

TEXAS GENERAL LAND OFFICE



FILE COPY

SURFACE LEASE NO. SL20080027

By virtue of the authority granted by Chapter 51 of the Texas Natural Resource Code, Title 31 of the Texas Administrative Code, all amendments thereto, all other applicable statutes, and subject to all rules and regulations promulgated pursuant thereto, the State of Texas (the "Grantor"), acting by and through the Commissioner of the General Land Office (the "GLO") on behalf of the Permanent School Fund (the "PSF"), hereby grants to the grantee (the "Grantee") named under the "Grantee's Name" section of Attachment A, the Control Page, the right to use a tract of state-owned real property (the "Premises"), which property is described in the "Premises" section of Attachment A and further depicted in Attachment B, for the purposes described in this agreement (the "Agreement").

ARTICLE I: INTERPRETIVE PROVISIONS

- (a) The meanings of defined terms are equally applicable to the singular and plural forms of the defined terms;
- (b) The words "hereof," "herein," "hereunder," and similar words refer to this Agreement as a whole and not to any particular provision, section, Attachment, or schedule, unless otherwise specified;
- (c) The term "including" is not limiting and means "including without limitation" and, unless otherwise expressly provided in this Agreement, (i) references to agreements (including this Agreement) and other contractual instruments shall be deemed to include all subsequent amendments and other modifications thereto, but only to the extent that such amendments and other modifications are not prohibited by the terms of this Agreement; and (ii) references to any statute or regulation are to be construed as including all statutory and regulatory provisions consolidating, amending, replacing, supplementing, or interpreting the statute or regulation;
- (d) The captions and headings of this Agreement are for convenience of reference only and shall not affect the interpretation of this Agreement;
- (e) All attachments within this Agreement, including those referenced by incorporation, and any amendments are considered part of the terms of this Agreement;

- (f) This Agreement may use several different limitations, regulations, or policies to regulate the same or similar matters. All such limitations, regulations, and policies are cumulative and each shall be performed in accordance with its terms;
- (g) Unless otherwise expressly provided, reference to any action of the Grantor or by the Grantor by way of consent, approval, or waiver shall be deemed modified by the phrase "in its/their sole discretion;"
- (h) All due dates and/or deadlines referenced in this Agreement that occur on a weekend or holiday shall be considered as if occurring on the next business day;
- (i) All time periods in this Agreement shall commence on the day after the date on which the applicable event occurred, report is submitted, or request is received; and
- (j) Time is of the essence in this Agreement.

ARTICLE II: GRANTING CLAUSE

2.01 GRANTING CLAUSE

In consideration of the payments stated in Article IV of this Agreement and other consideration stated therein, the receipt and sufficiency of which are hereby acknowledged, and according to the covenants and commitments herein agreed to be kept and performed by the Grantee, the Grantor grants to the Grantee, in common with others entitled to use same, a non-exclusive right to use the Premises for the purposes and under the conditions and obligations described in the following section of this Agreement.

2.02 SCOPE OF GRANTING CLAUSE

The Grantee's use of the Premises is subject to compliance with the following covenants, obligations, and conditions:


(a) Use

The Premises may be used by the Grantee solely for those uses specified under the "Use(s) of Premises" section of **Attachment A** and for no other purpose. Except as otherwise provided in this Agreement, the Premises are to remain in their current topographical and hydrologic condition during the term of the Agreement. The Grantee is specifically prohibited from modifying the Premises in any manner not authorized in this Agreement and from using, or allowing the use by others, of the Premises for any other purpose.

(b) Trash

The Grantee shall be responsible for the removal and disposal of all trash at the Premises, whether or not such trash is generated by the Grantee or its guests and invitees.

(c) Improvements

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- i) Except as otherwise allowed in this Agreement, no construction, land modifications or excavation, or permanent property improvements may be allowed or undertaken without the Grantor's prior express written consent. The Grantee may not maintain or allow any nuisances or public hazards on the Premises, and shall be under a duty to abate or remove any activity or property constituting or contributing to a hazard or nuisance. The Grantee may file a criminal complaint or institute civil proceedings to protect its right of possession and leasehold interest in the Premises against trespass of other infringement of the Grantee's rights by third parties. The Grantee is specifically prohibited from using or allowing the use by others of the Premises for any purpose not stated herein, including, but not limited to, mining, hauling, or otherwise removing rock, sand, gravel, aggregate, or other such materials, without the Grantor's prior express written approval;
- ii) Prior to undertaking construction or installation of improvements on the Premises, the Grantee shall provide written notice of the terms of this Agreement to each person or entity authorized by the Grantee to perform any such activity on its behalf. If a dispute arises concerning construction or installation of the improvements, the Grantee shall provide the Grantor with a copy of all applicable notices within ten (10) days of the Grantor's written request;
- iii) The Grantee, in its sole cost and expense, shall make, and be solely responsible for, any repairs, maintenance, or replacements to the improvements that the Grantor considers necessary or as required by this Agreement. If the Grantee fails or refuses to honor such a request, or in case of an emergency, the Grantor may make such repairs, maintenance, renewals, or replacements. **THE GRANTEE WAIVES ANY CLAIM FOR DAMAGE CAUSED THEREBY AND IS LIABLE TO THE GRANTOR FOR ANY COSTS INCURRED;**
- iv) Prior to expiration of this Agreement or upon notice of termination, the Grantee shall, at the Grantor's discretion, remove all improvements, remove any resulting debris, and pay Grantor all monies due. The Grantee shall take whatever measures are necessary to restore the area involved as nearly as practicable to the same condition that existed prior to placement of any Improvements. If the Grantee fails to comply with this provision, the Grantor shall have the right to perform the work, in which event the Grantee shall be liable to the Grantor for all cost, loss, and damage incurred by the Grantor;
- v) Notwithstanding the preceding, pursuant to Title 31 of the Texas Administrative Code, the Grantor may waive the removal/restoration requirements in this section if, in the Grantor's sole opinion and discretion, such waiver is in the best interest of the State. Any such waiver shall be in writing and may be conditioned upon factors including the nature and sensitivity of the natural resources in the area, potential damage to or destruction of property, beneficial uses of the existing improvement(s), and other factors considered to be in the best interest of the State; and
- vi) Any improvements existing prior to the execution of this Agreement are and shall remain the property of the Grantor.

(d) Special conditions

The Grantee shall adhere to the special conditions, if any, listed under the "Special Conditions" section of Attachment A.

2.03 AS IS

THE GRANTEE HAS INSPECTED THE PHYSICAL AND TOPOGRAPHIC CONDITION OF THE PREMISES AND, AS A MATERIAL PART OF THE CONSIDERATION FOR THIS AGREEMENT, GRANTOR AND GRANTEE AGREE THAT GRANTEE ACCEPTS THE SAME "AS IS," IN ITS EXISTING PHYSICAL AND TOPOGRAPHIC CONDITION. THE GRANTEE ACKNOWLEDGES THAT SUCH ACCEPTANCE IS REASONABLE AND IT IS NOT RELYING ON ANY REPRESENTATION, STATEMENT, OR OTHER ASSERTION OF THE GRANTOR WITH RESPECT TO THE CONDITION OF THE PREMISES, BUT IS RELYING ON THE GRANTEE'S OWN INSPECTION OF THE PREMISES. THE GRANTOR DISCLAIMS ANY AND ALL WARRANTIES OF HABITABILITY, MERCHANTABILITY, SUITABILITY, FITNESS FOR ANY PURPOSE, AND ANY OTHER EXPRESS OR IMPLIED WARRANTY NOT EXPRESSLY SET FORTH IN THIS AGREEMENT. THE USE OF THE TERM "GRANT" IN NO WAY IMPLIES THAT THIS AGREEMENT IS FREE OF LIENS, ENCUMBRANCES, AND/OR PRIOR RIGHTS. THE GRANTEE IS PUT ON NOTICE THAT OTHER GRANT AND/OR ENCUMBRANCE MAY BE OF RECORD, AND THE GRANTEE IS ADVISED TO EXAMINE THE RECORDS IN THE ARCHIVES AND RECORDS DIVISION OF THE GLO AND RECORDS OF THE COUNTY IN WHICH THE PREMISES ARE LOCATED.

2.04 RESERVATIONS

The Grantor reserves the full use of the Premises and all rights with respect to its surface and subsurface for any and all purposes unless such purposes would unreasonably interfere with Grantee's use of the Premises. The aforementioned reserved full use of the Premises by the Grantor includes the right of ingress, egress, and use of the Premises by the Grantor, its officers, agents, representatives, employees, and other authorized users for any authorized purpose.

2.05 RIGHT OF ENTRY

- (a) In any circumstances where the Grantor is granted a right of entry on the Premises during the term of the Agreement, no such entry shall constitute an eviction or disturbance of the Grantee's use and possession of the Premises, a breach by the Grantor of any of its obligations hereunder, render the Grantor liable for damages for loss of business or otherwise, entitle the Grantee to be relieved from any of its obligations hereunder, grant the Grantee any right of off-set or recoupment, or other remedy.
- (b) In exercising any right of entry, the Grantor agrees to exercise its right of entry only at reasonable times (except in an emergency) for purposes of inspection, repair, and as necessary to protect the State's interests, and the Grantor agrees not to unreasonably interfere with the Grantee's authorized use of the Premises. The Grantee shall provide the Grantor with keys or combinations to all locks that may limit access to the Premises.
- (c) Further, the Grantee authorizes the State, its officers, agents, representatives, and employees to access the Premises over and across Grantee's Adjacent Property. Grantor agrees to use the Adjacent Property only to the extent and for the length of time necessary to provide

access to and from the Premises. The foregoing authorization creates a license only, and does not create an easement over the Adjacent Property.

- (d) Grantee acknowledges that Grantor's right of ingress and egress shall remain in effect as long as any improvements placed on the Premises by Grantee remain on the Premises and/or as necessary for Grantor to confirm the removal (in whole or in part) of those improvements.
- (e) Any aforementioned right of entry shall survive the termination of this Contract.

2.06 SALE OR TRADE

The Premises are subject to sale or trade. The Grantor reserves the right to permit entry by prospective or actual buyers. Regardless of whether the Premises are offered for sale or trade, the Grantee shall have no preference right to purchase the Premises or to renew or extend this Agreement, unless specified in the special conditions herein. The Grantor reserves the right to remove from this Agreement such acreage as the Grantor may determine necessary for purposes other than those described herein, in which event this Agreement shall be canceled as to the part so removed by the Grantor and Rent shall be prorated on the remaining acreage.

ARTICLE III: TERM

The effective date and termination date of this Agreement are specified under the "Effective and Termination Dates" section of **Attachment A**, unless renewed or earlier terminated as provided herein. Unless otherwise specified herein, renewal of this Agreement is at the sole discretion of the Grantor.

ARTICLE IV: CONSIDERATION

4.01 CONSIDERATION

The Grantee shall pay, in consideration of the mutual covenants and agreements set forth in this Agreement, the payment(s) and/or fee(s) listed under the "Payment(s) and/or Fee(s)" section of **Attachment A** on or before the due date.

4.02 PAST DUE CONSIDERATION

All Consideration and any other payments hereunder to be paid by the Grantee shall be deemed to be "rent" and due and payable by the Grantee without demand, deduction, abatement, or off-set. Past due Consideration and other past due payments shall bear interest from maturity at the rate of ten percent (10%) per annum from the date when due until actually paid. Failure of the Grantee to make a payment on or before the date the same becomes due shall, at the option of the Grantor, make all payments due and payable immediately. The Grantor and the Grantee agree that the foregoing represents a fair and reasonable estimate of the expenses that the Grantor may incur by reason of such late payment by the Grantee. Acceptance of such late payments by the Grantor shall not constitute a waiver of the Grantee's default with respect to any such past due amounts, nor prevent the Grantor from exercising any other rights and remedies granted to the Grantor under this Agreement, at law, or in equity.

4.03 HOLDOVER

If the Grantee continues in possession of the Premises after expiration or earlier termination of this Agreement, the Grantee will be deemed to be occupying the Premises on the basis of a month-to-month tenancy subject to all of the terms and conditions of this Agreement, except that, the Grantee shall be liable for any damages arising out of such holding over. The Grantee further acknowledges that acceptance of consideration under this provision does not imply the Grantor consented to hold over. This month-to-month tenancy may be terminated by either party upon 30 days' written notice to the other.

ARTICLE V: EVENTS OF DEFAULT; TERMINATION

5.01 EVENTS OF DEFAULT

With respect to the Grantee, it shall be an event of default hereunder ("Event of Default") if:

- (a) the Grantee fails or refuses to timely pay Consideration or any other payments required by this Agreement after it becomes due;
- (b) the Grantee fails or refuses to comply, timely perform, or observe any of the covenants, duties, obligations, and/or conditions under this Agreement;
- (c) the Grantee abandons or vacates the Improvements, the Premises, or any significant portion thereof;
- (d) there is an entry of a court order requiring the dissolution, winding up, or termination of the Grantee's business affairs; or
- (e) the Grantee fails to materially comply with rules and regulations in the Texas Administrative Code, the Texas Natural Resources Code, or any other rules or regulations promulgated by any state or federal governmental entity with proper jurisdiction over any of the uses permitted under this Agreement.

5.02 NOTICE AND CURE

There shall be no consequences for an Event of Default under this Agreement, unless the Grantee receives written notice of the Event of Default and such Event of Default continues for a period of 30 days after the Grantee receives the notice. A notice of Event of Default shall specify the event or events constituting the default. This 30 day period shall be extended if the act, event, or condition is one that by its nature or circumstances reasonably requires more than 30 days to cure; provided, however, the Grantee shall promptly and in good faith initiate and diligently pursue measures that are expected to cure or eliminate the Event of Default in a reasonable period of time. If the Grantee fails to cure an Event of Default, the Grantor shall be entitled to terminate this Agreement by written notice. This notice and cure provision does not apply to an Event of Default under provision 5.01(a) or any emergency situations that affect public health or safety.

5.03 CUMULATIVE RIGHTS AND REMEDIES; NO WAIVER

If an Event of Default occurs and the Grantee fails to cure within the period provided above, the Grantor may, at its option, do any one or more of the following:

- (a) terminate this Agreement by sending written notice of such termination, in which event the Grantee shall immediately surrender possession of the Premises to the Grantor (such termination shall not prejudice the rights of the Grantor for any claim of payments due);
- (b) enter upon and take possession of the Premises and expel or remove the Grantee and any other occupant, with or without having terminated the Agreement; or
- (c) alter locks and other security devices, if any, at the Premises.

The failure of the Grantor to insist at any time upon the strict observance or performance of any of the provisions of this Agreement or to exercise any right or remedy as provided in this Agreement shall not impair any other right or remedy or be construed as a waiver or relinquishment thereof with respect to subsequent defaults. Every right and remedy given by this Agreement to the Grantor may be exercised from time-to-time and as often as may be deemed expedient by the Grantor. In an Event of Default, the Grantor shall have the option, but not the obligation, to mitigate its damages.

5.04 TERMINATION

Notwithstanding any other provisions contained herein, the parties agree that this Agreement may be terminated without cause by either party upon ninety (90) days written notice by the terminating party to the non-terminating party.

ARTICLE VI: GENERAL TERMS, CONDITIONS, AND EXCEPTIONS

6.01 ASSIGNMENT

The Grantee shall not assign or otherwise dispose of an interest in this Agreement or the Premises without the express prior written consent of the Grantor; and any attempt to assign or otherwise dispose of an interest without consent shall be void and of no effect. This prohibition against assigning or disposition shall be construed to include a prohibition against any assignment or disposition by operation of law. If this Agreement is assigned, or if an interest in this Agreement or the Premises is assigned or disposed of, the Grantor may nevertheless collect Consideration from the assignee and apply the net amount collected to the Consideration payable hereunder. No such transaction or collection of Consideration shall release the Grantee from the further performance of its covenants, duties, and obligations.

6.02 INDEMNITY

EXCEPT FOR DAMAGES DIRECTLY OR PROXIMATELY CAUSED BY THE WILLFUL ACT OF THE GRANTOR, THE GRANTEE SHALL INDEMNIFY AND HOLD HARMLESS THE GRANTOR AND THE GRANTOR'S OFFICERS, REPRESENTATIVES, AGENTS, AND EMPLOYEES FROM ANY LOSSES, CLAIMS, SUITS, ACTIONS, DAMAGES, OR LIABILITY (INCLUDING ALL COSTS AND EXPENSES OF DEFENDING AGAINST ALL OF THE AFOREMENTIONED) ARISING IN CONNECTION WITH:

- THIS AGREEMENT;
- THE USE OR OCCUPANCY OF THE PREMISES;
- ANY NEGLIGENCE, ACT, OMISSION, NEGLECT, OR MISCONDUCT OCCURRING IN, ON, OR ABOUT THE PREMISES; OR
- ANY CLAIMS OR AMOUNTS ARISING OR RECOVERABLE UNDER FEDERAL OR STATE WORKERS' COMPENSATION LAWS, THE TEXAS TORT CLAIMS ACT, OR ANY OTHER SUCH LAWS.

THE GRANTEE ASSUMES RESPONSIBILITY FOR THE CONDITION OF THE PREMISES. THE GRANTEE EXPRESSLY AGREES TO USE AND OCCUPY THE PREMISES AND PLACE ANY IMPROVEMENTS ON THE PREMISES AT ITS OWN RISK. THE GRANTEE SHALL BE RESPONSIBLE FOR THE SAFETY AND WELL BEING OF ITS EMPLOYEES, GUESTS, AND INVITEES. THESE REQUIREMENTS SHALL SURVIVE THE TERM OF THIS AGREEMENT UNTIL ALL CLAIMS HAVE BEEN SETTLED OR RESOLVED AND SUITABLE EVIDENCE TO THAT EFFECT HAS BEEN FURNISHED TO THE GRANTOR.

6.03 PROTECTION OF NATURAL AND HISTORICAL RESOURCES

(a) Unauthorized Discharge

No discharge of solid waste or garbage shall be allowed into state waters or on state lands from any construction or equipment on the Premises. Solid waste includes, but is not limited to, containers, equipment, rubbish, plastic, glass, or any other man-made non-biodegradable items.

(b) Natural Historical Preservation Act and Antiquities Code of Texas

THE GRANTEE IS EXPRESSLY PLACED ON NOTICE OF THE NATIONAL HISTORICAL PRESERVATION ACT OF 1966 AND THE ANTIQUITIES CODE OF TEXAS. IN THE EVENT THAT ANY SITE, OBJECT, LOCATION, ARTIFACT, OR OTHER FEATURE OF ARCHEOLOGICAL, SCIENTIFIC, EDUCATIONAL, CULTURAL, OR HISTORIC INTEREST IS ENCOUNTERED DURING THE ACTIVITIES AUTHORIZED BY THIS AGREEMENT, THE GRANTEE SHALL IMMEDIATELY CEASE SUCH ACTIVITIES AND SHALL IMMEDIATELY NOTIFY THE GRANTOR AND THE TEXAS HISTORICAL COMMISSION, SO THAT ADEQUATE MEASURES MAY BE UNDERTAKEN TO PROTECT OR RECOVER SUCH DISCOVERIES OR FINDINGS, AS APPROPRIATE.

6.04 COMPLIANCE WITH OTHER LAWS; NUISANCE

The Grantee, at its own expense, will comply with all federal, state, municipal, and other laws, codes, ordinances, rules, and regulations applicable to the Premises; and will install, remove, and alter such equipment and facilities in, and make such alterations to, the Premises as may be necessary to comply. The Grantee will not make any unlawful use of the Premises or permit any unlawful use thereof; and will not commit, or permit anyone else to commit, any act that is a nuisance or annoyance to the Grantor or adjacent property owners or tenants, or which might, in the exclusive judgment of the Grantor, damage the Grantor's goodwill or reputation, or tend to injure or depreciate the value of the Premises and/or any Improvements located thereon. The obligations of the Grantee under this Section shall survive any termination of this Agreement.

6.05 NOTICE

- (a) The Grantee shall provide written notice to the Grantor of any change in the Grantee's name, address, corporate structure, legal status or any other information relevant to this Agreement. The Grantee shall provide to the Grantor any other information reasonably requested by the Grantor in writing within 30 days following such request.
- (b) Any payments and required written notices under this Agreement shall be delivered by hand or United States Registered or Certified Mail, adequate postage prepaid, to the address(es) listed under the "Address(es) for Notification" section of Attachment A. A party may change its address by giving notice as provided above. No change of address shall be binding until notice of such change of address is given as required.

6.06 SEVERABILITY

If any provision contained in this Agreement is held to be unenforceable by a court of law or equity, this Agreement shall be construed as if such provision did not exist and the non-enforceability of such provision shall not be held to render any other provision or provisions of this Agreement unenforceable, unless it deprives either party of the benefits of its bargain.

6.07 ENTIRE AGREEMENT

This Agreement and its attachments constitute the entire agreement of the parties and such are intended as a complete and exclusive statement of the promises, representations, negotiations, discussions, and other agreements that may have been made in connection with the subject matter hereof. Unless otherwise expressly authorized by the terms of this Agreement, no modification, renewal, extension, or amendment to this Agreement shall be binding upon the parties unless the same is in writing and signed by the respective parties hereto.

6.08 TAXES

The Grantee shall, as further consideration for this Agreement, pay and discharge all "Taxes" (as hereinafter defined) properly assessed in any calendar year (or portion thereof) during the term of this Agreement. For the purposes of this Agreement, the term "Taxes" means all taxes, assessments, impositions, levies, charges, excises, fees, licenses, and other sums (whether now existing or hereafter arising, whether foreseen or unforeseen, and whether under the present system of taxation or some other system), that during the term of this Agreement may be levied, assessed, charged, or imposed by any governmental authority or other taxing authority or accrue on the Premises and any Improvements or other property thereon, whether belonging to the Grantor or the Grantee, or to which either of them may become liable in relation thereto. The term "Taxes" shall also include all penalties, interest, and other charges payable by reason of any delay or failure or refusal of the Grantee to make timely payments as required pursuant to this provision. **THE GRANTEE AGREES TO AND SHALL INDEMNIFY AND HOLD THE GRANTOR HARMLESS FROM LIABILITY FOR ANY AND ALL TAXES, TOGETHER WITH ANY INTEREST, PENALTIES, OR OTHER SUMS IMPOSED, AND FROM ANY SALE OR OTHER PROCEEDING TO ENFORCE PAYMENT THEREOF.**

6.09 ENCUMBRANCE OF INTEREST

The Grantee may not mortgage, hypothecate, encumber, or grant any deed of trust or security interest that encumbers the Premises or this Agreement. Further, the Grantee may not collaterally assign any rent or other income generated from the Premises. Prior to expiration or termination of this Agreement, the Grantee will provide the Grantor with documentation sufficient to evidence the Grantor's ownership of the Improvements not required to be removed per Article II.

6.10 FILING

Within 30 days of the execution of this Agreement, the Grantee shall file a memorandum of this Agreement for record in the office of the County Clerk in any county in which all or any part of the Premises are located, and file stamped copies thereof must be filed in the GLO. The memorandum must be signed and acknowledged by the Grantee before it is filed in the county records. In the event the Grantee fails to timely file the memorandum, the Grantor may execute a memorandum setting forth the terms and provisions of the Agreement and record the same at the Grantee's cost and expense.

6.11 CONDEMNATION

In the event of a condemnation proceeding that affects all or part of the Premises, the Grantor will have the exclusive authority to negotiate with the condemning authority. In the event of a total condemnation, this Agreement shall terminate. In the event of a partial condemnation, the Grantor may decide whether or not to terminate this Agreement, but, if the Grantor elects to continue the Agreement, the Consideration shall be proportionately reduced. All condemnation proceeds, except for those allocated to the Improvements belonging to the Grantee, shall be payable to the Grantor.

6.12 BANKRUPTCY

If the Grantee ever becomes the subject of a voluntary or involuntary bankruptcy or other similar type proceeding under the federal bankruptcy laws, this Agreement shall automatically terminate.

6.13 INSURANCE

- (a) The Grantee shall acquire, for the duration of this Agreement, insurance and/or bonds, with financially sound and reputable independent insurers licensed by the Texas Department of Insurance, in the type, amount, and under the conditions reasonably required by Grantor. If requested, the Grantee shall submit evidence of such insurance, including a schedule of coverage (or "underwriter's schedules") establishing to the satisfaction of the Grantor the adequacy of the coverage provided by such insurance. If the Grantor determines the coverage is deficient, the Grantee shall secure additional coverage as the Grantor may reasonably request or as required by law or regulation. If coverage expires during the term of the Agreement, the Grantee shall provide the Grantor with renewal or replacement evidence of insurance no less than 30 days before the expiration or replacement of the required insurance. The GLO, its officers, employees, and authorized agents shall be named as additional insureds for all liability arising under this Agreement except on Workers' Compensation and Professional Liability policies. An original additional insured

endorsement signed by an authorized insurance company representative must be submitted to the Grantor.

- (b) Notwithstanding the preceding paragraph, the Grantor reserves the right to consider reasonable alternative methods of insuring the Agreement in lieu of the insurance policies and/or bonds required. It will be the Grantee's responsibility to recommend to the Grantor alternative methods of insuring the Agreement. Any alternatives proposed by the Grantee should be accompanied by a detailed explanation regarding Grantee's inability to obtain insurance coverage as described in this Agreement. The Grantor shall be the sole and final judge as to the adequacy of any substitute form of insurance coverage.

6.14 PROPER AUTHORITY

Each party hereto represents that the person executing this Agreement on its behalf has full power and authority to enter into this Agreement.

6.15 RELATIONSHIP OF THE PARTIES

Nothing contained in this Contract shall be deemed or construed to create a partnership or joint venture, to create relationships of an employer-employee or principal-agent, or to otherwise create for the Grantor any liability whatsoever with respect to the indebtedness, liabilities, and obligations of the Grantee or any other party.

6.16 GRANTEE'S WAIVER OF CERTAIN RIGHTS AND ASSERTIONS

The Grantee waives and relinquishes all rights that the Grantee might have to claim any nature of lien against the Grantor and the Premises, or withhold or deduct from or offset against any Consideration or other sums provided hereunder to be paid to the Grantor by the Grantee. The Grantee waives and relinquishes any right, either as a claim or as a defense, that the Grantor is bound to perform or is liable for the nonperformance of any implied covenant or implied duty of the Grantor not expressly set forth in this Agreement.

IN TESTIMONY WHEREOF, witness my hand and the Seal of Office.

GRANTOR:
THE STATE OF TEXAS

By: Jerry E. Patterson
JERRY E. PATTERSON
Commissioner, General Land Office
Chairman, School Land Board

GRANTEE:
PROPERTY OWNERS ASSOCIATION OF
TERLINGUA RANCH, INC.

By: Alida Lorio
(Signature)
ALIDA LORIO GENERAL MGR.
(Printed Name) (Title)

Date: 9 Dec 2008

Date: 12-16-08

APPROVED:

Contents: MSW
Legal: RTM
Deputy: Dot
Executive: _____

ACKNOWLEDGMENT

STATE OF TEXAS §
COUNTY OF Brewster §

This instrument was acknowledged before me on the 16th day of December, 2008.

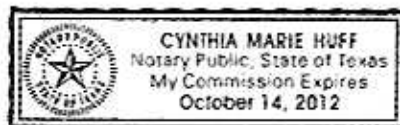
By Alida Lorio
(Grantee representative signing this document)

Cynthia Marie Huff
(Notary Signature)

Notary Stamp

Notary Public, State of TEXAS

My commission expires: 10/14/2012



ATTACHMENT A: CONTROL PAGE

GRANTEE'S NAME

The Property Owners Association of Terlingua Ranch, Inc., a Texas nonprofit corporation.

PREMISES

The Premises, in Brewster County, Texas, further depicted on **Attachment B** incorporated herein by reference, is described as:

GLO File No	Section	Block	Survey	Acres
154569	89	G-4	D. & W. RY. CO.	640.00
154570	90	G-4	D. & W. RY. CO.	640.00
154571	91	G-4	D. & W. RY. CO.	640.00
154572	92	G-4	D. & W. RY. CO.	640.00
154573	93	G-4	D. & W. RY. CO.	640.00
154574	94	G-4	D. & W. RY. CO.	640.00
154575	95	G-4	D. & W. RY. CO.	640.00
154576	96	G-4	D. & W. RY. CO.	640.00
154577	128	G-4	H. E. & W. T. RY. CO.	640.00
154578	129	G-4	H. E. & W. T. RY. CO.	640.00
154579	130	G-4	H. E. & W. T. RY. CO.	640.00
154580	132	G-4	H. E. & W. T. RY. CO.	640.00
154581	168	G-4	H. E. & W. T. RY. CO.	497.00
154582	167	G-4	H. E. & W. T. RY. CO.	640.00
154583	131	G-4	H. E. & W. T. RY. CO.	452.60

Total Acres - 9,269.60

USE(S) OF PREMISES

The Premises may be used by the Grantee, its guests and invitees, subject to the provisions contained herein, solely for Recreation. "Recreation" means low impact, non-invasive uses, including fishing, horseback riding, hiking, camping, birding, photography, and like-kind or related uses, but not hunting. Notwithstanding the foregoing, all activities on the Premises must be consistent with that certain Gift Deed between the Conservation Fund and the State of Texas, recorded at Volume 28, Page 294 of the Real Property Records of Brewster County, Texas, as shown on Attachment C attached hereto (the "Gift Deed") and that certain special document executed by the Commissioner of the General Land Office on April 7, 2008 on behalf of the National Park Service, recorded at Volume 228, Page 734 of the Real Property Records of Brewster County, Texas, as shown on Attachment D attached hereto (the "NPS Special Document"). Any use of or conduct on the Premises inconsistent with the Gift Deed or the NPS Special Document shall entitle the Grantor to immediately terminate this Agreement by written notice to the Grantee.

SPECIAL CONDITIONS

- i) In accordance with the reservations included in section 2.04 of the Agreement, the Grantor reserves the right to authorize a limited number of individuals or associations to use the Premises for hunting purposes. The Grantee agrees that such use of the Premises is reasonable and not inconsistent with the Grantee's use of the Premises as stated herein. As a material part of the

Consideration for this Agreement, the Grantee agrees to provide access to the Premises to such persons as described below.

- a) The number of individuals or associations authorized to use the Premises for hunting purposes pursuant to this section will be determined by the Grantor on a case by case basis, depending on the type of hunting to be authorized and the time of year during which the hunting will occur.
 - b) Individuals or associations authorized to use the Premises for hunting purposes pursuant to this section will be limited to the use of bows and arrows, black powder muzzle loaders, and shotguns.
 - c) Use of the Premises for hunting purposes pursuant to this section will be in accordance with all applicable Texas Parks and Wildlife rules and regulations.
- ii) The Grantee shall develop and implement a sign-in registration system, to be approved by the Grantor, that will facilitate the public use of the Premises by the Grantee, its guests and invites, and others authorized to use the Premises as provided herein. Appropriate signage shall be placed to direct the public from State Highway 118 to the Terlingua Ranch Lodge where a registration station will be located.
 - iii) In connection with the public use contemplated herein, at a minimum, the Grantee shall provide or arrange a reasonable pedestrian and vehicular access route from the Terlingua Ranch Lodge to the Premises at a point on the east boundary of Section 91 that allows the Grantee, its guests and invites, and others authorized to use the Premises as provided herein to access the existing road/jeep trail across the Premises. All motorized vehicle use on the Premises must comply with the Gift Deed.
 - iv) The Grantee may repair existing road/jeep trails on the Premises as necessary to allow access in conjunction with defined recreational uses and consistent with the Gift Deed and the NPS Special Document. The Grantee agrees that public use of the Premises pursuant to the NPS Special Document is reasonable and not inconsistent with the Grantee's use of the Premises as stated herein.

EFFECTIVE AND TERMINATION DATES

This Agreement is for a term of five (5) years, commencing on 1/01/2009 (the "Effective Date") and terminating on 12/31/2013, unless earlier terminated as provided herein. The Grantor, at its own discretion, may extend this Agreement for an additional five (5) year period, subject to terms and conditions mutually agreeable to both parties. If the Grantee desires to extend the Agreement, it must provide written notice to the Grantor at least 90 days prior to expiration of the Agreement.

PAYMENT(S) AND/OR FEE(S)

Consideration for this Agreement shall be Ten And 00/100 Dollars (\$10.00) and other good and valuable consideration as described herein.

ADDRESS(ES) FOR NOTIFICATION

Grantor's Contact Information

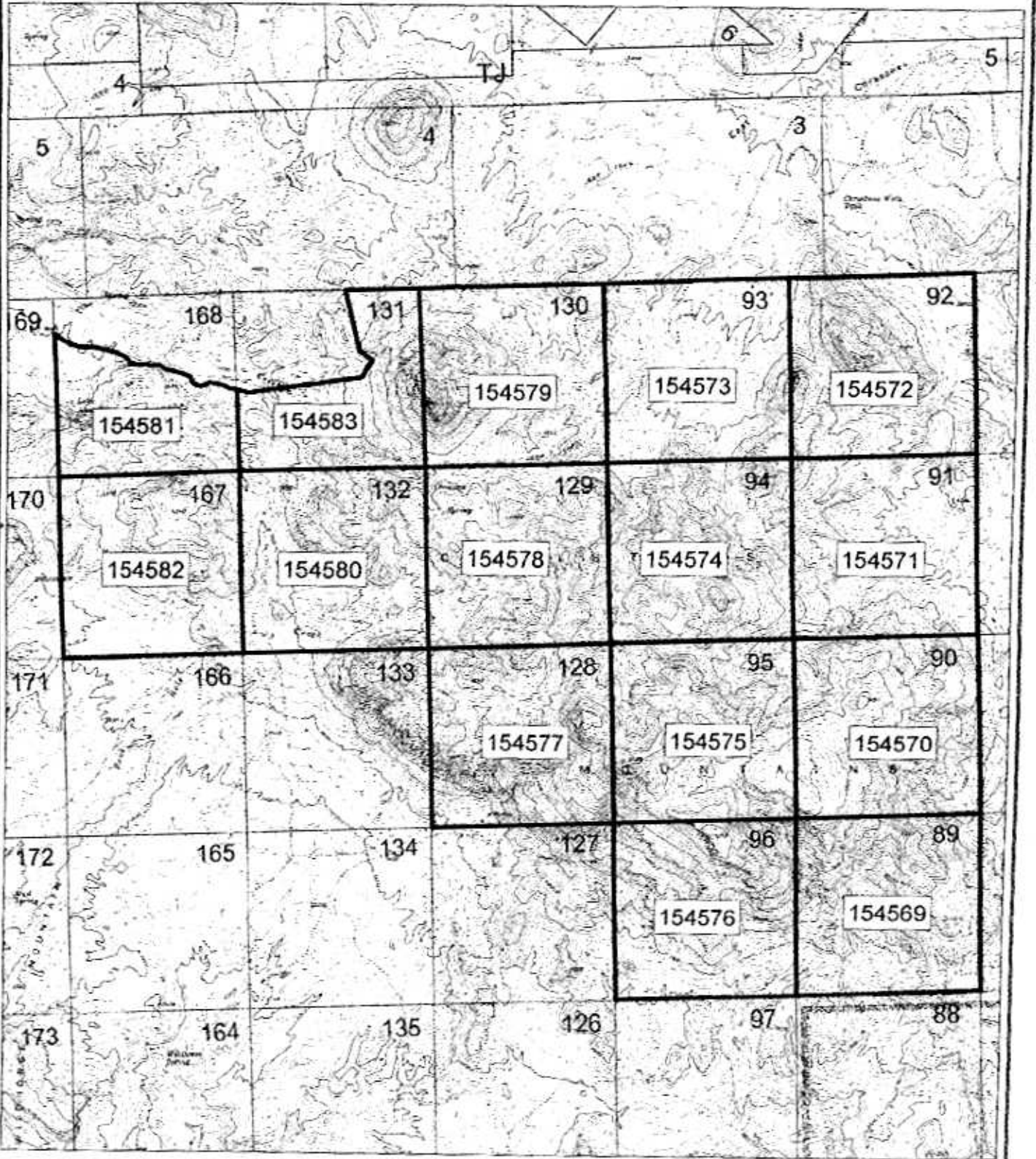
Name: Jerry E. Patterson
Title: Commissioner of the Texas General Land Office
Address: 1700 N. Congress Ave.
Address: Austin, Texas 78701-1495

Grantee's Contact Information

Name: Property Owners Association of Terlingua Ranch, Inc.
C/O: Alida Lorio, General Manager and Registered Agent
Address: Post Office Box 638
Address: Terlingua, Texas 79852-0638



ATTACHMENT B - SL20080027- BREWSTER COUNTY



GIFT DEED

THE STATE OF TEXAS §
§
COUNTY OF BREWSTER §

KNOW ALL MEN BY THESE PRESENTS:

040352

THAT THE CONSERVATION FUND, a non-profit corporation, organized and existing under the laws of the State of Maryland, acting by and through PATRICK F. NOGIAN, its PRESIDENT, as Grantor, has GRANTED and CONVEYED, and by these presents does GRANT and CONVEY unto the STATE OF TEXAS, on behalf of the Permanent School Fund, as Grantee, whose mailing address is 1700 North Congress, Austin, Texas 78701-1495, the following described real property in Brewster County, Texas, to-wit:

That 9,269.6 acres, more or less, in Brewster County, Texas, known as the Christmas Mountains Ranch and as fully described on Exhibit "A" attached hereto and made a part hereof.

It is the intention of the Grantor herein to make a voluntary and absolute gift or donation to the Grantee, without consideration of any type, and subject only to the delivery and acceptance of the gift by the Grantee herein.

PROVIDED, HOWEVER, there is reserved unto Grantor herein a conservation easement (the "Easement") as follows:

WHEREAS, Grantor and Grantee recognize the natural, scenic, aesthetic, and special character of the "Protected Property" (the surface estate and other interests as conveyed by this deed); and

WHEREAS, Grantor and Grantee have the common purpose of the conservation and protection in perpetuity of the Protected Property and the natural resources therein; and

WHEREAS, the grant made to Grantee herein is limited by the covenants and restrictions made hereinbelow which require or restrict Grantee from doing various acts hereinafter mentioned, and Grantor and Grantee agree that the action or refraining therefrom shall constitute a servitude upon the Protected Property in order to perpetuate the scenic and biological values and resources of said property; and

WHEREAS, Grantor and Grantee acknowledge and agree that the intent of the restrictions and covenants hereinafter set forth is to prevent or restrict, as applicable, any type of activity or condition which would require or which might induce or cause the construction, erection or creation of new and/or additional structures, buildings, alterations and/or improvements on or to the Protected Property or any alteration, modification or change in its

general appearance.

WHEREAS, Grantor and Grantee agree that nothing set forth herein shall constitute a limitation upon, or impose a duty upon Grantee with respect to, the rights, privileges and duties of third parties in and to the Protected Property;

NOW, THEREFORE, the following restrictions are hereby imposed creating the Easement upon the Protected Property, and the acts which Grantee covenants to do and refrain from doing therein and thereon are as follows:

1. There shall be no agricultural, commercial or industrial activity undertaken on the Protected Property except as hereinafter provided.

2. Except as may be required by law, no application of pesticides, including, but not limited to, insecticides, fungicides, rodenticides and herbicides shall be made to the Protected Property.

3. Farming, tilling and grazing of domestic livestock is prohibited.

4. No dumping or storing of ashes, sawdust, non-composted organic waste, sewage, garbage, scrap material, sediment discharges, oil and petroleum by-products, leached compounds, toxic fumes and any other "hazardous substance" (as hereinafter defined) shall be placed in, on, over, under or upon the Protected Property. For the purposes of this paragraph 4, the phrase "hazardous substance" shall mean and refer to a substance currently defined as a "hazardous substance" in the federal Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. 9601 et seq.) and/or a substance whose manufacture, processing, contribution in commerce, use, possession or disposal is banned, prohibited or limited pursuant to the federal Toxic Substances Control Act (15 U.S.C. 2601 et seq.).

5. No dune buggies, motorcycles, all-terrain vehicles or other motorized recreational vehicles shall be operated on the Protected Property, nor shall the off-road use of automobiles, trucks, vans or other motor vehicles be permitted except as is necessary for inspection, maintenance, fire protection or emergency purposes.

6. No telephone, telegraph, cable television, electric, gas, water, sewer or other utility line(s) shall be routed over, under in, upon or above the Protected Property. Television dishes, radar and/or radio antenna and other telecommunications equipment are prohibited on the Protected Property.

7. The Protected Property shall not be subdivided.

8. No residential dwelling, apartment, building, multifamily unit, motel or hotel shall be constructed on the Protected Property. Except for the residence of an on-site manager, if any, no residential structure of any kind, temporary or permanent, shall be located on the Protected Property. There shall be no construction or placement of advertising signs, billboards or any advertising materials on the Protected Property.

9. There shall be no introduction of non-native, exotic plant or animal species upon the Protected Property.

10. No exterior artificial illumination shall be employed on the Protected Property.

11. No new permanent roads shall be constructed on the Protected Property. Maintenance of existing roads shall be limited to removal of dead vegetation, necessary pruning or removal of hazardous trees and plants and/or application of permeable materials (e.g., sand, gravel, crushed stone) necessary to correct or prevent erosion. Widening of existing roads is specifically prohibited.

12. There shall be no dredging, construction of ponds, groins or dikes, or alteration of natural water courses on the Protected Property; provided, however, notwithstanding the foregoing, Grantee may maintain the existing dam at Lake Asent and may maintain existing windmill water systems provided Grantee insures that all work is performed in compliance with the foregoing covenants and restrictions.

13. Hunting of game species may be allowed so long as hunting is to be conducted in accordance with State and federal laws; provided, however, hunting shall be conducted in a manner that will maintain a sustainable population of healthy native species upon the Protected Property. The role of native predators in the maintenance of natural biological processes on the Protected Property is recognized and protected by this covenant. That natural role will be accepted when determining appropriate harvest allowances of game species upon the Protected Property.

Notwithstanding the foregoing to the contrary, subject to prior approval of Grantor, the management of predators upon the Protected Property may be allowed when, due to extreme natural conditions, extirpation of native species upon the Protected Property will occur without appropriate management of predator impact. In the event Grantor approves the management of natural predators, hunting shall be suspended accordingly during the management period.

14. Minerals conveyed by this Deed shall not be mined. There shall be no filling, excavating, dredging or drilling on the Protected Property.

Grantor acknowledges that Grantee currently owns extensive mineral rights in the Protected Property conveyed herein. Notwithstanding any provision herein to the contrary, nothing set forth herein shall affect, encumber or modify the existing rights of Grantee or any permittee or lessee of Grantee to fully explore, develop or produce the minerals owned by Grantee. In the event of exploration, development or production of State-owned minerals by a permittee or lessee of Grantee, Grantee agrees to require such permittee or lessee to comply with exploration, development and production requirements and procedures, as applicable, similar to those currently applicable to development of Permanent School Fund minerals in State parks and natural areas.

15. Grantor will have a right to enter the Protected Property at any time upon prior written notice to Grantee to inspect the condition thereof and to monitor Grantee's compliance with the covenants and restrictions set forth herein; provided, however, such right shall not be exercised in a manner which would unreasonably interfere with Grantee's and/or its lessees' or permittees' use and/or management of the Protected Property.

16. Grantor and Grantee acknowledge and agree that Grantee has no obligation to transfer or otherwise convey title to the Protected Property following acceptance of this Gift Deed. Grantee agrees that it will not convey or otherwise transfer, without the prior written consent of Grantor, the Protected Property to any party other than the Texas Parks and Wildlife Department or any successor agency ("TPW") or the National Park Service of the Department of the Interior ("NPS") for use as and inclusion in a nature park, wildlife refuge, recreational area or similarly designated use area. In the event Grantee proposes conveyance or transfer to any other person, agency or entity, Grantee shall first offer the Protected Property to TPW and NPS. If neither TPW or NPS desire to obtain title to the Protected Property pursuant to the terms and conditions set forth in Grantee's offer, Grantee shall have the right thereafter, subject to Grantor's prior approval, to transfer or otherwise convey the Protected Property to any third party, subject only to the Easement set forth herein.

17. Grantee from time to time may submit management and use plans (the "Management Plan") to Grantor for review and approval, which shall address, without limitation, the following issues: (i) exploration, development and production of minerals, (ii) property use by Grantee, its lessees and permittees, including low-impact recreational use, (iii) creation and maintenance of trails and roads for safety and emergency access purposes, and (iv) use of the Protected Property for scientific and educational purposes. Grantor and Grantee further acknowledge and agree that (i) following approval by Grantor, to the extent the Management Plan conflicts with any of the covenants and/or restrictions of the Easement, the subject provision in the Management Plan shall

control, and (ii) following initial adoption of a Management Plan, Grantor and Grantee may review the same at three (3) to (5) year intervals and may jointly amend the Management Plan as deemed necessary and appropriate.

The foregoing Easement, including the covenants and restrictions set forth therein, shall run with the land and be binding upon Grantee, its successors and assigns; however, it is specifically understood and agreed by and between Grantor and Grantee that by acceptance of this Gift Deed, Grantee assumes responsibility for the Easement and the covenants and restrictions set forth therein only during the period of Grantee's ownership of the Protected Property and that, upon transfer of same, Grantee shall thereupon be released and discharged from the Easement and all covenants and obligations accruing after the date of such transfer.

Grantor and Grantee acknowledge and agree that Grantee accepts title to the Protected Property subject to the rights of third parties, and that Grantee shall have no duty, obligation or liability with regard to the acts or omissions of any third party, regardless of whether such third party is a predecessor in title to Grantee or otherwise.

In the event Grantor reasonably believes that the terms of the foregoing Easement are being violated, or in the event activities are being conducted on the Protected Property which are inconsistent with the terms of the foregoing Easement, Grantor shall notify Grantee in writing of the violation or activity in question, identifying such violation or activity with particularity. Grantee shall thereupon have a reasonable period, but in no event less than thirty (30) days, in which to commence to cure any such violation or activity. Unless and until Grantee fails to exercise reasonable diligence to complete such curing, Grantor shall not have any remedy or cause of action by reason thereof. In the event Grantee does not cure such violation or activity within a reasonable period, or in the event Grantee believes that the purpose and intent of the Easement created and reserved herein is incapable of fulfillment or of being sustained on a continuous basis, then and in such event, Grantor shall have the right to seek such a judicial determination by a court of competent jurisdiction. In the event a court of competent jurisdiction determines that Grantee is in violation of the foregoing Easement, Grantee shall have the right to cure such violation within the thirty (30) day period immediately following such judicial determination and, as a condition of such cure, Grantee shall reimburse Grantor for court costs and reasonable attorney's fees expended in obtaining such determination. In the event Grantee does not cure such violation within such thirty (30) day period, or in the event the court determines that the Easement reserved herein is incapable of fulfillment or of being sustained on a continuous basis, then and in such event, the Protected

Property shall revert to Grantor without further action of any party.

Grantor shall the right to assign its rights, duties and obligations under the Easement, provided Grantor provides Grantee with at least thirty (30) days prior written notice of assignment, indicating the full name and address of the assignee. In the event Grantor assigns its rights, duties and obligations under the Easement, Grantor's assignor shall, in addition to the terms of the Easement, be bound by, and shall comply with, the terms and provisions of all written agreements which supplement the Easement, including, but not limited to, the Management Plan, regardless of whether such writing is filed of record in Brewster County, Texas.

TO HAVE AND TO HOLD the above described premises, together with all and singular, the rights and appurtenances thereto in anywise belonging unto the said Grantee and its successors and assigns, forever, and it does hereby bind itself, and its successors and assigns to warrant and forever defend, all and singular, the said premises unto Grantee, against every person whomsoever, lawfully claiming or to claim the same or any part thereof, except as to the reservation from and exception to conveyance and warranty, when the claim is by, through or under Grantor, but not otherwise. However, this conveyance, in connection with any warranty that may arise by operation of law, is made subject to all restrictions, covenants, conditions, reservations, right-of-ways, easements and leases, if any, that are valid, existing and properly of record or visible and apparent upon the property described above or set forth in the Easement reserved to Grantor herein.

EXECUTED this the 23rd day of December, 1991.

THE CONSERVATION FUND

By Patrick F. Moanah

Name: _____

Title: President



THE STATE OF VIRGINIA §
COUNTY OF ACELAND §

This instrument was acknowledged before me on this 23rd day of December, 1991, by Patrick F. Moanah, the President of The Conservation Fund, a non-profit corporation.

ELIZABETH TRYON
NOTARY PUBLIC
Commonwealth of Virginia
My Comm. Exps. 3/31/95

M Elizabeth Tryon
Notary Public, State of 1712810118
My Commission Expires: 3/31/95

ACCEPTANCE OF GIFT

The gift created and offered by the foregoing document is hereby accepted by the State of Texas, for and on behalf of the Permanent School Fund, together with and subject to the Easement reserved therein.

THE STATE OF TEXAS, for and on behalf
of the Permanent School Fund

By: *Garry Mauro*
Garry Mauro, Commissioner,
General Land Office

THE STATE OF TEXAS §
COUNTY OF TRAVIS §

This instrument was acknowledged before me on this 30th
day of December, 1991, by Garry Mauro, Commissioner of the
General Land Office, on behalf of the Permanent School Fund of the
State of Texas.

William Koatz
Notary Public, State of Texas
My Commission Expires: 8/17/94



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SL20080027 - ATTACHMENT C

GIFT DEED.

EXHIBIT, A

9269.6 acres of land, more or less, in Brewster County, Texas, as follows:

<u>Part</u>	<u>Survey No.</u>	<u>Block No.</u>	<u>Original Grantee</u>	<u>Abstract No.</u>	<u>Approx. Acres</u>
A11	89	G-4	D & W Ry. Co.	1266	640
A11	90	G-4	D & W Ry. Co.	8142	640
A11	91	G-4	D & W Ry. Co.	1215	640
A11	92	G-4	D & W Ry. Co.	8141	640
A11	93	G-4	D & W Ry. Co.	1216	640
A11	94	G-4	D & W Ry. Co.	8143	640
A11	95	G-4	D & W Ry. Co.	1217	640
A13	96	G-4	D & W Ry. Co.	8160	640
A11	128	G-4	HE & MT Ry. Co.	8144	640
A13	129	G-4	HE & MT Ry. Co.	1456	640
A11	130	G-4	HE & MT Ry. Co.	8145	640
A11	132	G-4	HE & MT Ry. Co.	8162	640
A13	168	G-4	HE & MT Ry. Co.	8155	497
A11	167	G-4	HE & MT Ry. Co.	1475	640
A13	131	G-4	HE & MT Ry. Co.	1457	452.6

The State of Texas

SL20080027 - ATTACHMENT D



Austin, Texas

SPECIAL DOCUMENT SD20080010

STATE OF TEXAS

§
§
§

KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF BREWSTER

CHRISTMAS MOUNTAINS EASEMENT

THIS EASEMENT (EASEMENT) is Granted by virtue of the authority granted in Section 51.291, et seq., TEX. NAT. RES. CODE ANN. (Vernon 2001), 31 TEX ADMIN CODE Sec 13.11, et seq., and all other applicable statutes and rules, as the same exist on the date hereof or as they may be amended from time to time.

WITNESSETH

WHEREAS, National Park Service, an agency of the United States (NPS) is the owner of a certain tract of land legally described and Identified as the Big Bend National Park Tract (Big Bend); and

WHEREAS, the STATE OF TEXAS, acting by and through the Commissioner of the General Land Office, on behalf of the Permanent School Fund, (the "STATE" or the "GRANTOR"), is the owner of a certain tract of land legally described and identified as the Christmas Mountains Tract (Christmas Mountains); and

WHEREAS, The Big Bend National Park Tract and the Christmas Mountains Tract are contiguous and adjacent to each other along portions of their common boundaries; and

WHEREAS, the State intends to grant to the National Park Service an easement with the right and authority, in the sole discretion of NPS, to establish, develop and operate certain parts of the Christmas Mountains for enjoyment and outdoor recreation by persons choosing to visit the Christmas Mountains for that purpose, and in order to effectuate the use and operation of the mentioned Christmas Mountains for this purpose, the State desires to grant to the NPS certain easements, in, to, over and across the Christmas Mountains Tracts.

ARTICLE I PARTIES

The STATE OF TEXAS, acting by and through the Commissioner of the General Land Office, on behalf of the Permanent School Fund, (the "STATE" or the "GRANTOR"), hereby grants to the National Park Service an agency of the United States (NPS or "GRANTEE") a non exclusive easement for the purposes identified hereinafter.

ARTICLE II
DEFINITIONS

- A. Party shall mean the NPS and the State respectively, and its respective successors and assigns during the period of each Party's fee ownership of any portion of the Big Bend/Christmas Mountains Tracts.
- B. Permittee shall mean all visitors, invitees, licensees, insofar as their activities relate to the intended use of the Big Bend/Christmas Mountains Tracts.
- C. Person shall mean any individual, partnership, firm, association, corporation, limited liability company, trust or any other form of business or Governmental Authority.

ARTICLE III
EASEMENTS

A. During the term of the Agreement the State hereby grants and conveys to NPS for its use and for the use of its Permittees, in common with others entitled to use the same, a perpetual, non-exclusive easement for the passage over and across the Christmas Mountains Tract, and for construction of such improvements as the NPS may from time to time decide should be constructed and maintained for NPS approved use, and for the passage and accommodation of pedestrians over and across any of the Christmas Mountains Tract or any part thereof, as improvements may from time to time be constructed and maintained by the NPS for such use. The easement herein established shall be appurtenant to and for the benefit of the Christmas Mountains Tract and the Big Bend National Park Tract, and as such shall be binding on, enforceable against and burden the Christmas Mountains Tract. Such easement rights shall be subject to the following reservations as well as the other applicable provisions contained in this Agreement.

- (i) The State reserves the right at any time and from time to time to exclude and restrain any Person or Permittee from using its Tract; and
- (ii) The State reserves the right to use the Christmas Mountain Tract as the State chooses.
- (iii) The State reserves the right to transfer all or any part of its right, title or interest of any kind in the Christmas Mountains Tract to any one or more person or entity.

B. In addition to the general perpetual easement specified above, the State hereby grants and conveys to NPS for its use and for the use of its Permittees, in common with others entitled to use the same, and subject to the reservations set forth in A above, a non-exclusive, perpetual easement for the passage and accommodation of pedestrians upon, over and across the Christmas Mountains Tract as designated by the NPS exact locations of passage and accommodation to be designed, planned and constructed by the NPS. The easement herein established shall be binding on, enforceable against and burden the Christmas Mountains Tract. During the term of this easement, each portion of the walkways, if any constructed, shall be maintained in accordance with the provisions of the NPS rules, statutes, regulations and policies governing maintenance of the permitted walkways on the Christmas Mountains Tract.

C. The State shall not be liable for any planning, construction, maintenance of the designated passage and accommodation and the NPS shall hold the State harmless from any liability, costs or expenses from operation, maintenance and control of the easement rights herein granted to NPS.

Default

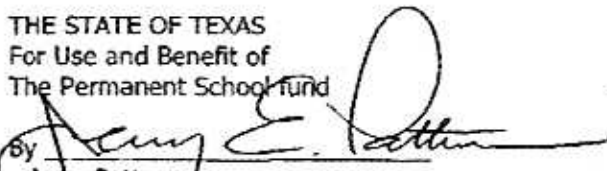
- A. This Agreement may be amended only by a written document signed by the State.
- B. None of the terms or provisions of this Document shall be deemed to create a partnership between or among the State and the NPS in their respective businesses or otherwise, nor shall it cause them to be considered joint venturers or members of any joint enterprise.
- C. Nothing herein contained shall be deemed to be a gift or dedication of title to any portion of Christmas Mountains Tract or any part of the tract or portion of either to the general public, or dedication for any public use or purpose except the perpetual easement for use as designated herein.

ARTICLE VIII
TERM

This Agreement shall be effective the date the signatory on behalf of the State executes the document. The term for use of the easements granted herein is perpetual provided however, the State and/or the NPS with or without cause, in the respective sole discretion of the State or the NPS, may terminate this Easement by giving 30 day written notice to the Other.

IN WITNESS WHEREOF, the State of Texas by and through the Commissioner of the General Land Office for use and benefit of the Permanent School Fund caused this Agreement to be executed effective as of the date the Commissioner executes this agreement.

THE STATE OF TEXAS
For Use and Benefit of
The Permanent School Fund

By 
Jerry Patterson
Commissioner, General Land Office

(SEAL)

Date: 7 APRIL 2008

Approved: Content CWR
 Legal EWL
 Deputy KS
 General Counsel JMP
 Executive JB



Legal Description of the Christmas Mountains

<u>Section</u>	<u>Block</u>	<u>Survey</u>	<u>File No.</u>	<u>Acres</u>	<u>County</u>
89	G-4	D. & W. Ry. Co.	154569	640.00	Brewster
90	G-4	D. & W. Ry. Co.	154570	640.00	Brewster
91	G-4	D. & W. Ry. Co.	154571	640.00	Brewster
92	G-4	D. & W. Ry. Co.	154572	640.00	Brewster
93	G-4	D. & W. Ry. Co.	154573	640.00	Brewster
94	G-4	D. & W. Ry. Co.	154574	640.00	Brewster
95	G-4	D. & W. Ry. Co.	154575	640.00	Brewster
96	G-4	D. & W. Ry. Co.	154576	640.00	Brewster
128	G-4	H.E. & W.T. Ry. Co.	154577	640.00	Brewster
129	G-4	H.E. & W.T. Ry. Co.	154578	640.00	Brewster
130	G-4	H.E. & W.T. Ry. Co.	154579	640.00	Brewster
132	G-4	H.E. & W.T. Ry. Co.	154580	640.00	Brewster
168	G-4	H.E. & W.T. Ry. Co.	154581	497.00	Brewster
167	G-4	H.E. & W.T. Ry. Co.	154582	640.00	Brewster
131	G-4	H.E. & W.T. Ry. Co.	154583	452.60	Brewster

Total Acres = 9,269.60

The State of Texas



Austin, Texas

FILE COPY

MEMORANDUM OF SURFACE LEASE NO. SL20080027

STATE OF TEXAS

COUNTY OF BREWSTER

§
§
§

KNOW ALL MEN BY THESE PRESENTS:

This Memorandum of Surface Lease is made to record the Lease heretofore entered into by the State of Texas, acting by and through the Commissioner of the General Land Office (the "GLO") on behalf of the Permanent School Fund (the "Grantor"), and Property Owners Association of Terlingua Ranch, Inc. (the "Grantee"), which affects certain lands in Brewster County, Texas.

WITNESSETH

That for and in consideration of the mutual promises and undertakings recited in the Lease, Grantor and Grantee have executed Surface Lease No. SL20080027 (the "Lease"), an original of which is recorded in the archives of the GLO. Grantor has leased to Grantee certain lands located in Brewster County, being more particularly described in Attachment A attached hereto (the "Premises").

The Lease shall commence on January 1, 2009 and shall terminate on December 31, 2013, unless earlier terminated as authorized in the Lease.

The Grantee shall have the right to use the surface of the Leased Premises generally for the limited purpose of Recreation, the scope of the grant being more particularly described in the Lease.

Grantee may not assign the Lease without the prior written consent of the Grantor. Use of state property without the requisite consent may subject the user to the assessment and enforcement of civil penalties of up to \$1,000.00 per day as provided in Chapter 51 of the Natural Resources Code.

IN TESTIMONY WHEREOF, witness my hand and the Seal of Office.

LESSOR:
THE STATE OF TEXAS

By: Jay E. Patterson
Commissioner, General Land Office
Chairman, School Land Board

Date: 9 Dec 2008

LESSEE:
Property Owners Association of
Terlingua Ranch, Inc.

By: Alida Lorio
ALIDA LORIO Gen Mgr.
(Printed Name) (Title)

Date: 12-16-08

Approved:
Contents
Legal
Deputy
Executive

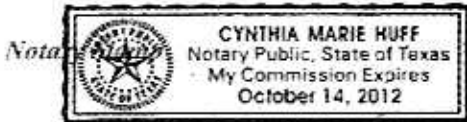
JEP
JEP

ACKNOWLEDGMENT

STATE OF Texas
COUNTY OF Brewster

This instrument was acknowledged before me on the 16th day of December, 20 08,
by Alida Lorio
(Lessee representative signing this document)

Cynthia Marie Huff
(Notary Signature)



Notary Public, State of Texas
My commission expires: 10/14/2012

Information Collected By Electronic Mail And By Web Form Is Subject To The Public Information Act, Chapter 552, Government Code.

Attachment A – SL20080027 – Brewster County

<u>GLO File No</u>	<u>Section</u>	<u>Block</u>	<u>Survey</u>	<u>Acres</u>
154569	89	G-4	D. & W. RY. CO.	640.00
154570	90	G-4	D. & W. RY. CO.	640.00
154571	91	G-4	D. & W. RY. CO.	640.00
154572	92	G-4	D. & W. RY. CO.	640.00
154573	93	G-4	D. & W. RY. CO.	640.00
154574	94	G-4	D. & W. RY. CO.	640.00
154575	95	G-4	D. & W. RY. CO.	640.00
154576	96	G-4	D. & W. RY. CO.	640.00
154577	128	G-4	H. E. & W. T. RY. CO.	640.00
154578	129	G-4	H. E. & W. T. RY. CO.	640.00
154579	130	G-4	H. E. & W. T. RY. CO.	640.00
154580	132	G-4	H. E. & W. T. RY. CO.	640.00
154581	168	G-4	H. E. & W. T. RY. CO.	497.00
154582	167	G-4	H. E. & W. T. RY. CO.	640.00
154583	131	G-4	H. E. & W. T. RY. CO.	452.60

Total Acres – 9,269.60