

Final
206
+ 92

300

CONSERVATION EASEMENT

STATE OF TEXAS §
COUNTIES OF HOUSTON §
AND CHEROKEE §

Grantor: Forestar (USA) Real Estate Group Inc., a Delaware corporation, authorized to do business in Texas, with its principal office in Austin, Travis County, Texas.

Grantee: Conserve East Texas Inc., whose mailing address is P. O. Box 154540, Lufkin, Texas 75915.

RECITALS:

- A. Grantor owns the parcel of real property (the "Property") situated in Houston and Cherokee Counties, Texas that is more particularly described by metes and bounds in the attached Exhibit "A", which exhibit is incorporated herein by reference and made a part hereof for all purposes, that Grantor desires to conserve and protect with a conservation easement.
- B. Grantee has the right and power to obtain easements and other interests in land necessary for among other purposes, the purpose of, conserving and protecting the waters and the soils in the Neches River Basin and is a "qualified organization" under Section 170 (h) of the Internal Revenue Code of 1986 ("Tax Code").

In consideration of the recitals and Ten Dollars, cash in hand paid, the receipt and sufficiency of which are acknowledged and for which no expressed or implied lien is retained, Grantor grants to Grantee, its successors and its assigns, a conservation easement ("Easement") together with a right of access (subject to the conditions in Section 6.2) to the Easement (the "Access Rights"), to have and to hold in perpetuity for the purposes stated in Article 1 of this Easement and subject to the Reservations and Permitted Exceptions as defined in Article 14 of this Easement. Grantor binds itself and its successors and assigns to warrant and forever defend title to the Easement and Access Rights in Grantee, its successors and assigns against every person lawfully claiming the Easement or any part thereof except as to Reservations and Permitted Exceptions, to the extent that such claim arises by, through or under Grantee, but not otherwise. Any and all implied covenants under Section 5.023 of the Texas Property Code are excluded from this conveyance. Neither this Easement nor the Access Rights grant to the general public rights of ingress and egress upon or across the Property or any right of enforcement.

1. **PURPOSE.** The purpose of this Easement is to ensure that the Property will be retained forever as a "working forest." As used in this Easement, the term "working forest" means a multifunctional forest that is managed, sustained and conserved in perpetuity using sound practices to promote and protect the following values associated with the Property: (a) the existing ecosystem that protects and contributes to clean air, clean water, soil maintenance and habitat for wildlife and fish; (b) the character of the Property as predominately hardwood bottomland and its related recreational and scenic qualities, and (c) the production of timber from the Property using best forestry practices in a manner that protects and enhances the other stated values.

2. **NO INCONSISTENT ACTS.** Grantor will not perform, nor knowingly allow others to perform, any act on or affecting the Property that is inconsistent with the purpose of this Easement or breaches any provision of this Easement. Unless otherwise specified below, nothing in this Easement shall require Grantor to take any action to restore the condition of the Property after any act of God or other event over which Grantor had no control.

3. **PROHIBITED PROPERTY USES.** Any activity on or use of the Property inconsistent with the purpose of this Easement is prohibited. Without limiting the foregoing, the following is a listing of activities and uses which are expressly prohibited.

3.1 Limitations on Division and Conveyance. Except as specifically permitted by this Easement, the Property shall not be divided, subdivided or partitioned, or conveyed.

(a) No Partition. Grantor waives and relinquishes any right to partition the Property that Grantor, its successors or assigns now have or in the future may have and covenants that Grantor, its successors and assigns, shall not assert in any proceeding a right to partition any interest owned in the Property.

(b) Involuntary Conveyance. An "involuntary conveyance" as that term is used in this Easement means any conveyance by exercise of the power of eminent domain, foreclosure, levy, execution, other legal process, receivership, bankruptcy or other insolvency action, or intestate passage of title at death or passage of title to a guardian or other personal

representative in the event of incapacity. In the event of an involuntary conveyance, the grantee's trustee, other fiduciary, successors or assigns shall be bound by this Easement to the fullest extent permitted by law.

- (c) Notice. Grantor (or its representative or successor) shall provide Grantee with written notice of: (i) any voluntary or involuntary conveyance of all or part of the Property regardless of whether it is a permitted conveyance under this Easement; or (ii) any planned merger, consolidation, dissolution or other similar change in its business organization where Grantor will not be the surviving business organization. The notice shall be provided promptly (but in no event later than seven days following the event giving rise to the notice obligation) and shall include copies of all relevant documents.
- (d) Liability of Grantor after Permitted Conveyance. Upon a conveyance in compliance with this Easement, Grantor shall be released from all future obligations under the Easement with respect to the Property (or portion thereof) conveyed, unless otherwise reasonably required to obtain the consent of Grantee to the conveyance. No conveyance shall release Grantor from any accrued liability under this Easement.
- (e) Exclusion from Limitations. The limitations on conveyances in Section 3.1 do not preclude the granting of leases, concessions or licenses to use the Property for purpose expressly permitted by this Easement, provided no such lease, concession or license shall be granted for a term of more than ten years (except as otherwise provided in Article 5) without the express prior written approval of Grantee, which approval shall not be unreasonably withheld or delayed. The limitations on conveyances do not preclude a conveyance of the entire Property subject to the terms of this Easement or any merger, consolidation, reorganization, or sale of all or substantially all of the assets of Grantor that includes all of the Property then owned by Grantor or any change in control of Grantor.
- 3.2 Construction. There shall be no construction of buildings, structures, roads, pipelines, utility lines or other improvements on the Property, except for any improvements that may be specifically permitted in either Article 4 or Article 5 of this Easement. Improvements existing as of the date of this Easement may be maintained, repaired and replaced substantially as now constructed in order to continue their current uses where located.
- 3.3 Hydrology, Water Quality. Subject to the prior estates and related rights, powers, privileges and obligations created by any prior reservation or conveyance of groundwater or an interest in the groundwater, there shall be no permanent alteration of groundwater hydrology or depletion of surface or ground water, including alteration of natural watercourses, lakes, ponds, marshes, or wetlands on the Property; provided, however, that the foregoing shall not prohibit wetland or waterfall habitat improvement programs upon such terms as Grantee may approve prior to commencement of such programs. There shall be no activities on the Property or uses made of the Property that pollute or impair the quality of surface or ground water on, in, under or adjoining the Property.
- 3.4 Disposal, Use and Storage of Waste and Related Matters. There shall be no disposal of waste of any kind on, in or under the Property, other than biodegradable tree or vegetation residue normally resulting from forestry activities that are permitted under this Easement. Except as temporarily required to conduct operations under uses permitted by this Easement, no hazardous substances or waste, no toxic materials, and no unsightly or noxious substances or materials shall be stored or used or collected on the Property. Underground storage tanks are not permitted. Collection and treatment areas and control structures for the protection of water or soil shall be properly designed, constructed and maintained in accordance with law, permit conditions and best practices in the forestry industry or, if related to another commercial activity, best practices for that industry.
- 3.5 Damage to Habitat. There shall be no uses of the Property or activities on the property that may threaten the viability of populations of or habitat for species identified on the Property that are then currently listed by either the state or federal government as threatened or endangered, unless the use or activity is consistent with rights reserved by Grantor and authorized by permit or other approval from the appropriate regulatory body required by law for such authorization. Nothing in this Section shall be interpreted to limit the rights of Grantor to apply for or receive any consent, license or permit, habitat conservation or other plan, or otherwise participate in any program or activity consistent with Grantor's reserved rights.

4. **PERMITTED PROPERTY USES.** Grantor retains the following rights:

4.1 **Existing Uses.** Grantor shall have the right to continue any activity on or use of the Property that is being conducted as of the date of this Easement and that is not specifically prohibited by this Easement. Prior to making any material change in an existing activity or use of the Property, Grantor shall notify Grantee in writing in order to afford Grantee an opportunity to enforce any provision of this Easement that Grantee may believe will be violated. Grantee's determination of a violation shall have no evidentiary value in any proceeding to resolve a dispute over whether the material change is a violation.

4.2 **Uses Not Prohibited.** In addition to the activities and uses specifically permitted by this Easement, Grantor shall have the right to engage in any lawful activity or make any lawful use of the Property that is consistent with the purpose of this Easement, unless specifically prohibited by this Easement.

4.3 **Transfer.** Subject to the limitations of Article 3 of this Easement, Grantor shall have the right to sell, give, mortgage, lease, or otherwise convey the Property; provided however, that any such conveyance, mortgage or lease shall be subject to the terms of this Easement. The grant of an undivided interest in the entirety of the Property or a portion thereof that has been previously conveyed in accordance with the terms of this Easement is permitted so long as the grantee expressly waives and relinquishes any right of partition in kind or otherwise by grantee, its heirs, successors and assigns and expressly agrees to assume the obligations under and be bound by the provisions of this Easement. The granting of estates in minerals or other commercially valuable substances under the surface of the Property is excluded from this Section 4.3 and is governed by Article 5 of this Easement.

4.4 **Timber Production and Harvesting.** Subject to the limitations of this Section 4.4, Grantor has the right to engage in commercial timber production and to practice silviculture on the Property. Grantor's rights include selected timber thinning, selected cutting (as defined below) of hardwood and clear cutting of pine, prescribed burning, and reforestation for the purposes of wildlife management, forest health and commercial production of timber consistent with the purpose of this Easement. All such activities must be conducted in accordance and compliance with the most currently published silvicultural best management practices for the State of Texas, subject to and in accordance with the following provisions.

(a) **Sustainable Forestry.** All timber management and harvest activities conducted on the Property must also conform with the Sustainable Forestry Initiative® standards (or equivalent replacement generally recognized in the industry) as such standards may be amended from time to time (the "SFI Standards") and shall not significantly impair, damage or interfere with the purpose of this Easement.

(b) **Size Limitations.** The maximum size of a pine clear-cut harvest will be 75 acres. The average size of all pine clear-cut harvests within any calendar year will be 50 acres or less. In the event of a subdivision of the Property in compliance with this Easement, the average acres harvested will be determined for each subdivided portion of the Property.

(c) **Selected Cutting; Select Timber Thinning.** After any harvest of a stand of hardwood or a mixed stand of hardwood and other species, both (a) an average of not less than fifty square feet of basal area of hardwood per acre harvested must remain and (b) for each acre harvested, a basal area of not less than thirty square feet per acre of hardwood trees must remain. For the purpose of determining compliance, Grantor shall designate the area of each acre within the harvest area in a written plan prepared prior to the harvest and delivered to Grantee at least 30 days prior to commencement of harvesting. If an acre within the perimeter of the harvest area has thirty basal square feet of hardwood or less prior to harvest, then hardwood from that acre may not be harvested and that acre shall be excluded in determining the average remaining number of square feet of hardwood basal area remaining for the harvested area. As used in this Easement, (a) the term "selected cutting" means that individual trees or groups of trees within a stand of trees are selected for cutting based upon physical condition or degree of maturity; (b) the term "selected timber thinning" means commercial harvest of selected trees in a stand, often done to remove less desirable trees or to decrease stand density and increase future growth of more desirable trees; (c) the term "harvest" includes a selected cutting or a selected thinning; and (d) "basal area" means the sum of the cross sectional areas in square feet of the standing hardwood trees on an acre at 4.5 feet above the ground. Nothing in this Section 4.4(c) shall limit the right of Grantor to harvest pine from a mixed stand of hardwood and other species so long as such pine harvest is consistent with the other provisions of this Easement.

(d) Included Rights. Notwithstanding the stated limitations, Grantor's right to engage in forestry on the Property includes the right to:

(i) Salvage timber lost as a result of a hurricane, fire, flood, drought or similar event or to prevent the spread of an insect, disease or forest health pest outbreak to adjacent stands or to recover the economic value of down or damaged timber. If such salvage operations will constitute removal of the timber on more than 25% of the acreage of the Property, Grantor will notify and consult with Grantee prior to commencement of salvage operations. Salvage operations must be conducted in a manner that complies with forestry best management practices in effect as of the date of the operations.

(ii) Prevent and control fire, as well as to apply fire as a management tool, on the Property and to clear fire lines on the Property. It is recognized that fire is a natural process and occurrence in the surrounding ecosystem and Grantor shall have no obligation to prevent or fight fires on the Property, unless the fire is the result of gross negligence of Grantor or its agents or contractors;

(iii) Remove dead or diseased trees, or trees that present a hazard to persons or property.

(iv) Apply forest chemicals and pesticides on the Property in amounts and with frequency that comply with the manufacturer's label directions and recommendations as necessary to accomplish reasonable forest management objectives, while minimizing adverse effects upon the Property and avoiding any impairment of the natural ecosystem.

(v) Control or eradicate invasive plant species on the Property.

(vi) Maintain, repair and replace existing forest management roads and associated bridges, water bars, culverts and other road improvements, provided that road repair and associated improvements are consistent with the purpose of the Easement.

4.5 Recreational and Educational Uses. Grantor reserves the right to engage in and permit others, whether or not for consideration, to engage in recreational and educational uses of the Property, including hiking, camping, nature walks, birding, picnicking, horseback riding, bicycling, ATV and four wheel or other recreational vehicle access, lawful hunting and fishing, and other recreational and educational uses as long as such activities are conducted in a manner and intensity that do not significantly adversely impact plant and wildlife habitat on the Property or create erosion. Such rights include the clearing, construction, and maintenance of recreational facilities and beneficial wildlife openings, trails or paths (including raised or elevated portions thereof) for walking, horseback riding, and other recreational or educational activities within and across the Property, including removal of brush and grass for maintenance of the existing scenic overlook on the Property. "Recreational facilities" as used in this provision, includes lodges, cabins, club buildings, study centers and related outbuildings (together, "Structures"), provided those Structures must be confined to one per tract of contiguous Property owned by Grantor or its successor or assigns, except that the 629 acre tract of Property identified as Coon Pond on Exhibit A hereto may have two Structures. No Structure will be located within 150 feet of the river bank and such Structures may be used only for temporary stays and not as full-time residences. The right to construct those types of Structures includes the right to extend and maintain roads and utilities to the Structures, and ordinary residential kitchen and toilet waste facilities to serve the Structures. All improvements constructed and maintained under this provision must comply with all applicable law and regulation and must not collectively or singularly be inconsistent with the purposes of this Easement or violate any other provision of this Easement.

4.6 Predator Control. Grantor shall have the right to control, destroy, or trap predatory and problem animals that pose a material threat to people, other animals, or habitat, subject to applicable law.

4.7 Access Control. Grantor reserves the right to install gates or other barriers and otherwise prohibit and monitor public access upon and across the Property.

5. MINERALS AND OTHER COMMERCIALY VALUABLE SUBSTANCES.

5.1 Prior Rights. To the extent, if at all, the Property is subject to prior leases or other severances of rights, title or interest in or to minerals or other commercially valuable substances (such as groundwater), this Easement is subject to such prior rights, title or interest and no reservations in this Easement are intended unlawfully to impair or encumber that right, title or interest; provided the right to use and possess the surface of the Property shall be subject to principles of accommodation of competing uses regardless of dominance of an estate or priority in time to the fullest extent permitted by law.

5.2 Restriction on Mining; Dredging. Subject to the prior rights, Grantor agrees not to conduct or permit use of any of the following activities on, in or under the Property: (a) surface mining using any method now known (such as open pit or quarry) or developed in the future that may be used to recover any mineral or other substance on, in or under the Property; (b) in situ mining methods now known or developed in the future used to extract minerals or other substances in place (such as the mining of substances such as uranium or sulfur by dissolving the substance in place through pumping a solution from the surface through the deposit and recovering the solution at the surface); or (c) dredging or fill operations on or from the Property. As a limited exception to the prohibition on surface mining, extraction or removal of soil, sand, gravel or sod is permitted from existing small excavation areas (not to exceed one half acre) solely for the purposes of reasonable maintenance of existing roads and other facilities on the Property, provided the excavation and related activity is lawful and properly permitted and does not jeopardize qualification of this Easement as a conservation easement under Texas law as then in effect or impair qualification for a deduction of the value as a conservation contribution under the Tax Code. At the time of execution of this Easement, Grantor has not granted any right to surface mine on the Property and no state or federal agency has granted a permit to surface mine and no person is conducting surface mining operations on the property. The probability of surface mining occurring on the Property is so remote as to be negligible.

5.3 Mineral Exploration and Recovery. Nothing in this Easement shall prevent Grantor from granting the right or undertaking (a) to explore for or recover minerals (such as oil and gas) or other commercially valuable substance (such as groundwater) from under the surface of the Property or (b) to store minerals or other substances in subsurface geologic formations, so long as such extraction or storage does not violate this Easement or disturb the surface or create a substantial risk of subsidence of the surface of the Property, and further provided that Grantor hereby expressly releases and waives, on behalf of itself and its successors or assigns, all rights of ingress and egress and all other rights of every kind and character whatsoever to enter upon, use or in any way disturb the surface of the Property or any part thereof, including, without limitation, the right to enter upon the surface of the Property for purposes of exploring for, developing, drilling, producing, transporting, treating, storing or any other purpose incident to the development or production of oil, gas or other minerals in, on and under the Property. Nothing herein, however, restricts or prohibits the exploration or production of the minerals by means of wells that are drilled or mines that open on land other than the Easement but enter or bottom under the Easement. Any person lawfully enabled to extract or store minerals or other substances in, on or under the Property using facilities located on the Property shall use best efforts and practices to prevent the impairment of, damage to or interference with the purpose of this Easement. Seismic or similar exploration operations are not permitted on the Property without the prior consent of Grantee.

6. GRANTEE'S RIGHTS. To accomplish the purpose of this Easement, Grantee shall have the following rights:

6.1 Right to Enforce. Grantee has the right to enforce the terms of this Easement. The failure of Grantor or its successors and assigns to timely provide Grantee the harvesting plan as required by Section 4.4(c) shall be considered an imminent violation likely to result in immediate and irreparable harm.

6.2 Right of Entry. Upon not less than 48 hours prior notice from Grantee, Grantor shall provide Grantee, its employees and contractors, with access to the Property, and will escort Grantee's personnel on the Property. Grantee shall not access the Property without providing Grantor such prior notice and Grantor shall have the right to accompany Grantee, its employees or contractors on any visit to the Property. During hunting season access may be limited to days and hours the Property is not in use for hunting activities. Grantee, its employees and contractors shall wear protective clothing and gear as required of Grantor's employees and contractors, but shall be solely responsible for their own safety while on the Property. Grantee acknowledges that entry upon the Property presents risks to Grantee and its employees and contractors and that all entry upon the Property shall be at the sole risk of Grantee, its employees and contractors. Grantor shall have no duty to Grantee and its employees and contractors concerning their entry upon the Property and activities thereon.

6.3 Access Easement. Grantor shall provide Grantee an access easement in the format attached hereto as Exhibit "B".

6.4 Discretionary Consent. Grantee's consent for activities otherwise prohibited may be given under the following conditions and circumstances. If, owing to unforeseen or changed circumstances, any of the prohibited activities listed in Article 3 are deemed desirable by both Grantor and Grantee, Grantee may, in its sole discretion, give permission for such activities, subject to the limitations herein. Such requests for permission shall be in writing and shall describe the proposed activity in sufficient detail to allow Grantee to judge the consistency of the proposed activity with the purpose of this Easement as specified in Article 1. Grantee may give its permission only if it determines, in its sole discretion, that such activities do not violate the purpose of this Easement. Notwithstanding the foregoing, Grantee and Grantor have no right or power to agree to any activities that would result in the termination of this Easement.

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

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

7.2 Management, Upkeep and Maintenance. Grantor shall be solely responsible for any upkeep and maintenance of the Property that may be required by law or deemed appropriate by Grantor. Grantee shall have no obligation for the upkeep or maintenance of the Property or to insure any improvements on the Property. Grantee has no expressed or implied right to manage or operate the Property under this Easement.

8. **RIGHTS AND REMEDIES OF GRANTEE.** Grantor confers the following rights upon Grantee to maintain perpetually the purpose of this Easement:

8.1 Enforcement. Grantee shall have the right to prevent and correct violations of the provisions of this Easement. If Grantee believes that a violation has occurred, is occurring or is threatened, it may at its discretion take appropriate legal action. Except when an ongoing or imminent violation could substantially diminish or impair the purpose of this Easement, Grantee shall give Grantor written notice of the alleged violation and 60 days to correct it (or to begin good faith efforts to correct the alleged violation in the event the alleged violation cannot be reasonably corrected in sixty days). If Grantor disputes all or part of the allegations of a violation, Grantor shall notify Grantee of the disputed allegations and the grounds for disputing the allegations. The parties agree to engage in good faith negotiations for purposes of resolving any disputed matter. If the parties are not able to resolve the matter, they agree to mediate the dispute before filing any legal action, with each party bearing one-half of the cost of the mediation. If the parties cannot agree on a mediator, either party may petition a court of competent jurisdiction to appoint a mediator. If a court with jurisdiction determines that a violation exists, has occurred or is threatened, Grantee may obtain an injunction to stop it, temporarily or permanently, upon the posting of any required bond. A court may also issue a permanent injunction requiring Grantor to restore the Property to its condition prior to the violation. In any legal action pertaining to this Easement, the prevailing party shall be awarded all of its attorney's fees (including support staff cost, cost of preparing for litigation, computerized research, telephone and facsimile expenses, mileage, deposition cost, postage, duplicating, process service, videotaping and similar costs and expenses) and all of the prevailing party's costs, including costs and fees of technical consultants, expert witnesses and all costs of investigation and documentation. The prevailing party is the party who receives substantially the relief desired, whether by settlement, dismissal, summary judgment or otherwise. The failure of Grantee to discover a violation or to take immediate legal action shall not bar it from doing so at a later time.

8.2 Natural Changes, Emergency Responses. Grantor has (a) no obligation to restore the Property to a former condition where a change in the Property occurs due either to natural causes or to acts of persons beyond Grantor's control and (b) no liability for damages resulting from any such change. Without limitation, natural causes may include natural specie and growth cycle changes in the forest, sedimentation, storms, or floods or forest fires not caused by Grantor's gross negligence. Further, Grantor shall not be liable for damages to the Property or restoration of the Property from changes that result from Grantor's reasonable response to emergencies that affect the Property.

9. **TRANSFER OF EASEMENT.** The parties agree that the benefits of this Easement are assignable. Grantee shall have the right to transfer or assign this Easement to any organization that, at the time of transfer, is a "qualified organization" under Section 170 (h) of the

Tax Code (or successor provision), and that expressly agrees to assume the responsibilities imposed upon Grantee by this Easement. If Grantee ever ceases to exist, is unwilling or unable to discharge its obligations under this Easement, or is no longer qualified under Sec. 170 (h) of the Tax Code (or successor provision), a court of competent jurisdiction shall transfer this Easement to another qualified organization having similar purposes that agrees to assume the responsibilities imposed upon Grantee by this Easement.

10. AMENDMENT OF EASEMENT. This Easement may be amended only with the written and signed consent of Grantor and Grantee, or their respective successors and assigns. Any such amendment must be consistent with the purpose of this Easement and shall comply with Sec. 170 (h) of the Tax Code (or any successor provision) so as not to disqualify this Easement as a qualified conservation easement. Any such amendment must also be consistent with Texas Natural Resources Code Chapter 183 (or any successor provision or related regulation) so that this Easement shall continue to be a conservation easement under Texas law. Grantor and Grantee have no right or power to agree to any amendment that would adversely affect the enforceability of this Easement.

11. TERMINATION OF EASEMENT. If it is determined that conditions on or surrounding the Property have changed so much that it is impossible to fulfill the conservation purposes set forth in Article 1, this Easement may be terminated by a court of competent jurisdiction at the joint request of both Grantor and Grantee. This Easement may also be terminated in any of the following events.

11.1 Condemnation. If condemnation of a part of the Property or of the entire Property by public authority renders it impossible to fulfill any of the conservation purposes set forth in Article 1, the Easement may be terminated upon motion Grantor and Grantee through judicial action in the condemnation proceedings or by declaratory judgment from a court of competent jurisdiction in an action brought by Grantor or Grantee.

11.2 Proceeds of a Taking. At the time of the conveyance of this Easement to Grantee, this Easement gives rise to a real property right, immediately vested in Grantee. If the Easement is terminated and the Property is sold or taken for public use, then, as required by Sec. 1.170A-14(g)(6) of the U.S. Treasury Regulations (or any successor regulation), Grantee shall be entitled to a percentage of the gross sale proceeds or condemnation award (minus any amount attributable to new improvements made after the date of this conveyance, which amount shall be reserved to Grantor) equal to the ratio of the fair market value of this Easement to the unrestricted fair market value of the Property, as these values are determined as of the date of condemnation. Grantee shall use Grantee's proceeds consistently with the conservation purpose of this Easement.

12. INTERPRETATION. Except as to matters governed by federal law, this Easement shall be governed by and interpreted under the laws of Texas, without regard to any conflict of laws principles, resolving any ambiguities and questions of or concerning the validity of specific provisions so as to give maximum effect to its conservation purposes. As used in this Easement, the term "including" or "such as" shall mean by way of example and shall not be a limitation on the scope of the term modified by that word or phrase.

13. INDEMNIFICATION. Each party agrees to 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 Property that causes injury to a person(s) or damage to property.

14. PERMITTED EXCEPTIONS; RESERVATIONS. This Easement is subject to all liens, leases, easements, encumbrances, servitudes, rights-of-way, prescriptive rights, oil, gas and mineral leases, reservations, conveyances, other grants, and any and all other matters of record or apparent on the Property (the "Permitted Exceptions"). All of the covenant rights or privileges, limitations, conditions and reservations in favor of Grantor that are contained in the provisions of this Easement are collectively referred to as the "Reservations."

15. NOTICES. All notices and other communications hereunder shall be in writing and shall be given to the person to be notified using the contact information specified below, by one of the following methods: (a) in person, (b) by facsimile, (c) by an express courier service that maintains and provides written confirmation of delivery, or (d) by certified U.S. mail, postage prepaid, return receipt requested. Delivery by one of the preceding methods will be deemed made (a) in the case of delivery in person, when delivered to the person named in the "attention" line of the contact information specified below, (b) in the case of notification by facsimile, at the time specified on the confirmation of transmission generated by the notifying party's facsimile machine, (c) in the case of notification by express courier service, at the time of delivery recorded by the express courier service, and (d) in the case of notification by U.S. mail, at the time of delivery recorded on the return receipt. If tender of a notice or communication conforming to these provisions is made but affirmatively refused, the notice or communication will be deemed given at the time of the refusal. Email addresses and telephone numbers are also provided below,

for information communication purposes, but no notice or communication delivered solely by email or telephone shall be deemed to have been given.

If to Grantor: Forestar (USA) Real Estate Group Inc.
1607 Chestnut, Suite R
Lufkin, Texas 75901
Attn: SVP – Fiber Resources
Telephone: 936-639-0660
Facsimile: 936-639-0665
E-mail: jeffportwood@forestargroup.com

With copy to: Forestar (USA) Real Estate Group Inc.
6300 Bee Cave Road
Building Two, Suite 500
Austin, Texas 78746
Attn: General Counsel
Telephone: 512-433-5200
Facsimile: 512-433-5203
E-mail: davidgrimm@forestargroup.com

If to Grantee: Conserve East Texas Inc.
P. O. Box 154540
Lufkin, Texas 75915
Telephone: 936/1252-3130
Facsimile: _____

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

17. PARTIES; INUREMENT; ACTION. The term "Grantor" as used in this Easement shall mean the party who at the time of reference is the legal owner of the Property and upon any conveyance of the Property, the new owner (or if jointly owned, the co-owners) shall be deemed Grantor under this Easement. The term "Grantee" shall mean and include the above named Grantee and any of its successors or assigns. Every provision of this Easement that applies to Grantor or Grantee shall also apply to their respective heirs, successors and assigns as their interests may appear. All rights, powers and privileges granted Grantee under this Easement shall inure to Grantor's heirs, successors and assigns, and all liabilities and obligations imposed upon Grantor by this Easement shall be deemed assumed by Grantor's heirs, successors and assigns to the fullest extent permitted by applicable law. All rights, powers and privileges reserved by Grantor under this Easement shall inure to Grantor's heirs, successors and assigns, and all liabilities and obligations imposed upon Grantor by this Easement shall be deemed assumed by Grantor's heirs successors and assigns to the fullest extent permitted by applicable law. In the event of co-ownership of the Property or of the Easement, the following rules shall apply.

17.1 Co-owners of the Easement. A majority in interest of co-owners of the Easement may take any action and make any decision that the original Grantee could take or make under this Easement, provided if there are five or more co-owners of the Easement, then they must delegate the power to take action or make decisions to no more than three co-owners who will act by majority vote on a per capita basis. For these purposes, a co-owner may designate a single representative to act on its behalf. Grantor may enforce this provision requiring five or more co-owners to delegate authority to act by specific performance under a judgment of any court of competent jurisdiction. Without limiting the foregoing, co-owners may exercise the inspection rights collectively no more than four times per year, unless a co-owner has probable cause to believe there has been a material violation.

17.2 Co-owners of the Property. A majority in interest of co-owners of a fee estate in the Property may take any action and make any decision that the original Grantor could take or make under this Easement, provided if there are five or more co-owners of a fee estate in the Property, then they must delegate the power to take action or make decisions to no more than three co-owners who will act by majority vote on a per capita basis. For these purposes, a co-owner may designate a single representative to act on its behalf. Grantee may enforce this provision requiring five or more co-owners to delegate authority to act by specific performance under a judgment of any court of competent jurisdiction. For the purposes of this

provision, owners of (a) any right, title, royalty or other interest in a severed mineral estate (including a right to use or extract valuable substances on, in or under the surface of the Property that are not commonly considered minerals) or (b) a nonpossessory right or interest, lien or a leasehold interest in the surface estate in the Property shall be bound by the action of the co-owners of the surface estate in the Property with respect to this Easement to the fullest extent permitted by law.

18. **RUN WITH THE LAND.** Each of the covenants, conditions, restrictions and limitations in this Easement touch and burden the Property and are intended to run with the land and bind all successive owners of the Property.

19. **MERGER.** The parties agree this Easement shall survive any merger of the fee and easement interests in the Property.

20. **SUBSEQUENT LIENS ON PROPERTY.** No provisions of this Easement should be construed as impairing the ability of Grantor to use this Property as collateral for subsequent borrowing, provided that any mortgage or lien arising from such a borrowing shall be subordinate to this Easement.

21. **ADDITIONAL LIMITATIONS ON LIABILITY.** Subject to the provisions of this Easement, Grantor shall be and remain liable for its breach or violation of this Easement only if such breach or violation of this Easement occurs during such time as Grantor is the legal owner of the Property or part thereof and prior to the express assumption of the provisions of this Easement by Grantor's heirs, successor or assigns in accordance with Section 3.1(a), if applicable. The rights and obligations set forth herein are solely those of the parties to it and no third party beneficiary rights or privileges are intended or conferred. Nothing herein shall be construed to limit the ability of Grantee to recover from the proceeds of any insurance under which Grantor is insured, nor to limit in any manner Grantee's power and ability to enforce any of the covenants and restrictions. No consequential damages or punitive damages may be recovered from Grantor as the result of any breach or violation of this Easement. Any agreement to convey a portion of the Property or attempted conveyance of a portion of the Property in violation of the provisions of this Easement shall be void and cannot be enforced.

22. **REFERENCES.** All references to "Articles" are to the bold-faced numbered and named paragraphs of this Easement and the numbered sections thereof. All references to "Sections" are to the numbered sections of particular Articles including any lettered subsections of the referenced Section.

23. **ACCEPTANCE AND EFFECTIVE DATE.** As attested by the signature of its authorized representative affixed hereto, Grantee hereby accepts without reservation the rights and responsibilities conveyed by this Easement. This Easement is to be effective on the date it is recorded.

[SIGNATURE PAGE TO FOLLOW]

EXECUTED effective as of the 31st day of December, 2014.

GRANTOR:

FORESTAR (USA) REAL ESTATE GROUP INC.,
a Delaware corporation

By: [Signature]
Name: Jeff Portwood
Title: Senior Vice President

THE STATE OF TEXAS §

COUNTY OF ANGELINA §

This instrument was acknowledged before me on the 31st day of December, 2014 by Jeff Portwood, the Senior Vice President of Forestar (USA) Real Estate Group Inc., a Delaware corporation, on behalf of said corporation.



[Signature]
Notary Public, State of _____
Printed Name: _____
Commission Expires: _____

GRANTEE:

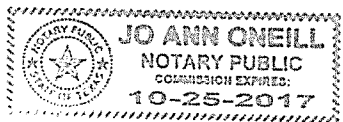
CONSERVE EAST TEXAS INC.

By: [Signature]
Name: Thomas Duncan MD
Title: Vice President

THE STATE OF Texas §

COUNTY OF Angelina §

This instrument was acknowledged before me on the 31st day of December, 2014 by Thomas E. Duncan the Vice President of Conserve East Texas Inc..



[Signature]
Notary Public, State of _____
Printed Name: _____
Commission Expires: _____