations of this Conservation Easement and to require the restoration of such areas or features of the Protected Property that may be damaged by any inconsistent activity or use, pursuant to Section 10 below.
- 4.5 Discretionary Consent. The Grantee's consent for activities otherwise prohibited under Section 2 above, or for any activities requiring Grantee's consent under Section 3 above, may be given under the following conditions and circumstances. If, owing to unforeseen or changed circumstances, any of the activities listed in Section 2 are deemed desirable by both the Grantors and the Grantee, the Grantee may, in its sole and reasonable discretion, give permission for such activities, subject to the limitations herein. Such requests for permission, and permission for activities requiring the Grantee's consent under Section 3, 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 regarding matters under Section 3 only if it determines, in its sole and reasonable discretion, that such activities (1) do not violate the purpose of this Conservation Easement and (2) either enhance or do not impair any significant conservation values associated with the Protected Property.
- 4.6 Approval. When approval is required prior to Grantors engaging in any activity not expressly prohibited by this Conservation Easement, Grantors' request for approval shall be in writing and contain detailed information regarding the proposed activity. Such request for permission or approval shall be delivered to Grantee at least sixty (60) days before the anticipated start date of such activity.

Grantee agrees to use reasonable diligence to respond to the request for permission within sixty (60) days. If Grantee does not respond to Grantors' request for permission by the end of the 60 day review period, Grantors may send a second request for approval to Grantee. For any proposed activity, use or conveyance requiring Grantee approval, such second request for permission or approval must explicitly state that it is the second request for approval or permission and state in bold typeface, in all capitalized letters, and in a conspicuous place, that Grantee's failure to timely respond within fifteen (15) days after Grantee has received such second notice will be deemed to constitute Grantee's approval of or permission for the proposed activity, use, or conveyance identified in such request for approval. Notwithstanding anything in this section to the contrary and for the avoidance of any doubt, this section ___ is not intended for approval or permission of activities that would violate the purpose of this Conservation Easement or that are expressly prohibited by this Conservation Easement or any activities that would be reasonably expected to have an adverse effect on any of the conservation values.

Grantee agrees to make its determinations based on the terms of this Conservation Easement and will not unreasonably withhold its permission.

5. Access. Nothing contained in this Conservation Easement shall give or grant to the public or any person or persons, other than the Grantee and its agents and employees as provided herein, a right to enter upon or to use the Protected Property or any portion thereof.
6. Costs and Liabilities.
 - 6.1 Grantors retain all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep and maintenance of the Protected Property. The Grantors shall keep the Grantee's interest in the Protected Property free of any mechanics liens arising out of any work performed for materials furnished to or obligations incurred by the Grantors.
 - 6.2 Each party agrees to release, hold harmless, defend and indemnify the other from any and all liabilities including, but not limited to, injury, losses, damages, judgments, costs, expenses and fees, that the indemnified party may suffer or incur as a result of or arising out of the activities of the other party on the Protected Property. The indemnification provided for in this section is extended to include not only Grantors and Grantee, but also their respective officers, agents, board members and employees, as applicable.
7. Taxes. The Grantors agree to pay any real estate taxes or other assessments levied on the Protected Property. If the Grantors become delinquent in payment of taxes or assessments, so that a lien is created against the Protected Property, the Grantee, at its option, shall, after written notice to the Grantors, have the right to pay such taxes or assessments and any interest and penalties thereon to discharge the lien. Thereafter, Grantee may make written demand on Grantors for full reimbursement of all sums expended by Grantee, including reasonable attorneys' fees, resulting from Grantors'

failure to pay such taxes or assessments. In the event that Grantors fail to pay Grantee such sums within thirty (30) days of the giving of such written notice by Grantee, Grantee shall have the right to seek a court order for a public sale of the Protected Property, subject to the terms of this easement, according to commercially reasonable terms and notice as may be determined by the District Court of Kendall County, Texas. In the event the Protected Property is sold, pursuant to said Court Order, the proceeds of such sale shall be paid into the registry of the Court and distributed in the following order of preference. First, to pay the costs of Court and the costs of sale. Second, to pay the reimbursements due to Grantee hereunder. Third, the residue of such proceeds to the Grantors and/or their heirs and assigns.

8. Title. Subject to all matters of record in _____ County, Texas or visible on the ground, Grantors covenant and represent that the Grantors are the sole owners and are seized of the Protected Property in fee simple and have good right to grant and convey this Conservation Easement; that the Protected Property is free and clear of any and all encumbrances except for those filed in the public records of Kendall County, if any, and that the Grantee shall have the use of and enjoy all of the benefits derived from and arising out of this Conservation Easement.
9. Hazardous Waste. To the best of Grantors' knowledge, Grantors represent that Grantors has no actual knowledge of any hazardous substances, toxic waste or underground storage tanks on the Protected Property. The parties acknowledge that neither Grantors nor Grantee, has conducted any studies, searches, or detailed inspections of the Protected Property regarding hazardous substances, toxic waste, or underground tanks.
10. Grantee's Remedies. If the Grantee becomes aware of a violation of the terms of this Conservation Easement, the Grantee shall give notice to the Grantors, at the Grantors' last known address, of such violation via certified mail, return receipt requested, and request corrective action sufficient to abate such violation and restore the Protected Property to its previous condition at the time of this grant. Grantors agree that the Easement Documentation Report shall be deemed to provide objective information concerning the Protected Property's condition at the time of this grant. Failure by the Grantors to abate the violation and take such other corrective action as may be requested by the Grantee within ninety (90) days after receipt of such notice shall entitle the Grantee to bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Conservation Easement; to require the restoration of the property to its previous condition; to enjoin the non-compliance by ex parte, temporary restraining order and/or permanent injunction in a court of competent jurisdiction, and/or to recover any actual damages arising from the noncompliance. However, the award of any type of punitive, compensatory, and/or consequential damages shall be prohibited by this Conservation Easement. Any damages recovered by Grantee must be applied by Grantee to take the corrective action on the Protected Property in order to remedy the condition caused by the violation of this Conservation Easement. If the court determines that the Grantors have intentionally failed to comply with or violated the terms of this Conservation Easement, the Grantors shall reimburse the Grantee for any reasonable costs of enforcement, including costs of restoration, any other actual damages, court costs and reasonable attorney fees.

- 10.1 Emergency Enforcement. If the Grantee, in its reasonable discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the conservation values of the Protected Property, the Grantee may pursue its remedies under this Section with prior notice to the Grantors by personal communication, telephone, or pursuant to Section 19.6 herein, but without waiting for any period for cure to expire.
- 10.2 Failure to Act or Delay. The Grantee does not waive or forfeit the right to take action as may be necessary to insure compliance with this Conservation Easement by any prior failure to act and the Grantors hereby waives any defenses of waiver, estoppel or laches with respect to any failure to act or delay by the Grantee, its successors or assigns, in acting to enforce any restriction or exercise any rights under this Conservation Easement. Notwithstanding the foregoing, any condition or issue of compliance which has existed for at least three (3) years shall be deemed a permitted or consented-to exception.
- 10.3 Violations Due to Causes Beyond Grantors' Control. Nothing herein shall be construed to entitle the Grantee to institute any enforcement proceedings against the Grantors for any changes to the Protected Property due to causes beyond the Grantors' control, such as changes caused by fire, flood, storm, earthquake or the unauthorized wrongful acts of third persons. In the event of violations of this Conservation Easement caused by the unauthorized wrongful acts of third persons, the Grantors agree, upon request by the Grantee, to join in any suit, or at the election of the Grantors to appoint the Grantee its attorney-in-fact for the purposes of pursuing enforcement action.
11. Parties Subject to Easement. The covenants agreed to and the terms, conditions, and restrictions imposed by this grant shall not only be binding upon the Grantors but also its lessees, agents, personal representatives, successors and assigns, and all other successors in interest to Grantors shall continue as a servitude running in perpetuity with the Protected Property.
12. Subsequent Transfers. See Section _____.
13. Merger. The Grantors and the Grantee agree that the terms of this Conservation Easement shall survive any merger of the fee and easement interest in the Protected Property.
14. Assignment. The parties hereto recognize that the benefits of this easement are in gross and assignable, provided, any assignment of this Easement by Grantee requires written approval by Grantors. Any assignment shall be to a qualified organization as that term is defined in Section 170(h)(3) of the Internal Revenue Code of 1986, that is organized and operated primarily for one of the conservation purposes specified in Section 170(h)(3) of the Internal Revenue Code and committed to hold the easement solely for the conservation purposes that the contribution was originally intended to advance. However, an assignee of Grantee or any subsequent holder of this easement shall not assign its rights and obligations under this Agreement, except by approval of Grantors, which will not be unreasonably withheld. If a dispute arises out of or related to the reasonableness of

Grantors' non-approval, and if said dispute cannot be settled through direct discussions, the Grantors and Grantee agree to follow the procedures described in Section 4.3 above as it relates to mediation and arbitration procedures.

15. Limitations on Extinguishment. If future circumstances render the purpose of this Easement impossible to accomplish, this Easement can only be terminated or extinguished, whether with respect to all or part of the Protected Property, by judicial proceedings in a local court of competent jurisdiction. Unless otherwise required by applicable law at the time in the event of any sale of all or a portion of the Protected Property (or any other property received in connection with an exchange or involuntary conversion of the Protected Property) after such termination or extinguishments, and net of any costs or expenses associated with such sale, Grantors and Grantee shall divide the proceeds from such sale in accordance with their respective percentage interests in the fair market value of the Protected Property, as such percentage interests are determined under the provisions of paragraph _____, adjusted, if necessary, to reflect a partial termination or extinguishments of this Easement. All such proceeds received by Grantee under such circumstances shall be used by Grantee in a manner consistent with Grantee's conservation purposes.

- 15.1 Percentage Interests. For purposes of this Section 15, the parties stipulate that as of the effective date of this grant, the Easement and the restricted fee interest in the Protected Property each represents a percentage interest in the fair market value of the Protected Property. Said percentage interests shall be determined by the ratio of the value of the Protected Property encumbered by this Easement on the effective date of this grant, to the value of the Protected Property without deduction for the value of the Easement on the effective date of this grant. The values on the effective date of this grant shall be those values used to calculate the deduction for federal income tax purposes allowable by reason of this grant, pursuant to Section 170(h) of the Code. The parties shall include the ratio of those values with the Baseline Documentation of the Protected Property on file at Grantee's offices and shall amend such values, if necessary, to reflect any final determination thereof by the Internal Revenue Service or court of competent jurisdiction. For purposes of this paragraph, the ratio of the value of the Easement to the value of the Protected Property unencumbered by the Easement shall remain constant, and the percentage interests of Grantors and Grantee in the fair market value of the Protected Property thereby determinable shall remain constant. The Parties agree that the percentage interests and calculation of any proceeds shall not be affected by value attributable to authorized improvements to the Protected Property made after the date of this grant.

16. Condemnation. If all or part of the Protected Property is taken under the power of eminent domain by public, corporate, or other authority, or otherwise acquired by such authority through a purchase in lieu of a taking, Grantors and Grantee shall join in appropriate proceedings at the time of such taking to recover the full value of the interests in the Protected Property subject to the taking and all incidental or direct damages resulting from the taking. All expenses reasonably incurred by the parties to this Easement in connection with such taking shall be paid out of the recovered proceeds. Grantors and

Grantee shall be respectively entitled to compensation from the balance of the recovered proceeds in conformity with the provisions of paragraphs 15 and 15.1 (with respect to the allocation of the proceeds). The respective rights of Grantors and Grantee set forth in this paragraph 16 shall be in addition to, and not in limitation of, any rights they may have at common law.

17. Reserved Rights as to One (1) Building Envelope

- 17.1 In addition to the rights reserved by Grantors in Section 3 above, Grantors also reserves the rights in this Section 17. Notwithstanding any other provisions contained in this Conservation Easement to the contrary, Grantor specifically retains, for the benefit of Grantors and Grantors' descendants, beneficiaries, heirs, successors, representatives or assigns, the right to exclusively use one (1), ____-acre building envelope of land that is currently delineated by an existing fence, and identified on Exhibit ____ acre plat & meets & bounds (the "Building Envelope"), for the construction, maintenance and operation of the current residence with supporting utilities, small scale solar panels, outbuildings, water wells, rainwater catchment, roadways, fencing, and landscaping constructed in accordance with County requirements and related structures on such parcel around the existing homestead. The rights retained and reserved for said parcel shall include the rights to use portions of the Protected Property outside of said parcels in order to provide for utilities, water wells, ingress/egress roadways, and for the discharge of any septic systems which may be installed for the benefit of said parcels. The reserved ____-acre Building Envelope may be conveyed along with any or all rights of Grantors and any remainder interests but shall otherwise remain subject to the conditions and restrictions of this Conservation Easement. Grantors may construct additional residences and related structures within the Building Envelope.
- 17.2 With regard to the reserved rights pertaining to the one (1) ____-acre Building Envelope, Grantors and Grantee agree to cooperate with each other in determining the exact locations of any and all wells, septic systems, utilities, roadways, fencing and any other reserved rights pertaining to said tract so that the conservation values of the Protected Property are maintained to the highest extent practicable.
- 17.4 Grantors reserve the right to construct ingress and egress roadways for said parcel; to provide for utilities to said parcel; and to fence said parcel off from the remainder of the Protected Property.
- 17.5 Grantors reserve the right to construct a caretaker house, outbuildings, and storage facilities within the Building Envelope. Grantors further reserve the right to preserve the native grasses within the Building Envelope. Grantors reserve right to use the areas within the Building Envelope for any purpose permitted by this Conservation Easement.

- 17.6 The owners of said parcels, as well as their heirs, executors, administrators, successors and assigns, shall have the absolute right, without limitation, subject to the terms of the Conservation Easement, to sell, transfer, assign and/or bequeath said parcels to any other person or entity.
18. Limitations on Amendment. If circumstances arise under which an amendment to or modification of this Easement would be appropriate, Grantors and Grantee may by mutual written agreement jointly amend this Easement; provided that no amendment shall be made that will adversely affect the qualification of this Easement or the status of Grantee under any applicable laws, including Sections 170(h) and 501(c)(3) of the Code and the laws of the state of Texas. Any such amendment shall be consistent with the purpose of this Easement, shall not affect its perpetual duration, shall not permit additional residences to be constructed on the Protected Property other than residences permitted by this Easement on its effective date, and shall not permit any impairment of the significant conservation values of the Protected Property. Any such amendment shall be executed by Grantee or by Grantee's successor in title to the benefits of this Easement and by the record owner or owners of the lot or lots or other portion of the Protected Property to which the amendment applies and shall be filed in the official public records of _____ County, Texas.
19. Miscellaneous Provisions.
- 19.1 Severability. If any provision of this Conservation Easement or the application thereof to any person or circumstance is found to be invalid, the remainder of the provisions of this Conservation Easement and the application of such provisions to persons or circumstances other than those as to which it is found to be invalid shall not be affected thereby.
- 19.2 Successors and Assigns. The terms contained in this Conservation Easement shall be binding upon and inure to the benefit of Grantors and Grantee and their respective heirs, executors, administrators, successors and assigns. The term *Grantors* shall also mean the masculine, feminine, corporate, limited partnership, singular or plural form of the word as needed in the context or its use. The term *Grantee* shall include THE CIBOLO CONSERVANCY, INC. and its successors and assigns.
- 19.3 Re-recording. The Grantee is authorized to record or file any notices or instruments appropriate to assuring the perpetual enforceability of this Conservation Easement and Grantee may re-record this instrument at any time as may be required to preserve its rights in this Easement; for such purpose, the Grantors appoint the Grantee its attorney-in-fact to execute, acknowledge and deliver any necessary instrument on its behalf. Without limiting the foregoing, the Grantors agree to execute any such instruments upon request.
- 19.4 Captions. The captions herein have been inserted solely for convenience of reference and are not a part of this Conservation Easement and shall have no effect upon construction or interpretation.

- 19.5 Counterparts. The parties may execute this instrument in two or more counterparts, which shall, in the aggregate, be signed by both parties; each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.
- 19.6. Reasonableness Standard. Grantors and Grantee shall follow a reasonableness standard and shall use their best efforts to make any determinations that are necessary or are contemplated to be made by them either separately or jointly under this Easement in a timely manner and shall cooperate with one another and shall take all other reasonable action suitable to that end.
- 19.7 Controlling Law. The interpretation and performance of this Easement shall be governed by the laws of the state of Texas.
- 19.8 Liberal Construction. Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the grant to effect the purpose of this Easement. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purpose of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.
- 19.9 Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to the Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Easement, all of which are merged herein. No alteration or variation of this instrument shall be valid or binding unless contained in an amendment that complies with paragraph 18.
- 19.10 Notices. Any notices required in this Conservation Easement shall be sent by registered or certified mail to the following address or such address as may be hereafter specified by notice in writing:

Grantors for
Tracts I-III:
Grantors for
Tract IV:

Grantee: THE CIBOLO CONSERVANCY, INC.
25 Spring Creek Road
Boerne, Texas 78006

- 19.11 Effective Date. Grantors and Grantee intend that these restrictions take effect on the day and year this Easement is recorded in the Kendall County Official Records.

TO HAVE AND TO HOLD the said Conservation Easement, by, through or under Grantors, but not otherwise, unto the said Grantee forever.

IN WITNESS WHEREOF, the Grantors and Grantee have executed this document on the dates listed below.

Grantor

Grantor

STATE OF TEXAS §

§

COUNTY OF KENDALL §

This instrument was acknowledged before me on ____, 2019 by

Notary Public, State of Texas
My Commission Expires: _____

STATE OF TEXAS §

§

COUNTY OF KENDALL §

This instrument was acknowledged before me on ____, 2019 by

Notary Public, State of Texas
My Commission Expires: _____

STATE OF TEXAS §
 §
COUNTY OF KENDALL §

This instrument was acknowledged before me on ____, 2019 by

Notary Public, State of Texas
My Commission Expires: _____

THE CIBOLO CONSERVANCY, INC., Grantee

By: _____
Brent Evans
Its: Director

STATE OF TEXAS §
 §
COUNTY OF KENDALL §

This instrument was acknowledged before me on ____, 2019, by Brent Evans, Director of THE CIBOLO CONSERVANCY, INC., a Texas non-profit corporation, on behalf of said corporation.

Notary Public, State of Texas

EXHIBIT A

Legal Description of the Protected Property

TRACT I: