

RECORDING REQUESTED BY AND  
UPON RECORDING RETURN TO:

-----SPACE ABOVE THIS LINE FOR RECORDER’S USE ONLY-----

**DEED OF PERPETUAL CONSERVATION EASEMENT**

**GRANT OF CONSERVATION EASEMENT**

THIS GRANT OF CONSERVATION EASEMENT is made by Cochise County Flood Control District, a political subdivision of the State of Arizona (“Grantor”), whose address is 1415 Melody Lane, Building G, Bisbee, Arizona 85603, to the City of Sierra Vista, a political subdivision of the State of Arizona (“Grantee”), whose address is 1011 No. Coronado Dr., Sierra Vista, AZ 85635.

WHEREAS, Grantor is the sole owner in fee simple of certain real property located in Cochise County, consisting of 480 acres, more particularly described and graphically depicted in Exhibits A and B attached hereto and incorporated by this reference (the “Property”); and

WHEREAS, the Property is located near the San Pedro River; and

WHEREAS, the property possesses natural, biological diversity, open space values, potential water recharge values, and the potential to limit water use associated with the parcel (which sometimes referred to collectively herein as the “Conservation Values”) that are of great importance to the people of Cochise County and the people of the State of Arizona; and

WHEREAS, the specific Conservation Values of the Property are further documented in the Easement Documentation Report depicting relevant features of the Property and an Acknowledgement of which is attached hereto as Exhibit C and incorporated by this reference (“Baseline Documentation”), dated [REDACTED], 2013 that consists of reports, maps, photographs, and other documentation that the parties provided, collectively, and agree represents an accurate representation of the Property at the date of this Easement and that is intended to serve as an objective, though nonexclusive, information baseline for monitoring compliance with the terms of this Easement; and

WHEREAS, Grantor intends that the Conservation Values of the Property be preserved and maintained, and past agricultural irrigation be prohibited; and

WHEREAS, the natural, biological diversity, and open space values or Conservation Values of the Property are of great importance to Grantor, Grantee, Fort Huachuca, and the general public, and are worthy of protection; and

WHEREAS, Grantor intends that these values or Conservation Values be preserved as set forth in this Conservation Easement; and

WHEREAS, the Grantor and Grantee share the goal of sustaining flows in the San Pedro River (the "River") to support the economic, social and ecological values the River provides; and

WHEREAS, the Property includes three agricultural wells, which in the past have been used for irrigation, and which the Grantor will retire from irrigation use in order to minimize the use of water on the Property;

WHEREAS, Grantor further intends, as owner of the Property, to convey to Grantee the right to preserve and protect the Conservation Values of the Property, in perpetuity; and

WHEREAS, Grantee is a political subdivision of the State of Arizona qualified to hold conservation easements pursuant to the Arizona Conservation Easement Act, A.R.S. §§ 33-271 to 33-276, as amended (the "Act"), and is a "qualified organization" within the meaning of Section 170(h) of the Internal Revenue Code of 1986, as amended; and accepts the responsibility of enforcing the terms of this Easement and upholding its Conservation Values forever. The U.S. Army through Fort Huachuca is a third party in interest to this transaction; and

WHEREAS, Grantee agrees by accepting this grant to preserve and protect the Conservation Values of the Property; and

NOW THEREFORE, for good and valuable consideration, and in consideration of the above and the mutual covenants contained herein, and pursuant to the Arizona statutes, particularly the Act, Grantor hereby voluntarily grants and conveys to Grantee, its successors and assigns, a conservation easement in perpetuity over the Property, of the nature and character and to the extent hereinafter set forth (hereinafter referred to as the "Easement").

Section 1.0. Purpose. The purpose of this Easement is to assure the Property will be retained in its natural, biological diversity and open space condition reflected in the Baseline Documentation referenced in this Easement in perpetuity, and to prevent any use of the Property that will significantly impair or interfere with the Conservation Values of the Property, but with the specific acknowledgment and understanding that Grantor may use a portion of the Property for the Flood Control and Recharge Uses (as that term is defined below) which, both Grantor and Grantee acknowledge, do not impair or interfere with the Conservation Values, are consistent with the Conservation Values, and which protect and support the biodiversity of the area. Grantor intends that this Easement will restrict the use of the Property in perpetuity to such activities as are consistent with the Conservation Values of the Property and purposes of this Easement. This Easement shall not be construed to impose upon Grantor an affirmative obligation to take specific steps to maintain or improve the Property, or to incur any cost or expense to accomplish same. For

purposes of this Easement the term “Flood Control and Recharge Uses” shall mean the objective of sustaining flows in the San Pedro River, through the flood control detention basins and other aquifer recharge devices on the Property, as well as the stormwater capture/recharge project.

Section 2.0. Prohibited Uses. Any activity or use of the Property inconsistent with the purposes of this Easement is prohibited. Without limiting the generality of the foregoing, the following activities on and uses of the Property are expressly prohibited:

- 2.1 Development and Construction. Development and construction of any buildings or structures on the Property, including, but not limited to, buildings intended for occupancy for residential purposes is prohibited, except as provided in Sections 3.1 and 3.2;
- 2.2 Subdivision. The division, subdivision, or de facto subdivision of the Property into two or more parcels, whether by physical or legal process, including but not limited to the partition of undivided interests, or the transfer of title to the Property except as a single parcel is prohibited, except as permitted in paragraph 3.9;
- 2.3 Timber Harvesting. Timber Harvesting is allowed to control insects and disease, for firewood for domestic use, and the purpose of reducing evapotranspiration, reintroduction of native grasses or the reduction of water consumption..
- 2.4 Trash. The dumping or accumulation of any kind of trash or refuse on the Property, other than farm-related trash and refuse produced on the Property, is strictly prohibited. However, this shall not prevent the storage of agricultural products and by-products on the Property in accordance with all applicable government laws and regulations.
- 2.5 Feed Lot. The establishment or maintenance of a commercial feed lot is prohibited. For purposes of this Easement, "commercial feed lot" is defined as a permanently constructed confined area or facility within which the property is not grazed or cropped annually, and which is used and maintained for purposes of engaging in the business of the reception and feeding of livestock. Nothing in this section shall prevent Grantor from seasonally confining Grantor's livestock into an area for feeding or from leasing pasture for the grazing of livestock owned by others, or from grazing Grantor's own livestock on the land consistent with the provisions hereof.
- 2.6 Mining. The commercial mining or extraction of soil, sand, gravel, oil, natural gas, fuel, or any other mineral substance, using any surface mining method is prohibited; provided that mineral extraction is permitted if such extraction is not accomplished by any surface mining method and the method of extraction has a limited, localized impact on the real property that is not irretrievably destructive of the Conservation Values of the Property, and provided further that the proposed mining or extraction will not substantially diminish or impair the Conservation Values of the Property. No extraction permitted pursuant to this paragraph shall occur without prior written notice to Grantee, which notice shall include a description of the type of extraction, the areas within which such extraction shall occur, and the anticipated impact

thereof. This section does not apply to necessary sediment removal from construction or maintenance of basins, settling ponds or other facilities designed and constructed as part of the pilot project.

- 2.7. Construction of Buildings and Other Structures. Except as set forth in Section 3, the construction of any building or other structure, except those existing on the date of this Easement, and except for replacement of fences or installation or construction of stockwells or stockponds consistent with historic livestock grazing practice, is prohibited. Any construction of replacement fences, installation or construction of stockwells or stockponds require the prior approval of the Grantee.
- 2.8. Commercial or Industrial Activity. No commercial or industrial uses shall be allowed on the Property. Grantor's rights to use the Property as set forth in Section 3 shall not be deemed a prohibited commercial use
- 2.9 Irrigation Wells. There are three existing wells on the Property that in the past have been used for agricultural irrigation. As part of this Conservation Easement, the Grantor acknowledges that these wells shall no longer be used for agricultural irrigation. Grantor can continue to use one well to supply up to two stock tanks (maximum size, 150 to 200 gallons per tank) for grazing. The wells also can be used for the purposes described in paragraph 3.9.
- 2.10 Electromagnetic generation. Construction and/or operation of cellular towers, radio-telephone repeaters, wind powered electrical generators, television or radio stations, radio-dispatch dependent businesses, microwave or other wireless communications systems operating between 2.4MHz and 8GHZ, and structures in excess of 50 feet in height are prohibited.

Section 3.0. Permitted Uses and Practices. Grantor intends that this Easement shall confine the future use of the Property primarily to the preservation of open space and the other uses which are described herein and which are consistent with this Easement's purpose. The following uses and practices, though not an exhaustive recital of consistent uses and practices, are permitted under this Easement, and these uses shall not be precluded, prevented, or limited by this Easement:

- 3.1 Maintaining, repairing, and replacing the existing improvements on the Property.
- 3.2 Constructing and maintaining all structures and other improvements relating to the Flood Control and Recharge Uses. No groundwater or stormwater will be used for offsite consumptive purposes. The portion of the Property that will ultimately be used for the Flood Control and Recharge Uses is also not known. Because the structures and other improvements relating to the Flood Control and Recharge Uses, and the boundaries of the portion of the Property necessary for the implementation, are not known for certain, Grantee acknowledges that flexibility is necessary; provided, however, that any such structures, improvements and boundaries shall be consistent with the above description of such Uses;

- 3.3 Additional fencing shall be permitted. In the event of destruction, deterioration or obsolescence of said fences, Grantor may replace the same with fences of similar size, function, and capacity;
- 3.4 Except as prohibited in paragraph 3.9, continuing current and historic modes and levels of ranching, including the pasturing, grazing, feeding, and care of horses, and cattle, and to maintain stockponds and stockwells on the Property, either replacement or new, provided they are used to continue the current and historic modes and levels of ranching. Grantor's activities may include those normally incident to range preservation and enhancement. Such activity may include controlled burns in conformity with applicable laws or regulations;
- 3.5 Maintaining and controlling any flood waters by use of dams or earth damming construction in order to prevent damage to the Property by flood waters or in order to improve or construct stockponds or in furtherance of Flood Control and Recharge Uses;
- 3.6 Utilizing the Property for recreational and educational uses including horseback riding, hiking and hunting;
- 3.7 Intentionally left blank.;
- 3.8 Preserving, repairing, maintaining, and replacing the existing roads and utility access across the Property and to relocate the existing roads and utility access on the Property when reasonably necessary to maintain the use thereof;
- 3.9 It is understood that Grantor expects to convey its right, title and interest to portions of the Property to private parties, subject to this Conservation Easement. The Grantor may make no more than twelve such conveyances. No further division, subdivision or de facto subdivision of either the unsuitable portion of the Property conveyed or the portion of the Property retained by Grantor is permitted. For any such conveyance, such private party shall be entitled to construct one single-family dwelling unit on the Property, together with any accessory structures of a nature customarily incidental and subordinate in size, impact and purpose to the dwelling unit. Any such dwelling unit and accessory structures shall be (i) located within a single area of reasonably compact shape, not to exceed four (4) acres (the "Residential Building Envelope") the location of which shall be determined with the prior approval of Grantee and shall be located in a manner to minimize its impact to the Conservation Values, (ii) no buildings, structures or improvements may be placed, erected or constructed in any gullies, seeping saline areas or wetlands as determined by the United States Army Corp of Engineers; and (iii) prior to any construction occurring, the Residential Building Envelope shall be surveyed and staked on the ground, a legal description prepared and provided to the Grantee, and a Notice of Building Envelope Designation in the form attached hereto as Exhibit D and incorporated herein by this reference shall be recorded in the official records of Cochise County, all at such private party's sole cost and expense. Up to one-half acre of landscaping and gardening is permitted in the Residential Building Envelope. It is understood and acknowledged that it may be necessary to install

wells to supply water to any such dwellings; provided, however, that any conveyance shall contain restrictions on the use of water so that the water use shall not exceed that of a typical single-family dwelling. Any such dwelling must comply with the water conservation measures required for the Sierra Vista Sub-watershed as set forth in the Cochise County Zoning Regulations. No irrigated agricultural use, orchards, growing of crops (including hay, alfalfa, or other livestock feed beyond naturally occurring pasture), swimming pools, or other use which would involve intensive water use, will be permitted; provided, however, that it is understood that this provision is not intended to forbid small family gardens.

3.10 Using vehicles upon and across the Property incidental to the above purposes.

3.11 Grantor may use a strip of land up to 50 feet in width along the eastern edge of the Property that is immediately adjacent to and abuts that strip of land previously conveyed to the Grantor on October 7, 2004 and recorded as instrument numbers 041032516 and 041032517 in the official records of Cochise County, Arizona for the purpose of widening Palominas Road as depicted on Exhibit E.

Section 4.0. Reserved Rights. Grantor reserves to itself and to its personal representatives, heirs, successors, and assigns, all rights accruing from the ownership of the Property, including the right to engage in or permit, or to invite others to engage in, all uses of the Property that are not expressly prohibited herein and that are not inconsistent with the purposes of this Easement.

Section 5.0. Rights of Grantee. To accomplish the purposes of this Easement, the following rights are conveyed to Grantee by this Easement:

- 5.1. To take such actions as are reasonably necessary to preserve and protect the Conservation Values of the Property; and
- 5.2. On an annual basis, to enter upon the Property at a mutually agreed upon time which is reasonable to both Grantor and Grantee in order to monitor Grantor's compliance with and otherwise enforce the terms of this Easement, provided that such entry by Grantee shall not unreasonably interfere with Grantor's use and quiet enjoyment of the Property; and
- 5.3. In the event when emergency circumstances or prevention of a threatened breach require, to enter the Property to enforce the terms of this Easement without notice while not unreasonably interfering with Grantor's use and quiet enjoyment of the Property; and
- 5.4. To prevent any activity on or use of the Property that is inconsistent with the purposes of this Easement and to require the restoration of such areas or features of the Property that are damaged by any activity or use that is inconsistent with the purposes of this Easement.

Section 6.0. Access. No right of access by the general public to any portion of the Property is conveyed or created by this Grant of Easement.

Section 7.0. Grantee's Remedies.

- 7.1. Notice of Violation; Corrective Action. If Grantee determines that a violation of the terms of this Easement has occurred or is threatened, Grantee shall give written notice to Grantor of such violation and demand corrective action sufficient to cure the violation within 60 days and, where the violation involves injury to the Property resulting from any use or activity by Grantor that is inconsistent with the purpose of this Easement, to restore the portion of the Property injured to its prior condition with a plan approved by Grantee at Grantor's expense.
- 7.2. Injunctive Relief. If Grantor fails to cure the violation within twenty (20) days after receipt of notice thereof from Grantee, or under circumstances where the violation cannot reasonably be cured within a twenty (20) day period, fails to begin curing the violation within the twenty (20) day period, or fails to seek accommodation to cure the violation, or fails to continue diligently to cure such violation until finally cured, Grantee may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Easement, to enjoin the violation, *ex parte* as necessary, by temporary or permanent injunction, and to require the restoration of the Property to the condition that existed prior to any such injury.
- 7.3. Damages. Should Grantor violate the terms hereof, and should Grantee elect to seek injunctive relief or otherwise to enter upon the Property in accordance with the terms hereof to prevent further violation, or to correct such violation or to restore damage as a result of such violation, and except as provided in Section 5.3 or Section 7.6 hereof, Grantee shall first give Grantor ten (10) days written notice before entering upon the Property for such purposes. Grantor shall reimburse Grantee for its reasonable costs or expenses incurred in abating or correcting any such violation, including but not limited to reasonable court costs and attorneys' fees. Nothing herein shall purport to create liability to Grantor for damage to the Property due to Acts of God, or due to fire damage not deliberately or intentionally caused by Grantor, but Grantor shall nevertheless be required to indemnify Grantee as provided in Section 9.6 with respect to any claims made against Grantee by any third party arising from a controlled burn by Grantor.
- 7.4. Forbearance. Enforcement of the terms of this Easement shall be at the discretion of Grantee and any forbearance by Grantee to exercise its rights under this Easement in the event of any breach of any term of this Easement shall not be construed to be a waiver of such term or of any subsequent breach of the same or any other term of this Easement or of Grantee's rights under this Easement. No delay or omission by Grantee in the exercise of any right or remedy upon any breach shall impair such right or remedy or be construed as a waiver of such a right or remedy.
- 7.5. Acts Beyond Grantor's Control. Nothing contained in this Easement shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the Property resulting from: (1) causes beyond Grantor's control, including, without limitation, fire (except for Grantor's indemnity obligation to Grantee referred to in Section 9.6), flood, storm, and earth movement, or acts of third parties, except Grantor's lessees or invitees, or (2) any prudent action taken by

Grantor under emergency conditions to prevent, abate, or mitigate any threatened or actual significant injury to the Property resulting from such causes.

- 7.6. Emergency Enforcement. If Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values of the Property, Grantee may pursue its remedies under this section without prior notice to Grantor or without waiting for the period provided for cure to expire.
- 7.7. Scope of Relief. Grantee's rights under this section apply equally in the event of either actual or threatened violations of the terms of this Easement. Grantor agrees that Grantee's remedies at law for any violation of the terms of this Easement are inadequate and that Grantee shall be entitled to the injunctive relief described in this section, both prohibitive and mandatory, in addition to such other relief to which Grantee may be entitled, including specific performance of the terms of this Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Grantee's remedies described in this section shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.
- 7.8. Costs of Enforcement. If the court determines that the Grantor has failed to comply with this Conservation Easement, the Grantor shall reimburse the Grantee for any reasonable costs of enforcement, including the Grantee's staff time, costs of restoration, court costs, and reasonable attorneys' fees, in addition to any other payments ordered by such court.
- 7.9. Waiver of Certain Defenses. Grantor hereby waives any defense of laches, estoppel or prescription.

Section 8.0. Rights of the United States Army. The Easement was purchased with funds from the United States Army for the purpose of protecting the Property's Conservation Values and thereby maintaining and improving natural resources at Fort Huachuca by limiting development of the Property and any related degradation of its natural resources, especially the use of water. The contingent rights set forth in Paragraphs 8.1 through 8.3 and Paragraph 11 protect the Army's interests in this transaction.

- 8.1 Should the Grantee or its monitoring agent fail to monitor the Easement pursuant to paragraph 5.2 or enforce any term of the Easement and permit the Property to be used or developed in a manner inconsistent with the recitals and purposes of the Easement, then the United States Secretary of the Army (the "Secretary"), through his or her authorized representative, shall have the right to conduct monitoring in accordance with paragraph 5.2 and enforce the Easement using the procedures in Paragraph 7.0 and all authorities available under state or federal law.
- 8.2 If Grantee terminates, transfers, or otherwise divests itself of any rights, title, or interest in the Easement without the prior written approval of the Secretary of the Army, such transaction shall be legally ineffective and all right, title and interest in the Easement shall become vested in the United States of America.

- 8.3 If the Grantee permits use of the Property for purposes inconsistent with the Conservation Values of the Property or fails to enforce the breach of any covenant contained in this Easement, the Secretary of the Army, through his or her authorized representative, may demand the transfer of this Easement to the United States.

Section 9. Costs, Liabilities, Taxes, and Environmental Compliance.

9.1. Costs, Legal Requirements, and Liabilities. Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Property, including the maintenance of adequate liability insurance coverage. Grantor remains solely responsible for obtaining any applicable governmental permits and approvals for any construction or other activity or use which shall be undertaken in accordance with all applicable federal, state, and local laws, regulations, and requirements. Grantor shall keep the Property free of any mechanics' or materialmen's liens arising out of any work performed for, materials furnished to, or obligations incurred by the Grantor.

9.2. Representations and Warranties. Grantor represents and warrants that to the best of its knowledge:

- (a) No substance defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic, polluting, or otherwise contaminating to the air, water, soil, or in any way harmful or threatening to human health or the environment exists or has been released, generated, treated, stored, used, disposed of, deposited, abandoned, or transported in, on, from, or across the Property, provided that nothing in this Section purports to apply to fertilizers, biocides or other such permitted substances incident to stockraising and ranching activities;
- (b) There are not now any underground storage tanks located on the Property, whether presently in service or closed, abandoned, or decommissioned, and no underground storage tanks have been removed from the Property in a manner not in compliance with applicable federal, state, and local laws, regulations, and requirements;
- (c) Grantor and the Property are in compliance with all federal, state, and local laws, regulations, and requirements applicable to the Property and its use;
- (d) There is no pending or threatened litigation in any way affecting, involving, or relating to the Property; and
- (e) No civil or criminal proceedings or investigations have been instigated at any time or are now pending, and no notices, claims, demands, or orders have been received, arising out of any violation or alleged violation of, or failure to comply with, any federal, state, local law, regulation, or requirement applicable to the Property and its use, nor do there exist any

facts or circumstances that the Grantor might reasonably expect to form the basis for any such proceedings, investigations, notices, claims, demands, or orders.

- 9.3. Remediation. If at any time there occurs, or has occurred, an unlawful release by Grantor or by any of Grantor's family members, employees, agents, contractors, or invitees (other than Grantee) in, on, or about the Property of any substance now or hereafter defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment, Grantor agrees to take all steps necessary to assure its containment and remediation, including any cleanup that may be required.
- 9.4. Control. Nothing in this Easement shall be construed as giving rise, in the absence of a judicial decree, to any right or ability in Grantee to exercise physical or managerial control over the day-to-day operations of the Property, or any of Grantor's activities on the Property, or otherwise to become an operator with respect to the Property within the meaning of The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA").
- 9.5. Hold Harmless. Grantor hereby releases and agrees to hold harmless, indemnify, and defend Grantee and its members, directors, officers, attorneys, employees, agents, and contractors and its heirs, personal representatives, successors, volunteers and assigns each of them (collectively "Indemnified Parties") from and against any and all claims by persons or entities other than the parties hereto, including claims asserting liabilities, penalties, fines, charges, costs, losses, damages, expenses, causes of action, claims, demands, orders, judgments, or administrative actions, including, without limitation, reasonable attorneys' fees (collectively, "third party claims"), arising from: (1) injury to or the death of any person, or physical damage to any property, resulting from any act or omission of Grantor occurring on or about the Property including, but not limited to, any such third party claims made against Grantee by any third party arising from a controlled burn by Grantor referred to in Section 3.4 hereof; (2) Grantor's violation of, or failure to comply with, any state, federal, or local law, regulation, or requirement in any way affecting, involving, or relating to the Property; (3) the presence or release in, on, from, or about the Property, by act of Grantors or its agents, at any time, now or hereafter, of any hazardous or toxic substance or pollutant regulated under state or federal law, except as contemplated or permitted hereunder. Grantor and Grantee agree that the purpose of the foregoing indemnity provision is to require the Grantor to bear the expense of the aforesaid third party claims made by a third party against the Grantee which arise solely because the Grantee has an interest in the Property as a result of this Easement. Nothing herein shall require that Grantor indemnify, defend or hold harmless any of the Indemnified Parties for any third party claims for injury, death, physical damage, property damage, personal injury or any other damage, cost, expense or liability caused by the acts, omissions or negligence of any Indemnified Parties, nor for any third party claims for injury, death, physical damage, property damage, personal injury or any other damage, cost, expense or liability caused by

third parties, except Grantor's lessees or invitees, and not the fault of Grantor. Grantee shall at all times maintain commercial general liability insurance insuring Grantee for acts or omissions giving rise to personal injury or property damage.

Section 10.0. Extinguishment, Condemnation and Reversion.

- 10.1. This Easement constitutes a real property interest immediately vested in Grantee. The parties stipulate that this Easement has a fair market value equal to 96% of the full fair market value of the Property, as unencumbered by the Easement, on the date this Easement is first recorded. If it is determined that conditions on or surrounding the Property change so much that it becomes impossible to fulfill its Conservation Values, a court with jurisdiction may, at the joint request of both Grantor and Grantee, terminate this Easement. 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 Values, the Easement may be terminated through condemnation proceedings. If the Easement is terminated in whole or in part and all or part of the Property is sold or taken for public use, then, Grantor shall only be entitled to 4% of the gross sale proceeds or condemnation award which represents an amount equal to the ratio of the appraised value of this Easement to the unrestricted fair market value of the Property, as these values are determined on the date of this Easement. Grantee shall use the proceeds consistently with the Conservation Values of this Easement. The Army shall be entitled to receive ninety-six percent (96%) of the gross sale proceeds or condemnation award.
- 10.2. Condemnation. If all or any part of the Property is taken by exercise of the power of eminent domain or acquired by purchase in lieu of condemnation, whether by public, corporate, or other authority, so as to terminate this Easement, in whole or in part, the parties shall act jointly to recover the full value of their interests in the Property, subject to the taking or in lieu of purchase and all direct or incidental damages resulting therefrom. All expenses reasonably incurred shall be paid out of the amount recovered.

Section 11.0. Assignment of Grantee's Interest. With the prior written consent of Grantor, Grantee shall have the right to transfer this Easement to any governmental body or nonprofit organization that, at the time of transfer, is a "qualified organization" under §170(h) of the United States Internal Revenue Code, and a "Holder" under Arizona Revised Statutes §§33-271, et seq., but only if the governmental body/organization expressly agrees to assume the responsibility imposed on Grantee by this Easement and agrees that the Conservation Values of this Easement are to continue to be carried out. In any case, any assignee of this Easement must be the assignee of one hundred percent (100%) of the interest of the Easement

Section 12.0 Amendment of the Easement. This Easement may be amended only with the written consent of Grantee and Grantor by an instrument duly executed and recorded in the real property records of the county within which the Property is located; and provided further that the prior written consent of the Army shall be required. Any such amendment shall be consistent with the purposes of this Easement, shall comply with both the Grantee's internal procedures and standards for such modification and state and local laws regarding the creation and amendment of conservation easements, and shall comply with §170(h) of the United States Internal Revenue

Code, or any regulations promulgated thereunder. Any such amendment shall also be consistent with Arizona Revised Statutes §§33-274, et seq., or any regulations promulgated thereunder.

Section 13.0. Subsequent Transfers by Grantor. Grantor agrees to incorporate the terms of this Easement by reference in any deed or other legal instrument by which Grantor divests itself of any interest in all or a portion of the Property, including, without limitation, a leasehold interest. Grantor further agrees to give written notice to Grantee of the transfer of any interest in the Property subject to this Easement at least thirty (30) days prior to the date of such transfer. The Grantee shall promptly notify the Army. The failure of Grantor to perform any act required by this subsection shall not impair the validity of this Easement or limit its enforceability in any way.

Section 14.0. Recordation. Grantee shall record this instrument immediately following the closing of the purchase of the parcel by Grantor in the official records of Cochise County, and may re-record it at any time as may be required to preserve Grantee's rights in this Easement.

Section 15.0. Prior Notice and Approval. Grantor shall not undertake or permit any activity requiring prior approval by the Grantee, which approval shall not be unreasonably withheld, without first having notified and received approval from the Grantee as provided herein.

Prior to the commencement of any such activity, Grantor shall send the Grantee written notice of his/her intention to undertake or permit such activity. The notice shall inform the Grantee of all aspects of the proposed activity, including location, design, materials or equipment to be used, dates and duration, and any other relevant information, and shall be sent by registered or certified mail, return receipt requested, to 1011 N. Coronado Dr., Sierra Vista, AZ 85635, Attn: City Manager, or such other addresses as Grantor may from time to time be informed of in writing by the Grantee.

The Grantee shall have forty-five (45) days from receipt of the notice, as indicated by the date of the return receipt, to review the proposed activity and to notify Grantor of any objections thereto; provided that the 45-day period shall not begin until such time as the Grantee has received adequate information from Grantor to evaluate the proposed activity. In the event that the Grantee requires additional information to evaluate the proposed activity, the Grantee shall request the information from Grantor as soon as practicable and in any case not later than 30 days after the receipt of the notice of the proposed activity.

The Grantee's decision to approve or disapprove the activity proposed by Grantor shall be sent by registered or certified mail, return receipt requested, to Grantor at the address first stated above, or to such other address as the Grantee may from time to time be informed of in writing by Grantor.

A decision by the Grantee to disapprove a proposed activity must be based upon the Grantee's determination that the proposed activity is inconsistent with the conservation purposes of the Easement. If in the Grantee's judgment it is possible that the proposed activity can be modified to be consistent with the Easement, the Grantee's decision notice shall inform Grantor of such modification(s). Once modification is made to the satisfaction of the Grantee or the Grantee otherwise concurs with the matters set forth in Grantor's notice, the proposed activity may thereafter be conducted in a manner that is acceptable to the Grantee.

Should the Grantee fail to post its response to Grantor's notice within forty five (45) days of its receipt of notice or within forty five (45) days of the time that the Grantee has received adequate information to evaluate the proposed activity, whichever is later, the proposed activity is automatically deemed consistent with the terms of the Easement, the Grantee having no further right to object to the activity identified by such notice.

Section 16.0. General Provisions.

- 16.1. Notices. Any notice, demand, request, consent, approval, or communication that any party desires or is required to give to the other shall be in writing and either served personally or sent by first class mail, postage prepaid, to the other party at the address shown at the beginning of this Easement, or at such other address as a party may hereafter specify by written notice to the other parties.
- 16.2. Grant in Perpetuity. Subject to Sections 10.1, and 10.2 hereof, the Easement herein granted shall be a burden upon and shall run with the Property in perpetuity and shall bind Grantor and Grantor's respective personal representatives, heirs, successors, and assigns forever.
- 16.3. Termination of Rights and Obligations. A party's rights and obligations under this Easement terminate upon transfer of party's interest in the Easement or Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.
- 16.4. Liberal Construction. Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the grant to effect the purposes of this Easement and the policy and purposes of the Act. If any provision of this instrument is found to be ambiguous, invalid, or unenforceable, an interpretation consistent with the purposes of this Easement that would render the provision valid and enforceable shall be favored over interpretation that would render it invalid or unenforceable.
- 16.5. Severability. If any provision of this Easement or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of this Easement shall not be affected thereby.
- 16.6. Entire Agreement. This instrument sets forth the entire agreement between the parties with respect to this Easement.
- 16.7. Governing Law. The laws of the State of Arizona shall govern the validity, performance, and enforcement of this Easement. Notwithstanding which of the parties may be deemed to have prepared this Easement, this Easement shall not be interpreted either for or against Grantor or Grantee, but this Easement shall be interpreted in accordance with the general tenor of the language in an effort to carry out the purposes of this Easement.
- 16.8. Successors. The covenants, terms, conditions, and restrictions of this Easement shall be binding upon, and inure to the benefit of, the parties, hereto and their

respective personal representatives, heirs, successors, and assigns and shall continue as a servitude running in perpetuity with the Property. The terms “Grantor,” and “Grantee,” wherever used herein, and any pronouns used in place thereof, shall include, respectively, the above-named Grantor its successors, and assigns, and the above-named Grantee and its successors and assigns.

- 16.9. Captions. The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.
- 16.10. Counterparts. The parties may execute this instrument in two or more counterparts, which shall, in the aggregate, be signed by all parties; each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

*REMAINDER OF PAGE INTENTIONALLY LEFT BLANK*

*SIGNATURE PAGES FOLLOW*

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

IN WITNESS WHEREOF, Grantor has executed this Grant of Conservation Easement this \_\_\_\_ day of \_\_\_\_\_, 2013.

COCHISE COUNTY (Grantor)

\_\_\_\_\_  
Ann English, Chair, Board of Supervisors

\_\_\_\_\_  
Date

ATTEST:

\_\_\_\_\_  
Arlethe Rios, Clerk of the Board of Supervisors

\_\_\_\_\_  
Date

The undersigned Grantee hereby accepts the foregoing Grant of Easement.

CITY OF SIERRA VISTA

\_\_\_\_\_  
Rick Mueller, Mayor

\_\_\_\_\_  
Date

ATTEST:

\_\_\_\_\_  
Jill Adams, City Clerk

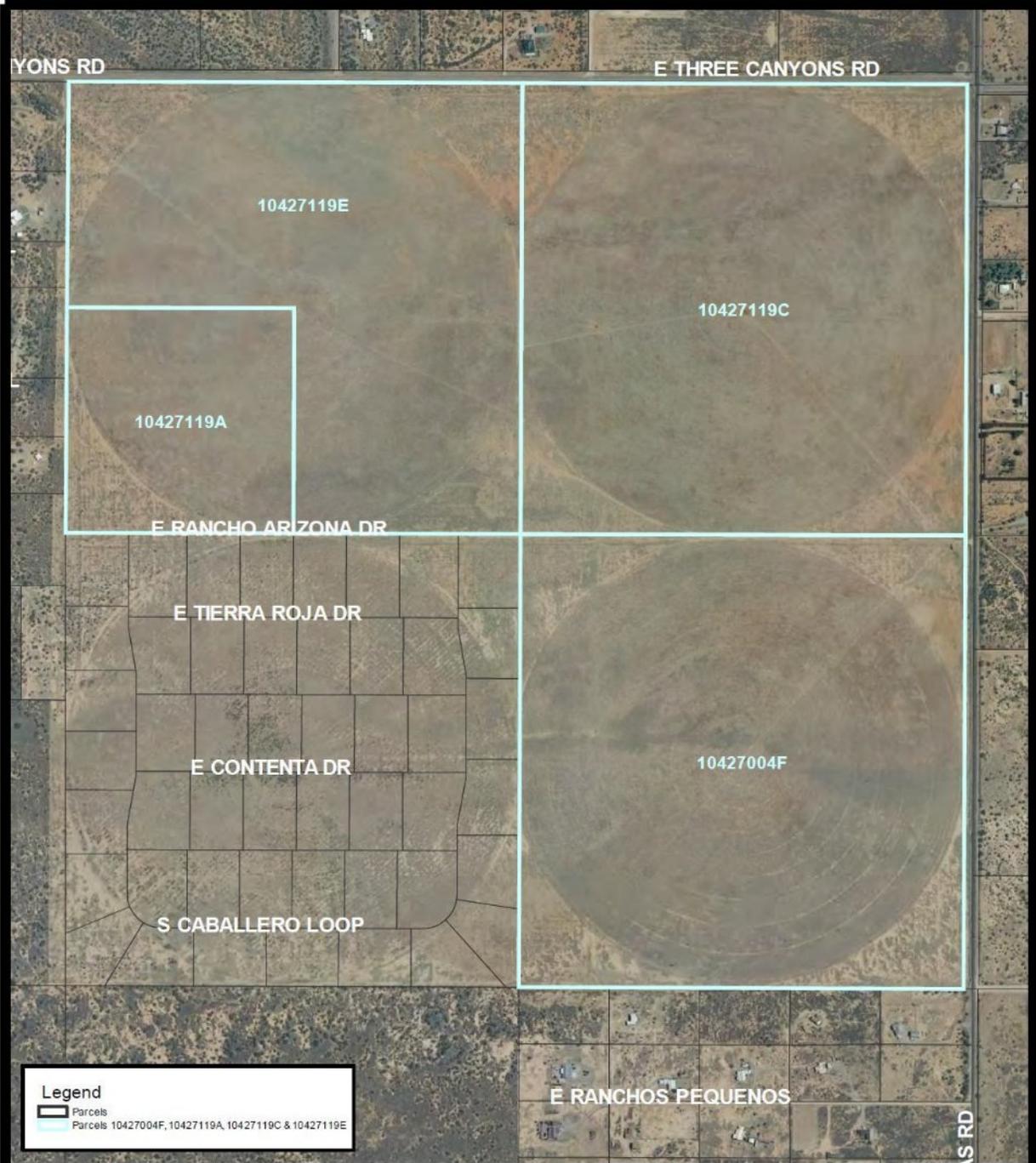
\_\_\_\_\_  
Date

**EXHIBIT A  
LEGAL DESCRIPTION**

SECTION 29, TOWNSHIP 23 SOUTH, RANGE 22 EAST OF THE GILA AND SALT RIVER BASE AND  
MERIDIAN, COCHISE COUNTY, ARIZONA;  
EXCEPT THE SOUTHWEST QUARTER THEREOF; AND  
EXCEPT THE EAST 50.00 FEET OF THE EAST HALF OF SAID SECTION 29

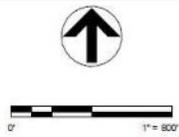
*END OF LEGAL DESCRIPTION  
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**EXHIBIT B**  
**Map of Property**



2010 aerial

This map is a product of the Cochise County GIS



touchenour, 2013-09-28 13:19:20  
 (ICoappnt@cochise.gov/~/homepages/Admin/Map/Iow.Mdb)

This document is a graphic representation only of best available sources. Cochise County assumes no responsibility for any errors.

**EXHIBIT C: Map Showing the Approximate Boundaries of the Portion of the Property to be used for Flood Control and Recharge  
Acknowledgment of Easement Documentation Report**

Grantor and the Grantee acknowledge that each has read the “\_\_\_\_\_” Conservation Easement Documentation Report,” dated \_\_\_\_\_, 2013 and the report accurately reflects the condition of the Property subject to the Easement as of the date of conveyance of the Easement.

GRANTEE:  
CITY OF SIERRA VISTA

GRANTOR:  
COCHISE COUNTY

By: \_\_\_\_\_  
Rick Mueller, Mayor

By: \_\_\_\_\_  
Ann English  
Chairman, Board of Supervisors

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**Exhibit D**  
**Notice of Building Envelope Designation**

RECORDING REQUESTED BY AND )  
WHEN RECORDED RETURN TO: )  
City of Sierra Vista )  
1011 N. Coronado Dr. )  
Sierra Vista, AZ 85635 )  
Attn: City Attorney )

**NOTICE OF BUILDING ENVELOPE DESIGNATION**

Pursuant to a Deed of Perpetual Conservation Easement granted to the City of Sierra Vista, dated \_\_\_\_\_, 2013, and recorded at \_\_\_\_\_ in the official records of the Cochise County, Arizona, \_\_\_\_\_, hereby designate the [County Building Envelope permitted under paragraph 3.9. of said Deed of Perpetual Conservation Easement] *or* [Residential Building Envelope permitted under paragraph 3.10. of said Deed of Perpetual Conservation Easement].

The legal description of the [County Building Envelope] *or* [Residential Building Envelope] is as follows:

[Insert surveyed legal description]

Dated: \_\_\_\_\_

[Insert appropriate signature block]

[Insert appropriate acknowledgement block for notary public]

