



Cochise County Board of Supervisors

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District 3

PATRICK G. CALL
Vice-Chairman
District 1

ANN ENGLISH
Supervisor
District 2

JAMES E. VLAHOVICH
County Administrator

EDWARD T. GILLIGAN
Deputy County Administrator

ARLETHE G. RIOS
Clerk of the Board

AGENDA FOR FLOOD CONTROL DISTRICT MEETING

Tuesday, November 15, 2016 at 10:00 a.m.

BOARD OF SUPERVISORS HEARING ROOM
1415 MELODY LANE, BUILDING G, BISBEE, AZ 85603

ANY ITEM ON THIS AGENDA IS OPEN FOR DISCUSSION AND POSSIBLE ACTION

ROLL CALL

Members of the Cochise County Board of Supervisors will attend either in person or by telephone, video or internet conferencing.

The Board may permit public comment during the discussion of any item on this agenda. If you wish to be heard on a specific item, please sign up to be heard using the 'Specific Item' on the speaker form provided, and please list the item about which you wish to be heard. Persons will be permitted three minutes to speak.

CONSENT

Board of Supervisors

1. Approve the Minutes of the Flood Control District meeting for September 27, 2016.

ACTION

Community Development

2. Approve Agreement conveying Bella Vista Ranch from The Nature Conservancy to Cochise County and authorize the Board Chair to execute all documents necessary to close the transaction.
3. Approve Agreement conveying Riverstone Ranch from The Nature Conservancy to Cochise County and authorize the Board Chair to execute all documents necessary to close the transaction.

CALL TO THE PUBLIC

This is the time for the public to comment. Members of the Board may not discuss items that are not specifically identified on the agenda.

Pursuant to the Americans with Disabilities Act (ADA), Cochise County does not, by reason of a disability, exclude from participation in or deny benefits or services, programs or activities or discriminate against any qualified person with a disability. Inquiries regarding compliance with ADA provisions, accessibility or accommodations can be directed to Chris Mullinax, Safety/Loss Control Analyst at (520) 432-9720, FAX (520) 432-9716, TDD (520) 432-8360, 1415 Melody Lane, Building F, Bisbee, Arizona 85603.

Cochise County Board of Supervisors
1415 Melody Lane, Building G Bisbee, Arizona 85603
520-432-9200 520-432-5016 fax board@cochise.az.gov

Flood Control District Meeting

Meeting Date: 11/15/2016

Minutes

Submitted By: Kim Lemons, Board of Supervisors

Department: Board of Supervisors

Presentation: No A/V Presentation

Document Signatures:

Recommendation:

of ORIGINALS

Submitted for Signature:

NAME n/a

TITLE n/a

of PRESENTER:

of PRESENTER:

Mandated Function?:

**Source of Mandate
or Basis for Support?:**

Information

Agenda Item Text:

Approve the Minutes of the Flood Control District meeting for September 27, 2016.

Background:

n/a

Department's Next Steps (if approved):

n/a

Impact of NOT Approving/Alternatives:

n/a

To BOS Staff: Document Disposition/Follow-Up:

Scan approved minutes & file.

Budget Information

Information about available funds

Budgeted:

Funds Available:

Amount Available:

Unbudgeted:

Funds NOT Available:

Amendment:

Account Code(s) for Available Funds

1:

Fund Transfers

Attachments

Minutes

**PROCEEDINGS OF THE COCHISE COUNTY FLOOD CONTROL DISTRICT
MEETING HELD ON
Tuesday, September 27, 2016**

A meeting of the Cochise County Flood Control District was held on Tuesday, September 27, 2016 at 10:00 a.m. in the Board of Supervisors' Hearing Room, 1415 Melody Lane, Building G, Bisbee, Arizona.

Present: Richard R. Searle, Chairman; Patrick G. Call, Vice-Chairman; Ann English, Director

Staff Present: James E. Vlahovich, County Administrator
Edward T. Gilligan, Deputy County Administrator
Britt W. Hanson, Chief Civil Deputy County Attorney
Arlethe G. Rios, Clerk of the Board

Chairman Searle called the meeting to order at 10:00 a.m.

ANY ITEM ON THIS AGENDA IS OPEN FOR DISCUSSION AND POSSIBLE ACTION

PLEDGE OF ALLEGIANCE

THE ORDER OR DELETION OF ANY ITEM ON THIS AGENDA IS SUBJECT TO MODIFICATION AT THE MEETING

CONSENT

Board of Supervisors

1. Approve the Minutes of the Flood Control District meeting for August 30, 2016.

Vice-Chairman Call moved to approve item 1 on the consent agenda. Director English seconded the motion and it carried unanimously.

ACTION

Community Development

2. Approve Professional Services Agreement with JE Fuller Hydrology & Geomorphology, Inc. for the Bella Vista Ranch Phase II Aquifer Recharge Feasibility Study in the amount of \$223,323.

Ms. Karen Riggs, Highway & Floodplain Director, presented this item. Ms. Riggs explained that this agreement was being paid for by the additional funds accepted by the Board on August 30th. She noted that the professional services agreement was not finalized, but would get that to the Board as soon as it was. She added that phase one on the Bella Vista project was complete and that this contract would move forward with additional site investigation. She also stated that this would be a storm water recharge project on coyote

wash.

Director English asked what the cost of final plans for this project would be.

Ms. Riggs said that it would cost an estimated \$70,000 to \$100,000.

Chairman Searle asked about the depth of the drilling.

Ms. Riggs said that it would be less than 150 feet.

Director English moved to approve Professional Services Agreement with JE Fuller Hydrology & Geomorphology, Inc. for the Bella Vista Ranch Phase II Aquifer Recharge Feasibility Study in the amount of \$223,323. Vice-Chairman Call seconded the motion.

Chairman Searle called for the vote and it was approved 3-0.

CALL TO THE PUBLIC

Chairman Searle opened the call to the public.

No one chose to speak and Chairman Searle closed the call to the public.

This is the time for the public to comment. Members of the Board may not discuss items that are not specifically identified on the agenda.

Chairman Searle adjourned the meeting at 10:11 a.m.

APPROVED:

Richard R. Searle, Chairman

ATTEST:

Arlthe G. Rios, Clerk of the Board

Flood Control District Meeting

Meeting Date:	11/15/2016		
Acquisition of Bella Vista Ranch			
Submitted By:	Britt Hanson, County Attorney		
Department:	County Attorney		
Presentation:	No A/V Presentation	Recommendation:	Approve
Document Signatures:	BOS Signature Required	# of ORIGINALS Submitted for Signature:	2
NAME of PRESENTER:	Britt Hanson and Karen Riggs	TITLE of PRESENTER:	Chief Civil Deputy
Docket Number (If applicable):			
Mandated Function?:	Not Mandated	Source of Mandate or Basis for Support?:	

Information

Agenda Item Text:

Approve Agreement conveying Bella Vista Ranch from The Nature Conservancy to Cochise County and authorize the Board Chair to execute all documents necessary to close the transaction.

Background:

As part of the County's efforts to recharge water into the aquifer of the the Sierra Vista sub-watershed, and to otherwise assist in water conservation efforts in that sub-watershed, the County has been negotiating with the The Nature Conservancy to acquire the 2,900+ acre Bella Vista Ranch. The Agreement to Convey Real Property that is the subject of this agenda item will accomplish that. The County will not pay any money for this acquisition.

As with the acquisition of the Mansker property, upon acquisition, the County will grant a Conservation Agreement to The Nature Conservancy. One difference is that whereas with Mansker the County retained the right to sell one parcel to a third party for use as a residence, the Conservation Easement for Bella Vista allows the County to sell up to five such parcels. Proceeds of any such sales are supposed to be used to further recharge efforts. The Conservation Easement also allows other potential uses, such as a County facility including a road yard or educational facility, not to exceed 15 acres.

The acquisition will come subject to a grazing lease and a lease of a 12 x 60 ft. trailer to Finchor, an Arizona partnership, with Mike Finch as the acting partner. Income from the grazing lease is \$6,600/year, with a maximum of 360 AUMs. Income from the lease of the trailer is \$250/month. The Flood Control District will manage these leases.

This acquisition also comes with a lease of 4,066 acres of State Land for cattle grazing.

Accompanying this agenda item is a separate agenda item to acquire Riverstone Ranch.

Department's Next Steps (if approved):

Move towards closing the acquisition.

Impact of NOT Approving/Alternatives:

The County will not have Bella Vista Ranch available for a recharge project

To BOS Staff: Document Disposition/Follow-Up:

Have the Board Chair sign two originals. Britt Hanson will route them to the Nature Conservancy.

Attachments

Agreement to Convey Bella Vista

Bella Vista lease

State Land lease - Bella Vista

AGREEMENT TO CONVEY REAL PROPERTY

This Agreement to Convey Real Property (the “Agreement”) is made and entered into by and between THE NATURE CONSERVANCY, a District of Columbia Non-Profit Corporation, hereinafter referred to as “TNC” and COCHISE COUNTY, a political subdivision of the State of Arizona, hereinafter referred to as “COUNTY.”

RECITALS:

1. TNC is a party to Cooperative Agreement W911SSR-07-2-0005 (“TNC Cooperative Agreement”) between TNC and the U.S. Army Research Engineering and Development Command.
2. Pursuant to the TNC Cooperative Agreement TNC purchased certain real property in Cochise County (the “Property”) which for purposes of this Agreement is defined as follows:
 - A. That certain real property, including the land and all buildings, improvements and fixtures thereon, all other surface rights, permits, hereditaments, easements, incidents and appurtenances currently belonging thereto, located in the County of Cochise, State of Arizona, consisting of 2,984.2863 acres, more or less, more particularly described in **Exhibit A** to this Agreement and shown generally on the map attached as **Exhibit B** (the “Real Property”).
 - B. All of the Conservancy’s right, title and interest in and to (i) any and all water, water rights, ditches, ditch rights, reservoirs, storage rights, wells, well permits, ground water rights, ditch and/or reservoir company stock, irrigation districts, and (ii) all other rights in and to the use of water, whether like or unlike the foregoing, adjudicated or unadjudicated, that are appurtenant to or used on or in connection with the Real Property, (collectively, the “Water Rights”). The Water Rights include, without limitation, (i) any and all rights to sub-flow and groundwater in any geological formation underlying the Real Property, whether or not appropriated or adjudicated; (ii) any and all rights, claims, and entitlements associated with the historic beneficial use of any of the Water Rights; and (iii) any and all ditches, reservoirs, embankments, flumes, headgates, measuring devices, wells, pumps, motors, pipelines, and other structures that are appurtenant to the Water Rights, and all easements, rights of way, licenses, permits, and contract rights therefor or pertaining thereto; to the extent the Conservancy has the right and authority to transfer any of the interests in the above.
3. COUNTY is a party to Cooperative Agreement W9124J-15-2-001 (“COUNTY Cooperative Agreement”) between COUNTY and the U.S. Army Mission and Installation Contracting Command.
4. Pursuant to the TNC Cooperative Agreement TNC received Disposition Instructions authorizing TNC to transfer fee title to the Property to COUNTY subject to a conservation easement to be held by TNC in form and substance substantially similar to the form attached hereto as **Exhibit C** (the “Conservation Easement”).
5. COUNTY desires to hold fee title to the Property subject to the Conservation Easement for the purpose of enhancing the management of the County’s groundwater recharge network

and agrees to hold fee title to the Property subject to the terms and conditions of the COUNTY Cooperative Agreement.

NOW THEREFORE, in consideration of the mutual covenants set forth herein, TNC and COUNTY make the following agreements:

AGREEMENT:

1. TNC will donate the Property to COUNTY, subject to the following conditions precedent, reservations and restrictions:
 - a. Simultaneous grant by COUNTY to TNC of the Conservation Easement encumbering the Property which shall include, but not be limited to restrictions agreed upon between the parties regarding building envelopes, footprint size and other mutually agreed upon building restrictions for any proposed building site and recharge facilities.
 - b. Subject to such easements, restrictions and other exceptions of record set forth in that title commitment, Order No.: 52001378-052-52, Reference No.: 60014574, with an Effective Date of October 10, 2016, as may be amended, issued by Title Security Agency of Arizona, with an address at 1 S. Church Street, Suite 2040, Tucson, AZ 85701.
2. Upon mutual execution of this Agreement, the parties shall execute escrow instructions to Title Security Agency of Arizona, with an address at 1 S. Church Street, Suite 2040, Tucson, AZ 85701 (“Escrow Holder”) to consummate the purchase. The provisions of this Agreement shall constitute joint instructions to the Escrow Holder; provided, however, that the parties shall execute such additional instructions as requested by the Escrow Holder not inconsistent with the provisions of this Agreement.
3. TNC will cooperate with COUNTY in conducting reasonable due diligence research regarding the Property.
4. Closing shall be held at the office of the Escrow Holder on a date mutually acceptable to the Conservancy and the Buyer (the “Closing”), but no later than **December 16, 2016** (the “Closing Date”), unless such Closing Date is extended upon the mutual written agreement of TNC and COUNTY.
5. At Closing, TNC shall execute and deliver a quit claim deed conveying the Property to the COUNTY and all other right, title and interest of TNC to the Property in form and substance substantially similar to the form attached hereto as **Exhibit D**. TNC shall also execute and deliver a quit claim deed conveying the Water Rights to the COUNTY and all other right, title and interest of TNC to the Water Rights in form and substance substantially similar to the form attached hereto as **Exhibit E**. At Closing TNC shall also assign to COUNTY the Ranch Lease Agreement dated April 10, 2014 with Finchcor, an Arizona general partnership, as amended on April 3, 2015 which replaced Finchcor as Lessee with Michael Finch who assumed all rights and obligations of Lessee under the Lease, and further amended as of April 3, 2016, pursuant to an Assignment and Assumption Agreement in form and substance substantially similar to the form attached hereto as **Exhibit F**, and State of Arizona Grazing Lease #23-94344. At Closing,

COUNTY shall execute and deliver the Conservation Easement to TNC and its successors and assigns free and clear of all monetary liens, encumbrances and other exceptions, except such easements, restrictions and other exceptions of record.

6. On or before Closing, TNC and COUNTY shall have executed all necessary forms to affect the transfer of water rights connected with the Property from TNC to COUNTY. Any filing costs to be paid in connection with the submission of such forms shall be paid by COUNTY.
7. **No Representations or Warranties by TNC.** COUNTY acknowledges that it is fully familiar with the Property and has had an ample opportunity to independently investigate and examine all aspects of the Property. COUNTY SPECIFICALLY ACKNOWLEDGES AND AGREES THAT TNC IS CONVEYING AND COUNTY IS ACCEPTING THE PROPERTY ON AN “AS IS, WITH ALL FAULTS” BASIS AND THAT COUNTY IS NOT RELYING ON ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, FROM TNC, ITS AGENTS, ITS CONTRACTORS, EMPLOYEES OR REPRESENTATIVES AS TO ANY MATTERS CONCERNING THE PROPERTY, INCLUDING, WITHOUT LIMITATION, THE FOLLOWING: (i) the quality, nature, adequacy or physical condition of the Property, including, without limitation, the soils, geology and groundwater, if any; (ii) the existence, quality, nature, adequacy, condition or ownership of any means of irrigation and any water or water rights, ditches or ditch rights, reservoirs or reservoir rights serving the Property; (iii) the Property’s use, habitability, merchantability, or fitness for a particular purpose; (iv) the zoning or other legal status of the Property or any other public or private restrictions on use of the Property; (v) the compliance of the Property or its operation with any applicable codes, laws, regulations, statutes, ordinances, covenants, conditions and restrictions of any governmental or quasi-governmental entity or of any other person or entity; (vi) the presence of any hazardous or toxic substances on, under or about the Property or any adjoining or neighboring property; (vii) the condition of title to the Property; (viii) the location of fences in relationship to the Property lines, or the actual boundaries or acreage of the Property; (ix) the existence, quality, nature, condition or ownership of any minerals on or under the Property or any mineral or other surface or subsurface rights relating to the Property; (x) the quality, nature, adequacy and physical and structural condition of any buildings, structures, fences or other improvements on the Property and of any labor and materials used in any such improvements; (xi) the quality or suitability of the land for growing crops or grazing livestock, of any kind; or (xii) the value of the Property for COUNTY’s intended uses
8. TNC shall bear the risk of loss for damage to the Property prior to Closing. After Closing, the risk of loss or damage to the Property shall rest with COUNTY.
9. TNC agrees that all taxes, assessments and encumbrances that are a lien against the Property at closing shall be satisfied of record by TNC at or before Closing. Regular real property taxes payable during the year in which closing shall occur shall be prorated as of Closing.
10. All rents and other income, if any, and water, sewer, utility and maintenance charges, and any other expenses with respect to the operation of the Property shall be prorated between COUNTY and TNC as of the Closing Date, and to the extent information then available, such proration shall be made as of the date of Closing. Such proration shall be adjusted and completed after the Closing Date as and when complete information becomes available, and TNC and COUNTY agree to cooperate and use their best efforts to complete such prorations not later than sixty (60)

days after the Closing Date. No insurance prorations shall be made. In the event TNC has prepaid any real estate taxes, TNC may seek a refund from the appropriate county official, or receive a credit from COUNTY at Closing.

11. COUNTY shall be solely responsible for payment of the title insurance premium for the Property, if any, in connection with the Closing of this transaction. TNC shall be solely responsible for payment of the title insurance premium for the Conservation Easement. COUNTY and TNC will split the remaining closing costs, including the escrow, recording and processing fees.
12. COUNTY may not assign its interest in this Agreement, or in any of the documents described herein, to any party.
13. Each party shall execute and deliver or cause to be executed and delivered all instruments reasonably required to convey the Property to COUNTY, grant the Conservation Easement to TNC and to vest in each party all rights, interests and benefits intended to be conferred by this Agreement.
14. All provisions herein shall be binding upon the heirs, successors and assigns of the parties hereto.
15. The Recitals are hereby incorporated into this Agreement.

*REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK
SIGNATURE PAGE FOLLOWS*

TNC and COUNTY have executed this Agreement as of the dates set forth below:

COUNTY: COCHISE COUNTY, a political subdivision of the State of Arizona:

Richard
Searle

Date

Chairman, Board of Supervisors

ATTEST:

Arlethe Rios
Clerk of Board of Supervisors

Date

APPROVED AS TO FORM:

Britt Hanson
Attorney for the County

Date

TNC: THE NATURE CONSERVANCY, a District of Columbia Non-Profit Corporation

By: _____

Date

Its: _____

Exhibit A
Legal Description of the Property

All that real property located in the County of Cochise, Arizona, more particularly described as follows:

A parcel of land situated in Sections 15, 20, 21, 22, 27, 28, 29 and 30, Township 21 South, Range 21 East of the Gila and Salt River Base and Meridian, Cochise County, Arizona, more particularly described as follows:

The east half of the east half, the northwest quarter of the northeast quarter, the northeast quarter of the northwest quarter, and the west half of the northwest quarter of said Section 15;

The south half of said Section 20;

All of said Section 21;

The east half of the northeast quarter and the south half of said Section 22;

The north half, the north half of the southeast quarter, the southwest quarter of the southeast quarter, and the southwest quarter of said Section 27;

The north half of the northwest quarter and the east half of said Section 28;

The north half of the north half of said Section 29;

The north half of the north half of said Section 30;

Excepting therefrom any portion lying within the following described property:

A strip of land 100.00 feet in width located in Sections 22, 27, 28 and 29, Township 21 South, Range 21 East of the Gila and Salt River Base and Meridian, Cochise County, Arizona, the center line being more particularly described as follows:

Beginning at the southeast corner of the northeast quarter of Section 31, Township 21 South, Range 21 East, Gila and Salt River Base and Meridian, Cochise County, Arizona;

Thence North 00°05'33" West a distance of 804.21 feet to a point on the center line of the existing Charleston Road;

Thence North 60°57'46" East a distance of 2,137.30 feet along said center line to an angle point;

Thence North 60°56'55" East a distance of 1,643.06 feet along said center line to an angle point;

Thence North 60°54'27" East a distance of 2,235.68 feet along said center line to an angle point;

Thence North 60°57'23" East a distance of 3,337.89 feet along said center line to an angle point;

Thence North 61°03'02" East a distance of 2,282.04 feet along said center line to the beginning of a curve concave to the northwest having a radius of 1,448.18 feet;

Thence northeasterly a distance of 676.68 feet along said curve through a central angle of 26°46'36" to a point of tangency;

Thence North 34°16'26" East a distance of 868.80 feet along said center line to an angle point;

Thence North 34°11'52" East a distance of 1,856.12 feet along said center line to the beginning of a curve concave to the southeast having a radius of 2,201.32 feet;

Thence northeasterly a distance of 477.48 feet along said curve through a central angle of 12°25'51" to a point of tangency;

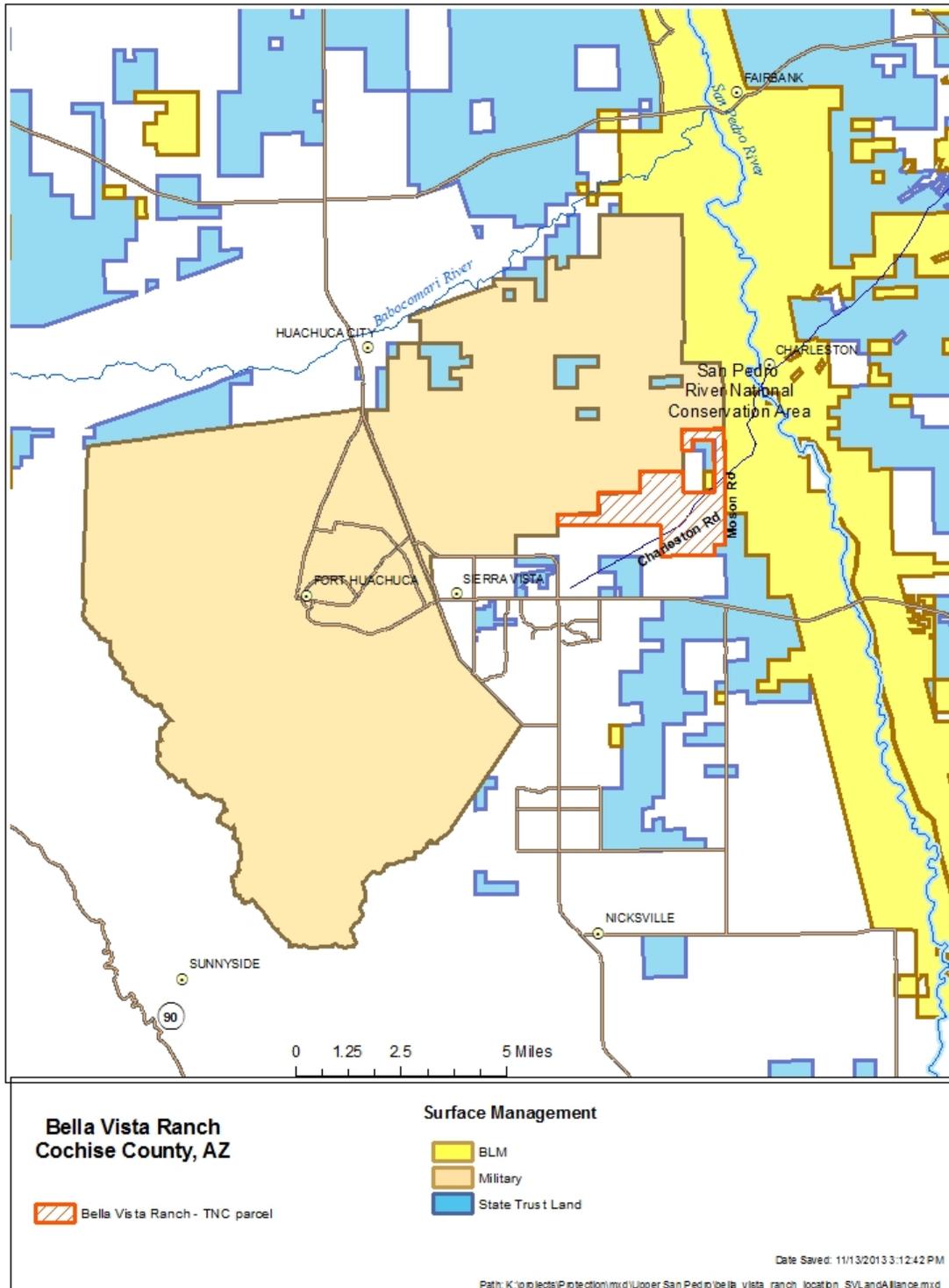
Thence North 46°37'43" East a distance of 2,556.50 feet along said center line to an angle point;

Thence North 46°40'14" East a distance of 2,063.51 feet along said center line to a point on the east section line of said Section 22 that bears North 00°00'52" East a distance of 4,752.11 feet from the southeast corner of said Section 22, said point also being the end of description.

The above described parcel contains 129,995,510 square feet or 2,984.2863 acres, more or less.

Subject to all covenants, rights of way and easements of record.

Exhibit B Maps of the Property



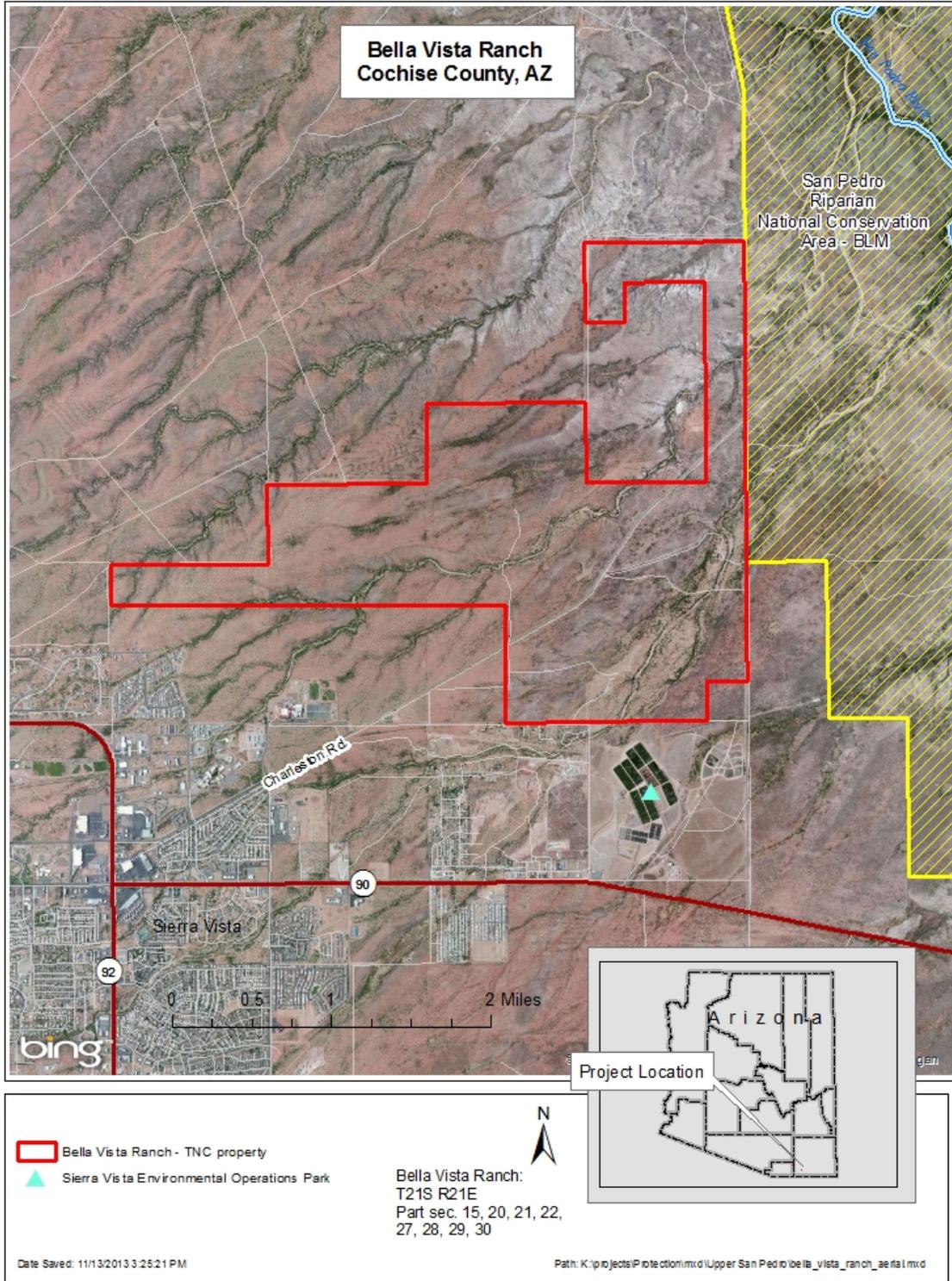


Exhibit C
Form of Conservation Easement

[This page intentionally left blank. Reference document starts on next page.]

RECORDING REQUESTED BY AND
UPON RECORDING RETURN TO:

The Nature Conservancy
Western Resource Office
2424 Spruce Street, Suite 100
Boulder, Colorado 80302
Attention: Legal Department

-----SPACE ABOVE THIS LINE FOR RECORDER’S USE ONLY-----
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DEED OF PERPETUAL CONSERVATION EASEMENT

NOTICE: THIS PROPERTY INTEREST HAS BEEN ACQUIRED WITH ASSISTANCE FROM THE UNITED STATES ARMY (THE “ARMY”) IN FURTHERANCE OF THE U.S. DEPARTMENT OF THE ARMY, ARMY COMPATIBLE USE BUFFER (ACUB) CONTRACT # W911SR-07-2-0005. THIS DEED CONTAINS RESTRICTIONS ON THE USE AND DEVELOPMENT OF THE PROPERTY WHICH ARE INTENDED TO PROTECT ITS CONSERVATION VALUES IN FURTHERANCE OF THE ACUB AGREEMENT. THE ARMY HAS FOUND THAT THE ADOPTION OF THESE DEED RESTRICTIONS IS IN THE PUBLIC INTEREST.

GRANT OF CONSERVATION EASEMENT

THIS GRANT OF CONSERVATION EASEMENT is made by Cochise County, a political subdivision of the State of Arizona (“Grantor”), whose address is 1415 Melody Lane, Building G, Bisbee, Arizona 85603, to THE NATURE CONSERVANCY, a District of Columbia nonprofit corporation, whose principal address is 4245 North Fairfax Drive, Suite. 100, Arlington, Virginia 22203-1606 (“Grantee”).

WHEREAS, Grantor is the sole owner in fee simple of certain real property located in Cochise County, consisting of 2,984 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 adjacent to the San Pedro River; and

WHEREAS, the property possesses natural, biological diversity, and open space values (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 D and incorporated by this reference (“Baseline Documentation”), dated _____, 2016, 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 by the continuation of land use patterns existing at the time of this grant, which, it is acknowledged, do not significantly impair or interfere with the Conservation Values and which protect and support the biodiversity of the area; 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 and continued, in a manner consistent with Grantor’s private ownership, use, and quiet enjoyment of the Property; 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 San Pedro Valley and the Property have the following characteristics:

(a) the Property and surrounding lands are rural in character and have historically been used for ranching, agricultural, open space, and rural residential and recreational uses; and

(b) the area is one of the most important in Cochise County from the standpoint of open space, biological diversity beauty and wildlife habitat and Grantor wants these Conservation Values protected; and

(c) the Property is in a strategic location for protecting and recharging the groundwater aquifer which supports riparian and aquatic habitats along the San Pedro River; and

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 charitable nonprofit corporation 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 intends to 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 stormwater and effluent capture/recharge projects.

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 3.10;
- 2.3 Timber Harvesting. Timber Harvesting is prohibited; provided however, trees may be cut to control insects and disease, to prevent personal injury and property damage and for firewood for domestic use only. Dead trees may be harvested at Grantor’s discretion for firewood or construction purposes. Trees and brush may be removed if for the purpose of reducing evapotranspiration or as needed to construct and maintain the recharge project facilities.
- 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 irremediably 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. Nothing herein purports to create any responsibility or liability of Grantor should there be entry upon the Property by third persons not under control of Grantor, including persons who may lawfully enter upon the land pursuant to rights of mineral entry in state or federal patents. 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 recharge 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.
- 2.8. Commercial or Industrial Activity. Establishment of any commercial activity that may have an adverse effect on the Conservation Values is prohibited. Grantor's rights to use the Property as set forth in Section 3 shall not be deemed a prohibited commercial use
- 2.9. Water Rights. Grantor may consumptively use water that is harvested from storm water or ground water, but the total amount used shall not exceed the amount that would be used for five (5) single family residences and non-irrigated agricultural use. The parties acknowledge the existence of a well on the Property. Grantor may use this well so long as the use complies with this subsection regarding the total amount of water used. Any export of water from the Property or streams traversing the Property for any purpose, or authorization for the export of water for any purpose, is prohibited.

- 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.
- 2.11 Non-native plants. Intentional introduction of non-native plants is prohibited, except as permitted in paragraph 3.10.
- 2.12 Roads. No new roads may be constructed on the property except those necessary for uses permitted by this Easement.
- 2.13 Motor vehicles. Using motor vehicles upon and across the Property except as reasonably necessary for permitted uses is 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. Grantor and Grantee acknowledge and understand that the Flood Control and Recharge Uses are currently the subject of a feasibility study and thus the structures and other improvements that ultimately will be required for these Uses are not known for certain. The project scope of work consists of the design and construction of one or more detention/recharge facilities that would reduce peak flows. The designed facilities may also recharge runoff due to increased development upstream, by means that could include injection wells, infiltration galleries, basins, or other means, or some combination of these. Improvements would be designed to enhance recharge in the basins, downstream of them and possibly in off-channel facilities. The Grantor might also partner with the City of Sierra Vista upstream of the Property to capture storm water from the developed surfaces of the city and recharge the storm water closer to the river, if technically and economically feasible. Water or treated effluent originating from other sources may also be recharged at this property, as long as water quality standards are met for recharge facilities. Preliminary studies have been conducted on the Property that indicate the suitability and feasibility of using the site as a recharge facility. Additional infiltration testing on this site will be done as part of Predesign to further quantify the suitability for enhanced recharge at the location already planned for detention. 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 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 Any new or rebuilt fencing shall be designed and constructed following AZGFD guidelines in a manner that minimizes the adverse effect of the fencing on wildlife or on the natural features of the Property. 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 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, and provided that grazing is done in a manner that maintains or improves soil and desirable vegetation health. 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 non-motorized recreational and educational uses including horseback riding, hiking and hunting. In addition, the Grantor may make the Property accessible to the public for the educational purpose of demonstrating and showcasing the Flood Control and Recharge Uses, as well as other Conservation Values. Grantor may build such structures and improvements, including unpaved trails for non-motorized use, as are reasonably incidental to these purposes with the prior approval of the Grantee;
- 3.7 Using agrichemicals, including but not limited to, fertilizers and biocides, but only in those amounts and with the frequency of application reasonably necessary to accomplish reasonable grazing and agricultural purposes, including weed control. All agrichemical use shall be in accordance with label directions and in compliance with applicable federal, state, and local laws, regulations, and requirements;
- 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 Provided the specific terms and conditions set forth in this paragraph are complied with, Grantor may use the Property for a county facility, including a road yard and educational facility, and for public access facilities to provide for the recreational and educational uses described in paragraph 3.6 above, and build such structures and improvements as are reasonably incidental to this purpose: (i) the total water consumption from all such facilities and uses does not exceed one (1) acre-foot per

year and is documented with a flowmeter(s) installed at Grantor's sole cost and expense that is accessible to the Grantee for monitoring, (ii) any use permitted pursuant to this paragraph and/or construction takes place within three (3) areas of reasonably compact shape, the combined size of which does not to exceed fifteen (15) acres (the "County Building Envelopes"), 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, and (iii) prior to any use permitted pursuant to this paragraph and/or construction occurring, the County Building Envelopes 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 Grantor's sole cost and expense;

3.10 It is understood that, in the event that a portion of the Property is determined to be unsuitable for Flood Control and Recharge Uses, Grantor may subdivide the unsuitable portion of the property into no more than five (5) parcels and convey its right, title and interest to that unsuitable portion of the Property to a private party or parties, subject to this Conservation Easement. 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. If this occurs, such private parties shall be entitled to construct no more than five (5) single-family dwelling units on the Property, one on each of the permitted parcels, together with any accessory structures of a nature customarily incidental and subordinate in size, impact and purpose to the dwelling unit. Any such dwelling units and accessory structures shall be (i) located within a single area of reasonably compact shape, not to exceed four (4) acres (the "Residential Building Envelopes") 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, and (ii) prior to any construction occurring, each 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 E 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 using non-native plants is permitted in each Residential Building Envelope.

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

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 subject to the purposes, terms and obligations of the Army Compatible Use Buffer (ACUB) Contract # W911SR-07-2-0005 on behalf of Fort Huachuca and the Army for the primary purposes 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. An incidental, but important, result of the purchase of the Easement is avoidance of development of the Property that can result in limitations on training and operations at Fort Huachuca. 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. Taxes. Grantor shall pay, before delinquency, any and all taxes, assessments, fees, and charges levied or assessed by competent authority on the Property (collectively "taxes"), including any taxes imposed upon, or incurred as a result of, this Easement, and shall furnish Grantee with satisfactory evidence of payment upon request.

- 9.3. Representations and Warranties. Grantor represents and warrants that to the best of its knowledge (it being understood, however, that inasmuch as Grantor has acquired the Property in connection with this easement, and has not undertaken any independent inspection except regarding the Flood Control and Recharge Use, Grantor's knowledge is limited):
- (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.
- 9.4. 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.
- 9.5. 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”).

- 9.6. 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 aforestated 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 ___% 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, Grantee shall only be entitled to ___% 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 one hundred percent (100%) of any such proceeds that the Grantee receives.
- 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 and the Army (which consent shall not be unreasonably withheld), Grantee shall have the right to transfer this Easement to any 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 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. Notwithstanding the foregoing, the consent of Grantor shall not be required for any transfer required under the Army Compatible Use Buffer Program (the "ACUB Program") so long as the conditions set forth in 10 U.S.C. 2684a(d)(3) are satisfied. Any such assignment required under the ACUB Program shall be made upon request of the Secretary of the Army or his or her authorized designee to the United States. If Grantee desires to transfer this Easement to a qualified organization having similar purposes as Grantee, but Grantor reasonably refuses to approve the transfer or, if Grantee ever ceases to exist or no longer qualifies under §170(h) or applicable state law, a court with jurisdiction shall transfer this Easement to another qualified organization having similar purposes and mission as Grantee and that agrees to assume the responsibility of enforcing this Easement, provided that Grantor receives notice of and an opportunity to participate in the court proceeding. 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 in a timely fashion 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 The Nature Conservancy, Tucson Conservation Center, whose address is 1510 E. Ft. Lowell Rd., Tucson, AZ 85719, with a copy to The Nature Conservancy, Attn: Legal Department, 2424 Spruce Street, Suite 100, Boulder, CO 80302, 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.

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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 _____, 2016.

COCHISE COUNTY (Grantor)

Richard Searle, Chair, Board of Supervisors

Date

ATTEST:

ATTEST:

Arlethe Rios, Clerk of the Board of Supervisors

Date

The undersigned Grantee hereby accepts the foregoing Grant of Easement.

THE NATURE CONSERVANCY, a District of
Columbia nonprofit corporation,

By _____

Dated _____, 2016

STATE OF ARIZONA)
) ss.
COUNTY OF)

The foregoing instrument was subscribed, sworn to, and acknowledged before me
this ____ day of _____, 2016 by _____, the _____
of THE NATURE CONSERVANCY, a District of Columbia nonprofit corporation, as Grantee.

Notary Public

My Commission expires:

**EXHIBIT A
LEGAL DESCRIPTION**

All that real property located in the County of Cochise, Arizona, more particularly described as follows:

A parcel of land situated in Sections 15, 20, 21, 22, 27, 28, 29 and 30, Township 21 South, Range 21 East of the Gila and Salt River Base and Meridian, Cochise County, Arizona, more particularly described as follows:

The east half of the east half, the northwest quarter of the northeast quarter, the northeast quarter of the northwest quarter, and the west half of the northwest quarter of said Section 15;

The south half of said Section 20;

All of said Section 21;

The east half of the northeast quarter and the south half of said Section 22;

The north half, the north half of the southeast quarter, the southwest quarter of the southeast quarter, and the southwest quarter of said Section 27;

The north half of the northwest quarter and the east half of said Section 28;

The north half of the north half of said Section 29;

The north half of the north half of said Section 30;

Excepting therefrom any portion lying within the following described property:

A strip of land 100.00 feet in width located in Sections 22, 27, 28 and 29, Township 21 South, Range 21 East of the Gila and Salt River Base and Meridian, Cochise County, Arizona, the center line being more particularly described as follows:

Beginning at the southeast corner of the northeast quarter of Section 31, Township 21 South, Range 21 East, Gila and Salt River Base and Meridian, Cochise County, Arizona;

Thence North 00°05'33" West a distance of 804.21 feet to a point on the center line of the existing Charleston Road;

Thence North 60°57'46" East a distance of 2,137.30 feet along said center line to an angle point;

Thence North 60°56'55" East a distance of 1,643.06 feet along said center line to an angle point;

Thence North 60°54'27" East a distance of 2,235.68 feet along said center line to an angle point;

Thence North 60°57'23" East a distance of 3,337.89 feet along said center line to an angle point;

Thence North 61°03'02" East a distance of 2,282.04 feet along said center line to the beginning of a curve concave to the northwest having a radius of 1,448.18 feet;

Thence northeasterly a distance of 676.68 feet along said curve through a central angle of 26°46'36" to a point of tangency;

Thence North 34°16'26" East a distance of 868.80 feet along said center line to an angle point;

Thence North 34°11'52" East a distance of 1,856.12 feet along said center line to the beginning of a curve concave to the southeast having a radius of 2,201.32 feet;

Thence northeasterly a distance of 477.48 feet along said curve through a central angle of 12°25'51" to a point of tangency;

Thence North 46°37'43" East a distance of 2,556.50 feet along said center line to an angle point;

Thence North 46°40'14" East a distance of 2,063.51 feet along said center line to a point on the east section line of said Section 22 that bears North 00°00'52" East a distance of 4,752.11 feet from the southeast corner of said Section 22, said point also being the end of description.

The above described parcel contains 129,995,510 square feet or 2,984.2863 acres, more or less.

Subject to all covenants, rights of way and easements of record.

EXHIBIT B MAP OF PROPERTY

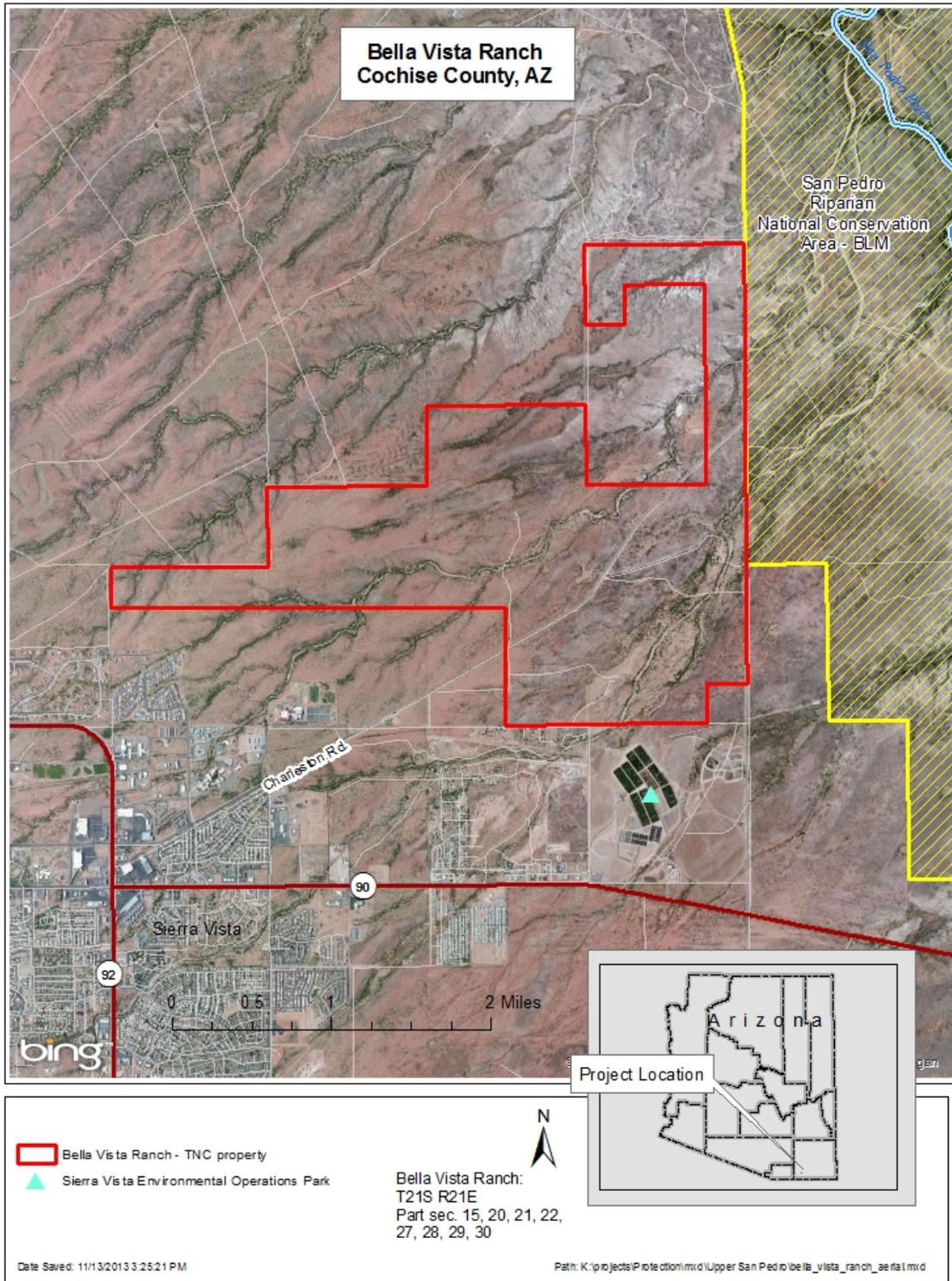


EXHIBIT C
ACKNOWLEDGMENT OF EASEMENT DOCUMENTATION REPORT

Grantor and the Grantee acknowledge that each has read the “Bella Vista Tract” Conservation Easement Documentation Report,” dated _____, 2016, and the report accurately reflects the condition of the Property subject to the Easement as of the date of conveyance of the Easement.

GRANTEE:
THE NATURE CONSERVANCY, a District of
Columbia nonprofit corporation

By: _____

Its: _____

Date: _____

GRANTOR:
COCHISE COUNTY

By: _____

Richard Searle
Chairman, Board of Supervisors

Date: _____

EXHIBIT D
NOTICE OF BUILDING ENVELOPE DESIGNATION

RECORDING REQUESTED BY AND)
WHEN RECORDED RETURN TO:)
The Nature Conservancy)
Western Resource Office)
Attn: Legal Department)
2424 Spruce Street, Suite 100)
Boulder, Colorado 80302)

NOTICE OF BUILDING ENVELOPE DESIGNATION

Pursuant to a Deed of Perpetual Conservation Easement granted to The Nature Conservancy, a District of Columbia nonprofit corporation, dated _____, 2016, 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]

Exhibit D
Form of Quitclaim Deed for Real Property

RECORDING REQUESTED BY AND)
WHEN RECORDED RETURN TO:)
Cochise County, Board of Supervisors)
1415 Melody Lane, Building G)
Bisbee, Arizona 85603)
Attention: Clerk of the Board)

EXEMPT FROM AFFIDAVIT PURSUANT TO ARS 11-1134 SECTION ____

Quitclaim Deed
San Pedro (SV Land Alliance aka Bella Vista) AZ

THE GRANTOR, THE NATURE CONSERVANCY, a District of Columbia non-profit corporation, whose address is 4245 North Fairfax Drive, Suite 100, Arlington, Virginia 22203, for value received, has remised, released, sold, conveyed, QUIT CLAIMED, and assigned, and by these presents does hereby remise, release, sell, convey, QUIT CLAIM and assign unto **COCHISE COUNTY**, a political subdivision of the State of Arizona, whose address is 1415 Melody Lane, Building G, Bisbee, Arizona 85603, **THE GRANTEE**, and its successors and assigns forever, all the right, title, interest, claim and demand which the Grantor has in and to the real property, together with improvements, if any, situate, lying and being in the County of Cochise and State of Arizona, described as follows:

See Exhibit “A” attached hereto and incorporated herein by reference.

SUBJECT TO any exceptions, encumbrances, liens, easements, rights of way, reservations or restrictions of record.

FURTHER SUBJECT TO that Lease Agreement with Finchcor, an Arizona general partnership, dated April 10, 2014 as amended.

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SIGNATURE PAGE FOLLOWS

Dated _____, 20__.

GRANTOR:

THE NATURE CONSERVANCY, a District of Columbia non-profit corporation

By: _____

Its: _____

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing was acknowledged before me this ___ day of _____, 20__, by _____, as _____ of The Nature Conservancy, a District of Columbia non-profit corporation.

Witness my hand and official seal.

My commission expires: _____

Notary Public

Exhibit E
Form of Quitclaim Deed for Water Rights

RECORDING REQUESTED BY AND)
WHEN RECORDED RETURN TO:)
Cochise County, Board of Supervisors)
1415 Melody Lane, Building G)
Bisbee, Arizona 85603)
Attention: Clerk of the Board)

Quitclaim Deed and Assignment
San Pedro (SV Land Alliance, LP aka Bella Vista Ranches) AZ

THE GRANTOR, THE NATURE CONSERVANCY, a District of Columbia nonprofit corporation, whose address is 4245 North Fairfax Drive, Arlington, VA 22203-1606, for value received, has remised, released, sold, conveyed, QUIT CLAIMED, and assigned, and by these presents does hereby remise, release, sell, convey, QUIT CLAIM and assign, without representation or warranty of any kind, express or implied, unto **COCHISE COUNTY**, a political subdivision of the State of Arizona, whose address is 1415 Melody Lane, Building G, Bisbee, Arizona 85603, and its successors and assigns forever, all the right, title, interest, claim and demand which the Grantor has in and to the following:

All of Grantor’s right, title and interest in and to (i) any and all water, water rights, ditches, ditch rights, reservoirs, storage rights, wells, well permits, ground water rights, ditch and/or reservoir company stock, irrigation districts, and (ii) all other rights in and to the use of water, whether like or unlike the foregoing, adjudicated or unadjudicated, that are appurtenant to the property described in **Exhibit A**, attached hereto (the “Real Property”) and described in **Exhibit B** attached hereto (collectively, the “**Water Rights**”). The Water Rights include (i) any and all rights, to the extent provided under Arizona law, to sub-flow and groundwater in any geological formation underlying the Real Property; (ii) any and all rights, claims, and entitlements associated with the historic beneficial use of any of the Water Rights; and (iii) any and all ditches, reservoirs, embankments, easements, rights of way, licenses, permits, and contract rights therefor or pertaining thereto; provided, however, that the Water Rights quit claimed and assigned herein do not include those water rights identified in the following Statements of Claim or filings: No. 55-805649 (Wells); No. 36-29083 (well 55-805649) (Surface Water Claim); No. 39-2743 (Adjudication Claim); and No. 39-13867 (Adjudication Claim).

Dated _____, 20__.

GRANTOR:

THE NATURE CONSERVANCY, a District of Columbia non-profit corporation

By: _____

Its: _____

STATE OF ARIZONA)
) ss.
COUNTY OF _____)

The foregoing was acknowledged before me this ___ day of _____, 20__, by _____, as _____ of THE NATURE CONSERVANCY, a District of Columbia non-profit corporation.

Witness my hand and official seal.

My commission expires:_____

Notary Public

Exhibit A to Quit Claim Deed
Legal Description of the Real Property

All that real property located in the County of Cochise, Arizona, more particularly described as follows:

A parcel of land situated in Sections 15, 20, 21, 22, 27, 28, 29 and 30, Township 21 South, Range 21 East of the Gila and Salt River Base and Meridian, Cochise County, Arizona, more particularly described as follows:

The east half of the east half, the northwest quarter of the northeast quarter, the northeast quarter of the northwest quarter, and the west half of the northwest quarter of said Section 15;
The south half of said Section 20;
All of said Section 21;
The east half of the northeast quarter and the south half of said Section 22;
The north half, the north half of the southeast quarter, the southwest quarter of the southeast quarter, and the southwest quarter of said Section 27;
The north half of the northwest quarter and the east half of said Section 28;
The north half of the north half of said Section 29;
The north half of the north half of said Section 30;

Excepting therefrom any portion lying within the following described property:

A strip of land 100.00 feet in width located in Sections 22, 27, 28 and 29, Township 21 South, Range 21 East of the Gila and Salt River Base and Meridian, Cochise County, Arizona, the center line being more particularly described as follows:

Beginning at the southeast corner of the northeast quarter of Section 31, Township 21 South, Range 21 East, Gila and Salt River Base and Meridian, Cochise County, Arizona;

Thence North 00°05'33" West a distance of 804.21 feet to a point on the center line of the existing Charleston Road;

Thence North 60°57'46" East a distance of 2,137.30 feet along said center line to an angle point;

Thence North 60°56'55" East a distance of 1,643.06 feet along said center line to an angle point;

Thence North 60°54'27" East a distance of 2,235.68 feet along said center line to an angle point;

Thence North 60°57'23" East a distance of 3,337.89 feet along said center line to an angle point;

Thence North 61°03'02" East a distance of 2,282.04 feet along said center line to the beginning of a curve concave to the northwest having a radius of 1,448.18 feet;

Thence northeasterly a distance of 676.68 feet along said curve through a central angle of 26°46'36" to a point of tangency;

Thence North 34°16'26" East a distance of 868.80 feet along said center line to an angle point;

Thence North 34°11'52" East a distance of 1,856.12 feet along said center line to the beginning of a curve concave to the southeast having a radius of 2,201.32 feet;

Thence northeasterly a distance of 477.48 feet along said curve through a central angle of 12°25'51" to a point of tangency;

Thence North 46°37'43" East a distance of 2,556.50 feet along said center line to an angle point;

Thence North 46°40'14" East a distance of 2,063.51 feet along said center line to a point on the east section line of said Section 22 that bears North 00°00'52" East a distance of 4,752.11 feet from the southeast corner of said Section 22, said point also being the end of description.

The above described parcel contains 129,995,510 square feet or 2,984.2863 acres, more or less.

Subject to all covenants, rights of way and easements of record.

**Exhibit B to Quit Claim Deed
Schedule of Water Rights**

Well #1 – “Ranch A/Ranch House”

Well Registration:

55-805653-L

Surface Claims:

36-29081

Statement of Claimant:

39-2746

39-11968

39-13864

Well #2 – “Ranch Well #17”

Well Registration:

55-805650-L

Surface Claims:

36-29082

Statement of Claimant:

39-2741

39-11967

39-13865

Well #3 – unknown but registered well described on deeded property

Well Registration:

55-805648-L

Statement of Claimant:

39-2739

39-13888

Stock Tank #1 – “NE¹/₄ SE¹/₄ Section 28 Tank”

Surface Claims:

38-28622

Stock Tank #2 – “Commode Tank”

Surface Claims:

38-95426

Statement of Claimant:

39-2749

39-2750

39-13890

Exhibit F
Form of Assignment and Assumption of Lease Agreement

**ASSIGNMENT AND ASSUMPTION
OF
LEASE AGREEMENT**

This Assignment and Assumption of Lease Agreement (“Assignment”) is entered into as of October ____, 2016, by and between THE NATURE CONSERVANCY, a District of Columbia non-profit corporation (“Assignor”), and COCHISE COUNTY, a political subdivision of the State of Arizona (“Assignee”).

RECITALS:

A. Assignor and Assignee are parties to that certain Agreement to Convey Real Property dated October ____, 2016, (the “Agreement”), wherein Assignor agreed to transfer and Assignee agreed to accept certain real property as further described in the Agreement (the “Property”).

B. Assignor desires to assign to Assignee, and Assignee desires to accept from Assignor, all of Assignor’s rights and obligations under that certain Ranch Lease Agreement dated April 10, 2014 by and between THE NATURE CONSERVANCY, a District of Columbia non-profit corporation, as Lessor (whose rights were thereafter assigned to Assignor), and Finchcor, an Arizona general partnership, as amended on April 3, 2015 which replaced Finchor as Lessee with Michael Finch who assumed all rights and obligations of Lessee under the Lease, and further amended as of April 3, 2016, as Lessee (collectively the “Lease”).

AGREEMENT:

FOR VALUABLE CONSIDERATION, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

Assignment. Assignor hereby assigns and conveys to Assignee all of Assignor’s rights and obligations under the Lease, from and after the date hereof. Assignee hereby accepts the foregoing Assignment.

Assumption. Assignee hereby assumes and agrees to be bound by all of Assignor’s obligations and liabilities as Lessor under the Lease arising from and after the date of this Assignment, and agrees to perform and observe all of the covenants of Assignor as Lessor under the Lease, from and after the date of this Assignment.

Binding Effect. This Assignment shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto.

Counterparts. This Assignment may be executed in any number of counterparts, all of which taken together shall constitute a single integrated document. The parties may deliver their signatures by facsimile or email transmission.

IN WITNESS WHEREOF, the parties have executed this Assignment as of the date above first written.

ASSIGNOR:

THE NATURE CONSERVANCY, a District of Columbia non-profit corporation

By: _____

Name: _____

Title: _____

ASSIGNEE:

COCHISE COUNTY, a political subdivision of the State of Arizona

By: _____

Chairman, Board of Supervisors

Date: _____

ATTEST:

Clerk of Board of Supervisors

Date: _____

APPROVED AS TO FORM:

Attorney for the County

Date: _____

BELLA VISTA RANCH LEASE AGREEMENT

THIS LEASE AGREEMENT is made this 10 day of April, 2014 by and between Finchcor, an Arizona general partnership, whose business and post office address is P.O. Box 935, Sierra Vista, AZ 85636 as lessee (the "Lessee"), and THE NATURE CONSERVANCY, a non-profit corporation organized and existing under the laws of the District of Columbia and having its Arizona Field Office located at 1510 East Fort Lowell Road, Tucson, AZ 85719, as lessor (the "Conservancy") (the "Lease") effective as of April 3, 2014.

RECITALS:

1. The Conservancy is the owner of approximately 2,984 acres of real property, situated in Cochise County, Arizona, known as Bella Vista Ranch, and more particularly described in the attached **Exhibit A** attached hereto and incorporated herein by reference.
2. The Conservancy also owns and maintains certain buildings situated on Bella Vista Ranch, including a trailer home and buildings used in the ranching operations. A listing and description of the buildings are more particularly described in the attached **Exhibit B** attached hereto and incorporated herein by reference and which are sometimes referred herein as the "buildings" and are included as part of the property to be leased (the "Property").
3. The Conservancy is the holder of an Arizona State Land Use Permit (#23-94344) for grazing approximately 4,066 acres in Cochise County, a copy of which is attached hereto as **Exhibits C** and incorporated herein by reference (the "Grazing Permit").
4. The Conservancy, sometimes referred to herein as "Lessor," desires to lease the Property and its buildings to Lessee for the Lessee's cattle grazing operations, and to manage the Property in a manner that is compatible with the Conservancy's conservation activities and other approved activities in furtherance of the Conservancy's mission in Arizona. The Conservancy also desires to engage the services of Lessee to perform certain maintenance activities associated with management of the Property (hereinafter, "Maintenance Duties") and to offset the value of such Maintenance Duties against the rental payments due under this Lease.
5. Lessee desires to lease the Property and to perform the Maintenance Duties under the terms and conditions set forth in the Lease.
6. A copy of the Maintenance Duties together with associated values is attached as **Exhibit D**.

NOW THEREFORE, in consideration of the foregoing and of the covenants and agreements hereinafter set forth, the parties covenant and agree as follows:

LEASE TERMS:

1. Lease. Subject to the terms and conditions set forth herein, the Conservancy hereby leases the Property and its buildings to Lessee for the Lessee's cattle grazing operations, and to manage the Property in a manner that is compatible with the Conservancy's conservation activities and other approved activities in furtherance of the Conservancy's mission in Arizona.
2. Term. The initial term of this Lease shall be deemed to have commenced on April 3, 2014 (the "Commencement Date") and terminate on April 3, 2015, unless terminated early or extended pursuant to the provisions contained in this Lease.
 - a. Term Extension. Lessor may in its sole and absolute discretion agree to extend the Term for successive periods of twelve (12) months each under the terms and conditions of the original Term of this lease by sending written notice to Lessee of Lessor's consent to extending said lease for a new twelve (12) month term not less than ninety (90) days prior to the end of the then applicable Term. The election by Lessor or Lessee to cancel the then-applicable Term shall be exercised by providing

the other with ninety (90) days written notice and upon such expiration of the ninety (90) day notice the Term and this Lease shall expire. Notwithstanding anything to the contrary in the foregoing sentence, in the event Lessor does not consent to extend the Term, then this Lease shall expire by its terms without any action required by either Lessor or Lessee.

b. **Holding Over.** If after the expiration of this Lease, the Lessee remains in possession of the Property and continues to pay rent without a written agreement as to such possession, then subject to the Conservancy's consent, which consent may be withheld for any reason, such tenancy shall be regarded as month-to-month tenancy and terminable upon thirty (30) days written notice to the Lessee by Lessor. Rent under such month-to-month tenancy shall be due and payable within five (5) business days after the end of each month, and shall be calculated based on the terms described in Paragraph 3 below. During the period of any such month-to-month tenancy, Lessee shall be subject to all the terms and conditions of this Lease. Acceptance by Lessor of rent during any such hold-over period shall not constitute a renewal of this Lease; and nothing contained in this Lease shall be deemed to waive the Conservancy's right of re-entry or any other right hereunder or at law or in equity.

3. **Rent.** The following provisions shall apply to the payment of rent for the Property:

- a. **Building Rent.** Lessee agrees to pay rent at the rate of \$250.00 per month for the use of the 12 x 60 foot trailer on the Property as described in **Exhibit B**. The buildings necessary to the operation and management of the ranching operation as identified in **Exhibit B** are included in the Grazing Rent. Building Rent shall be included in the payment of the Grazing Rent and paid on the Payment Dates described below. All Rent shall be paid in lawful money of the United States of America to the Conservancy at 1510 East Fort Lowell Road, Tucson, AZ 85719, Attention: Jody Daline or to the attention of any other individual or to any other location specified by the Conservancy to Lessee. The Parties acknowledge that a lease agreement may be currently in effect for the buildings only and agree that this Lease Agreement shall supersede and replace such prior lease agreement.
- b. **Grazing Rent.** Both parties acknowledge that there is significant and sufficient consideration and value to the Conservancy by reason of the Lessee's active use of the Property for the Lessee's specified agricultural activities. Both parties also acknowledge the significant and sufficient consideration and value to the Lessee by reason of the Lessee's use of the Property for his agricultural purposes. Notwithstanding the foregoing, Lessee agrees to pay the sum of Three Thousand Six Hundred Dollars (\$3,600) as Grazing Rent for the Property during the Term. For lease payment purposes, Animal Units shall be defined as follows: a cow with or without a nursing calf is equivalent to 1.0 Animal Units; a replacement heifer is equivalent to 0.75 Animal Units; a yearling is equivalent to 0.75 Animal Units; and one bull or horse is equivalent to 1.5 Animal Units. An animal unit month ("AUM") shall be defined as 1.0 Animal Unit grazing for 1.0 calendar month. Lessee shall use the Property for the purpose of pasturing livestock that shall not exceed more than 360 AUMs per year. Notwithstanding anything herein to the contrary, Lessee shall be allowed to keep five (5) horses on the Property for the purpose of operating the Property at no charge.
- c. On April 3, 2015 Lessee shall pay to the Conservancy the Building Rent and Grazing Rent (collectively, the "Rental Payment"), as consideration for leasing the Property, in the amount of Six Thousand Six Hundred Dollars (\$6,600); provided, however, that the Rental Payment shall be adjusted in accordance with the reconciliation procedures set forth below.
 - i. **Reconciliation Procedures.** As soon as reasonably practicable, but in no event later than fourteen (14) calendar days after the six-month anniversary of this Lease, which six-month anniversary date is October 3, 2014, and each six months thereafter, Lessee shall deliver to the Conservancy a written report (the "Reconciliation Report") setting forth proposed adjustments (if any) to the Rental Payment based upon Maintenance Duties performed during the immediately preceding 6-month period (the "Reconciled Amount"). As soon as reasonably practicable, but in no event later than five (5) business days after the Conservancy receives the Reconciliation Report, the Conservancy shall deliver to Lessee a written report containing any changes the Conservancy proposes to be made to the Reconciliation Report. If

the Conservancy fails to deliver a report to Lessee containing the Conservancy's proposed changes, the Reconciled Amount as calculated by Lessee shall be deemed to be true and correct and binding on and non-appealable by the Parties.

- ii. **Reconciliation Payment.** On the last day of the Term, the Rental Payment will be reconciled based on the six-month Reconciled Amounts received during the Term. In the event that the total Reconciled Amount exceeds the Rental Payment, no monetary payment shall be due and owing from Lessee to the Conservancy, and the Conservancy is not obligated to make any payment to Lessee of any Reconciled Amount in excess of the Rental Payment. In the event that the total Reconciled Amount is less than the Rental Payment, Lessee shall pay to the Conservancy the difference between such total Reconciled Amount and the Rental Payment on or before the twentieth (20th) calendar after the last day of the Term.

4. **Cooperation to Maintain State Lease.** Lessee agrees to cooperate with the Conservancy and do all things and perform all tasks required by the State of Arizona, including timely payment of the annual State Land grazing lease fee, to maintain the State Leases in good standing including, but not limited to, compliance with the conditions of State Land Use Permit No. 23-94344 (the "Permit") attached hereto as **Exhibit C** and by this reference incorporated herein,.

5. **Taxes.** The Conservancy shall remain responsible for paying the real estate taxes on the Leased Property, including the trailer, and the Lessee shall be responsible for any taxes due for the permitted uses of Lessee under this Lease.

6. **Condition, Maintenance and Improvements of the Property.** Lessee will carefully protect all improvements on the Property and will promptly, at the expiration of this Lease, yield possession of the Property in the same condition as Property now is or may be placed at any time during this Lease, ordinary wear exempted. Lessee shall not be responsible for changes in condition of natural vegetation on the Property related to drought or other unpredictable climatic events, provided that the allowed AUMs are not exceeded. Lessee has examined the Property and its buildings, all furniture, furnishings, appliances and landscaping, if any, and fixtures, including smoke detector(s). Lessee acknowledges that those items are clean and in operative and leasable condition. The Conservancy has made no representations of any nature in connection with the condition of the Property or the buildings, and the Conservancy shall not be liable for any latent or patent defects thereon. The Lessee shall be presumed to have accepted possession of the Property under this Lease on the first day of the Term, and such acceptance of possession by the Lessee shall be conclusive evidence as against the Lessee that the Property was in good and satisfactory condition when possession of the Property was accepted.

- a. The Conservancy shall furnish all materials, based on estimates provided by Lessee and to be delivered to the Property, and Lessee shall furnish the labor for normal maintenance and repair of fences, corrals, water systems and other infrastructure used for containing, directing, and managing cattle or other livestock under this Lease, and Lessee shall keep all said property in good repair, ordinary use and wear accepted. The Conservancy will have the watering system in working condition at the beginning of this Lease and Lessee shall be responsible for ensuring that irrigation and watering systems are maintained in good working condition throughout the Term. In the event that the Lessee, with the advance knowledge and consent of the Conservancy, pays for any reasonable repairs to infrastructure on the Property for which the Conservancy would be responsible for payment under this Lease, the Conservancy agrees to compensate the Lessee for the reasonable cost of such repairs in the equitable fashion of its choosing, whether through direct reimbursement or through a deduction from the rent due under this Lease equal to the cost of the repairs, materials, or equipment. The Conservancy shall remain responsible for constructing any new fences or other infrastructure on the Property that the Conservancy deems necessary, or any new fences or other infrastructure requested by Lessee and approved by the Conservancy. Lessee shall keep the Leased Property in its natural state without any disturbance whatsoever of plant or animal population except to the extent of permitted uses of the Property by the Lessee.
- b. Regarding the building maintenance, Lessee shall properly use, operate, and safeguard the buildings, including, all mechanical, electrical, gas and plumbing fixtures, and keep them clean

and sanitary. Lessee shall immediately notify the Conservancy, in writing (including e-mail), of any problem, malfunction or damage. Lessee shall pay for all repairs or replacements caused by Lessee, or guests or invitees of Lessee, excluding ordinary wear and tear. Lessee shall pay for all damage to the buildings as a result or failure to report a problem in a timely manner. Lessee shall pay for repair of drain blockages or stoppages, unless caused by defective plumbing parts or tree roots invading sewer lines. In the event that the Lessee, with the advance knowledge and consent of the Conservancy, pays for any reasonable repairs to infrastructure on the buildings for which the Conservancy would typically be responsible for payment, the Conservancy agrees to reimburse the Lessee for the reasonable cost of such repairs in the equitable fashion of its choosing, whether through direct reimbursement or through a deduction from the rent due under this Lease equal to the cost of the repairs, materials, or equipment.

- c. Lessee acknowledges that the Property has significant natural, scenic, open space, ecological and scientific values that are of great importance to the Conservancy and the State of Arizona (the "Conservation Values"). Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited on the Property:
- i. Dumping. The dumping, storage or other disposal of non-compostable refuse, trash, sewer sludge or unsightly or toxic materials or agrichemicals. Lessee is not responsible for trespass dumping.
 - ii. Chemicals. The storage or application of non-household fertilizers, pesticides, biocides, defoliants, herbicides, or other toxic or potentially toxic chemicals. Lessee shall not use insecticides, pesticides, or any other chemicals on the Property unless first approved in writing by the Conservancy, which approval may be withheld at the sole discretion of the Conservancy. Any use of such insecticides, pesticides, or chemicals, if any, shall be in strict compliance with applicable federal, state and local laws and regulations, particularly labeling instructions, governing such use.
 - iii. Commercial Uses. The establishment of any commercial or industrial uses of the Property.

7. Access. The Conservancy shall have the right to restrict access to portions of the Property if, in its sole and absolute discretion, such restrictions are reasonably necessary to protect significant ecological resources in the restricted areas. Any such restrictions shall be made in a manner to reasonably minimize or eliminate any material impacts on Lessee's activities as permitted under the Lease. The Conservancy shall retain all of its own rights of access to the Property. The Nature Conservancy may, from time to time, allow access to contractors for the purpose of research and construction of groundwater recharge facilities on the property. Notification of one week will be provided to the Lessee.

8. Default; Termination. If Lessee defaults or otherwise violates the covenants and agreements set forth herein or otherwise defaults under the terms herein then the Conservancy shall have the right to terminate this Lease. If it so elects, the Conservancy shall give Lessee written notification of its election to terminate the Lease, and Lessee shall have ten (10) calendar days from the date of notification to cure the default or violation, should the parties agree that a cure exists at all. If the violation is not cured or the Conservancy has not granted an extension within those ten (10) calendar days, the Lease shall be considered terminated, in which event, neither party shall have any further rights or obligations hereunder except as otherwise expressly provided. The Conservancy may then remove Lessee, its agents, employees and equipment, at Lessee's sole cost and expense, and may re-lease the Property to another party, without prejudice to the Conservancy's other remedies at law or in equity. In the event that the Lessee is unable to effectively perform under the terms of this Lease due to unforeseen physical or mental incapacitation or death, it is mutually agreed that, upon two weeks written notice to the Conservancy, the Lessee or the Lessee's heirs or executors of the Lessee's estate may terminate this Lease, in which event, neither party shall have any further rights or obligations hereunder except as otherwise expressly provided.

9. Condemnation. The Conservancy and Lessee agree that if the Property shall be taken or condemned for public or quasi-public use or purpose (or purchased in lieu of any such taking or condemnation), this Lease shall terminate on the date on which Lessee is deprived of possession of the Property and neither party shall have any further rights or obligations hereunder except as otherwise expressly provided herein. If a portion of the Property is taken or condemned for public or quasi-public use or purpose (or purchased in lieu of any such taking or

condemnation) and such partial taking or condemnation materially interferes with the Lessee's ability to continue its business on the Property, then the Lessee shall have the right to cancel this Lease by providing the Conservancy with written notice thereof within thirty (30) days after possession thereof is taken by such condemning authority, in which event this Lease shall terminate and neither party shall have any further rights or obligations hereunder except as otherwise expressly provided. If such a partial taking occurs and this Lease is not canceled, this Lease shall cease as to the portion of the Property so taken. In the event of any such taking or condemnation (or purchase in lieu thereof), Lessee shall have no claim against the Conservancy and shall not have any claim or right to any portion of the amount that may be awarded as damages or paid as a result of any such condemnation and Lessee hereby assigns to the Conservancy all its right, title and interest in and to any such award or payment.

10. Limitation on Liability: Indemnification. The Conservancy, its affiliates, partners, officers, directors, members, trustees, employees, and agents shall have no liability for and shall not assume any liability or responsibility with respect to the conduct or operation of the business to be conducted on the Property and shall have no liability for any claim of loss of business or interruption of operations or any consequential damages or indirect losses whatsoever. Further, the Conservancy, its affiliates, partners, officers, directors, members, trustees, employees, or agents shall have no liability and shall not assume any liability or responsibility with respect to the conduct or operation of the Lessee's business to be conducted on the Property and shall have no liability for any claim or loss of business or interruption of operations, or any consequential damages for indirect losses whatsoever. Any property or personal effects placed or stored in or about the Property shall be at the sole risk of Lessee, and the Conservancy, its affiliates, employees, and agents shall not be responsible or liable for such property. Lessee shall hold the Conservancy harmless from any and all manner of actions, claims, demands or suits incurred by the Conservancy in connection with Lessee's negligent use of the Property by Lessee, Lessee's guests, invitees, licensees or agents or in connection with this Lease. The Conservancy shall hold the Lessee harmless from any and all manner of actions, claims, demands or suits incurred by the Lessee in connection with the Conservancy's negligent use of the Property by the Conservancy's guests, invitees, licensees or agents or in connection with this Lease. Lessee shall obtain bodily injury and property damage liability insurance in a responsible company in an amount consistent with the custom and usage of the area. Such insurance coverage shall provide for the Conservancy to be a named insured during the term of the Lease only. This Paragraph shall survive the expiration or any termination of this Lease for a period of six (6) months.

11. Lessor's Liability. The Conservancy as Lessor shall not be responsible for any latent defects in, deterioration of, or change in the condition of the Property or for any damage resulting therefrom, whether to person or property. It is agreed that the Conservancy shall not be liable or responsible in any way for any injury to person or damage to or loss or theft of property sustained in or about the Property however the same may be caused. Lessee hereby releases the Conservancy from any liability or responsibility for damage to person or property caused by breakage of glass, or by leaks, breaks or overflow of roof, pipes, drains or plumbing fixtures, or by falling plaster, imperfect wiring or construction. Notwithstanding anything herein to the contrary, Lessee shall look solely to the estate and property of the Conservancy in and to the Property in the event of any claim against the Conservancy, arising out of or in connection with this Lease, the relationship of the Conservancy and Lessee or Lessee's use of the Property. Lessee agrees that the liability of the Conservancy hereunder shall be limited to such estate and property of the Conservancy. No other properties or assets of the Conservancy shall be subject to levy, execution or other enforcement procedures for the satisfaction of any judgment (or other judicial process) or for the satisfaction of any other remedy of Lessee arising out of or in connection with this Lease.

12. Minerals Ownership. Lessee acknowledges that the minerals on a portion of the Property are severed and the Conservancy neither owns nor controls the development of such minerals. Lessee further assumes any risk associated with the mineral rights owner's potential development of these minerals and agrees that the Conservancy shall not be liable for any damages to the Property or to Lessee's ability to use the Property that may be associated therewith. Lessee agrees not to consent to any mineral exploration or development on the Property nor to hold itself out as an agent for doing so. Lessee will direct any mineral inquiry to the Conservancy and defer to the Conservancy for all such decisions and authorizations.

13. Utilities. Lessee agrees to pay for all utilities and services. If any utilities are not separately metered, Lessee shall pay Lessee's proportional share, as reasonably determined by the Conservancy.

14. Occupants. The buildings are for the sole use as a personal residence by the following named person(s) only: Mike Finch and immediate family, and no more than two additional persons (Note: Reasonable use of the buildings will include Lessee's hosting overnight guests personally related or known and acceptable to the Lessee).

15. Rules and Regulations. Lessee agrees to comply with all rules and regulations of the Conservancy that are at any time posted on the Property or delivered to Lessee. Lessee shall not and shall ensure that guests and licensees of Lessee shall not disturb, annoy, endanger, or interfere with other Lessees or users of the property or neighbors, or use the Property for any unlawful purposes, including, but not limited to, using, manufacturing, selling, storing or transporting illicit drugs or other contraband, or violate any law or ordinance, or commit a waste or nuisance on or about the Property.

16. Keys. Lessee acknowledges receipt of keys to the Property. Lessee acknowledges that locks to the Property have not been re-keyed. If Lessee re-keys existing locks or opening devices, Lessee shall immediately deliver copies of all keys to the Conservancy. Lessee shall pay all costs and charges related to loss of any keys or opening devices. Lessee may not remove locks, even if installed by Lessee. Three sets of keys will be provided to the Lessor to access the property and allow access to contractors and researchers with prior notice to Lessee.

17. Entry. Lessee shall make all buildings and facilities that fall under the jurisdiction of this Lease available to the Conservancy or representatives of the Conservancy for the purposes of entering to make necessary or agreed repairs, decorations, alterations, or improvements, or to supply necessary or agreed services, or to show the Property to prospective or actual purchasers, prospective lessees, mortgagees, lenders, appraisers, or contractors. The Conservancy and Lessee agree that twenty four (24) hours notice (oral or written) shall be reasonable and sufficient notice. In an emergency, the Conservancy or representatives of the Conservancy may enter the Property at any time without prior notice.

18. Surrender. Upon expiration or earlier termination of this Lease, Lessee shall: (a) give the Conservancy all copies of all keys or opening devices to the Property, including any common areas; (b) vacate the Property and surrender it to the Conservancy empty of all persons and livestock; (c) vacate any/all buildings and/or storage spaces; (d) deliver the Property to the Conservancy in the same condition as referenced in Paragraph 7; and (e) give written notice to the Conservancy of Lessee's forwarding address.

19. Personal Property. If Lessee shall not remove all of Lessee's furniture, personal property or other effects from the Property at the expiration or earlier termination of this Lease, the Conservancy may, at its option, remove all or part of such personalty in any manner that the Conservancy shall choose and store or dispose of the same without liability to Lessee for loss thereof. Lessee shall be liable to the Conservancy for all expenses incurred in such removal, storage and disposal and shall pay the same to the Conservancy upon demand. Upon the expiration or earlier termination of this Lease, wherein Lessee shall be liable in any amount to the Conservancy, the Conservancy shall have a lien upon such personalty and the Conservancy may, at its option, without notice to Lessee and without obligation to account therefore, sell or otherwise dispose of such personalty and Lessee shall pay the Conservancy for all expenses (including attorney's fees) incurred in connection with the disposition of such personalty upon demand.

20. Damage to Property. If, by no fault of Lessee, the Property is totally or partially damaged or destroyed by fire, earthquake, flood, severe drought, accident or other casualty, that render the Property uninhabitable or untenable, either the Conservancy or Lessee may terminate this Lease by giving the other written notice within ten (10) days of the date of damage. Rent shall be abated as of the date of damage. The abated amount shall be calculated based on the terms described in Paragraph 3. If this Lease is not terminated, the Conservancy shall promptly repair the damage, and rent shall be reduced based on the extent to which the damage interferes with Lessee's reasonable use of the Property. If damage occurs as a result of an act of Lessee or Lessee's guests, only the Conservancy shall have the right of termination, and no reduction in rent shall be made.

21. Governing Law, Litigation and Attorneys' Fees. This Lease and the interpretation and enforcement thereof shall be governed by and construed according to the laws of the State of Arizona. The venue for any action in connection with this Lease shall be Cochise County, Arizona. In any action or proceeding arising out of this Lease,

the prevailing party between the Conservancy and Lessee shall be entitled to reasonable attorneys' fees and costs. Both parties hereto hereby waive the right to jury trial in connection with any dispute concerning this Lease.

22. Notices. Notice from one party to the other shall be deemed to have been properly given if mailed by first class or certified mail, postage prepaid, to the other party at the respective addresses which appear in this Lease or to the attention of any other individual or to any other location specified by the Conservancy in writing to Lessee or by Lessee to the Conservancy.

23. Severability. If any provision of this Lease or portion of such provision or the application thereof to any person or circumstances is held invalid, the remainder of the Lease (or the remainder of such provision) and the application thereof to other persons or circumstances shall not be affected thereby.

24. Assignment. Lessee will neither sublet the Property nor any part thereof, nor transfer or assign this Lease, without obtaining advance written consent of the Conservancy in each case, which consent may be withheld in the Conservancy's sole discretion. Lessee shall not permit any transfer, by operation of law, of the interest in the Property acquired through this Lease. The Conservancy retains the right to transfer the Property leased hereunder and shall have the option to assign this Lease to the transferee. The Conservancy's consent to any one assignment, transfer, or sublease, shall not be construed as consent to any subsequent assignment, transfer or sublease, and does not release Lessee of Lessee's obligation under this Lease. The Conservancy retains and holds all executive rights with respect to use of the surface estate for mineral development and Lessee shall not engage in any discussion of mineral development on the property but instead shall direct all inquiries to the Conservancy.

25. Waiver. The waiver of one breach of any term, condition, covenant, obligation or agreement of this Lease shall not be considered to be a waiver of that or any other term, condition, covenant, obligation or agreement or of any subsequent breach thereof.

26. Amendment. If circumstances arise under which an amendment to or modification of the Lease would be appropriate, Lessee and the Conservancy may jointly amend the Lease provided such amendment is in writing duly executed by both parties.

27. Entire Lease. All prior agreements between the Conservancy and Lessee related to the Property contemplated herein are incorporated in this Lease, which constitutes the entire contract. It is intended as a final expression of the parties' agreement and may not be contradicted by evidence of any prior agreement or contemporaneous oral agreement. The parties further intend that this Lease constitutes the complete and exclusive statement of its terms and that no extrinsic evidence whatsoever may be introduced in any judicial or other proceeding, if any, involving this Lease. Any provision of this Lease that is held to be invalid shall not affect the validity or enforceability of any other provision in this Lease.

28. Signs. Lessee authorizes the Conservancy to place "For Sale" and/or "For Lease" signs on the Property.

29. Lead Paint (Check if Applicable). The buildings were constructed prior to 1978. In accordance with federal law, The Conservancy gives, and Lessee acknowledges receipt of, the disclosures on the attached form and of a federally approved lead pamphlet.

30. Insurance. Lessee's personal property and vehicles are not insured by the Conservancy against loss or damage due to fire, theft, vandalism, rain, water, criminal or negligent acts of others, or any other cause. Lessee is to carry its own insurance (renter's insurance) to protect Lessee from any such loss.

31. Estoppel Certificate. Lessee shall execute and return any tenancy statement (estoppel certificate) delivered to Lessee by the Conservancy or its agent within three (3) days after the receipt by Lessee. Failure to comply with this requirement shall be deemed Lessee's acknowledgment that the tenancy statement is true and correct and may be relied upon by a lender or purchaser.

32. Joint and Individual Obligations. If there is more than one Lessee, each one shall be individually and completely responsible for the performance of all obligations of Lessee under this Lease, jointly with every other Lessee, and individually whether or not in possession.

33. Agricultural Classification. Lessee represents to Lessor that Lessee shall use the Property in a manner consistent with the terms and conditions of this Lease at all times during the Term necessary for the Lessor to qualify for agricultural classification status under the applicable Cochise County requirements. Lessee represents and warrants to Lessor that as of the Commencement Date and throughout the Term of the Lease, Lessee shall comply with the requirements for the State of Arizona and Cochise County, Arizona to maintain the Property in agricultural status for purposes of assessment for property taxes. Lessee acknowledges and agrees that the representations, warranties and requirements of this **Paragraph 33** are material conditions to Lessor consenting to and entering into this Lease and that the failure to comply with the same shall be a material breach of this Lease.

34. No Partnership or Agency Relationship. Nothing contained within this Lease shall be deemed to make Lessor and Lessee partners or joint venturers in the ranching and grazing operation of Lessee or to create a relationship of principal and agent between them, nor shall either Lessor or Lessee hold themselves out as partners, joint venturers, or agents of the other contrary to the terms of this Lease by advertising or otherwise. Neither party shall be bound by any representation, act or omission whatsoever of the other contrary to the provisions of this Lease.

35. Headings. The headings appearing at the beginning of each paragraph of this Lease are intended only for convenience of reference and are not to be considered in construing this Lease.

IN WITNESS WHEREOF, the parties hereto have executed this Lease the day and year first above mentioned.

THE NATURE CONSERVANCY,
a District of Columbia non-profit corporation

By _____

Its _____

LESSEE

Exhibit A
Property Description

All that real property located in the County of Cochise, State of Arizona, more particularly described as follows:

A parcel of land situated in Sections 15, 20, 21, 22, 27, 28, 29 and 30, Township 21 South, Range 21 East of the Gila and Salt River Base and Meridian, Cochise County, Arizona, more particularly described as follows:

The east half of the east half, the northwest quarter of the northeast quarter, the northeast quarter of the northwest quarter, and the west half of the northwest quarter of said Section 15;

The south half of said Section 20;

All of said Section 21;

The east half of the northeast quarter and the south half of said Section 22;

The north half, the north half of the southeast quarter, the southwest quarter of the southeast quarter, and the southwest quarter of said Section 27;

The north half of the northwest quarter and the east half of said Section 28;

The north half of the north half of said Section 29;

The north half of the north half of said Section 30;

Excepting therefrom any portion lying within the following described property:

A strip of land 100.00 feet in width located in Sections 22, 27, 28 and 29, Township 21 South, Range 21 East of the Gila and Salt River Base and Meridian, Cochise County, Arizona, the center line being more particularly described as follows:

Beginning at the southeast corner of the northeast quarter of Section 31, Township 21 South, Range 21 East, Gila and Salt River Base and Meridian, Cochise County, Arizona;

Thence North 00°05'33" West a distance of 804.21 feet to a point on the center line of the existing Charleston Road;

Thence North 60°57'46" East a distance of 2,137.30 feet along said center line to an angle point;

Thence North 60°56'55" East a distance of 1,643.06 feet along said center line to an angle point;

Thence North 60°54'27" East a distance of 2,235.68 feet along said center line to an angle point;

Thence North 60°57'23" East a distance of 3,337.89 feet along said center line to an angle point;

Thence North 61°03'02" East a distance of 2,282.04 feet along said center line to the beginning of a curve concave to the northwest having a radius of 1,448.18 feet;

Thence northeasterly a distance of 676.68 feet along said curve through a central angle of 26°46'36" to a point of tangency;

Thence North 34°16'26" East a distance of 868.80 feet along said center line to an angle point;

Thence North 34°11'52" East a distance of 1,856.12 feet along said center line to the beginning of a curve

concave to the southeast having a radius of 2,201.32 feet;

Thence northeasterly a distance of 477.48 feet along said curve through a central angle of $12^{\circ}25'51''$ to a point of tangency;

Thence North $46^{\circ}37'43''$ East a distance of 2,556.50 feet along said center line to an angle point;

Thence North $46^{\circ}40'14''$ East a distance of 2,063.51 feet along said center line to a point on the east section line of said Section 22 that bears North $00^{\circ}00'52''$ East a distance of 4,752.11 feet from the southeast corner of said Section 22, said point also being the end of description.

The above described parcel contains 129,995,510 square feet or 2,984.2863 acres, more or less.

Subject to all covenants, rights of way and easements of record.

Exhibit B
Buildings

1970 Nuway Mobile Home VIN 6661297852651

Exhibit C
State Land Use Permit No. 23-94344

Exhibit D – Maintenance Duties

The following maintenance activities are the responsibility of the Lessee. The rate applied to each task will be deducted from the total Rent rate on the payment due date.

1. Road grading at \$125 per hour
2. All other maintenance duties at \$15 per hour
 - A. Water line maintenance
 - B. Well maintenance
 - C. Fence maintenance
 - D. Trespass dumping clean up
 - E. Structure maintenance

**STATE LAND DEPARTMENT
STATE OF ARIZONA**

SPECIAL LAND USE PERMIT

Permit No. 23-94344-05

THIS SPECIAL LAND USE PERMIT ("Permit") is entered into by and between the State of Arizona, Arizona State Land Department ("Permitter"), through the State Land Commissioner ("Commissioner") and

THE NATURE CONSERVANCY

("Permittee"). In consideration of the payment of rental and of performance by the parties of each of the provisions set forth herein, the parties agree as follows:

**ARTICLE 1
SUBJECT LAND**

1.1 Permitter grants to Permittee a Permit for special use on the State Land described in Appendix A attached hereto (the "Subject Land").

1.2 Permittee makes use of the Subject Land "as is" and Permitter makes no express or implied warranties as to the physical condition of the Subject Land.

**ARTICLE 2
TERM**

2.1 The term of this Permit commences on April 4, 2014 ("Commencement Date") and expires on April 3, 2019 ("Expiration Date"), unless sooner canceled or terminated as provided herein or as provided by law. This Permit expires on the date indicated and carries no holdover rights.

2.2 The Permittee will not sub-let or assign the Subject Land herein described in this Permit without the written consent of the State Land Commissioner, first obtained, and will, upon the expiration of the Permit surrender peaceable possession of said land.

ARTICLE 3

FEE

3.1 Permittee agrees to pay as rental therefore an amount to be determined by the State Land Commissioner each year by an appraisal made by him, or his duly authorized agent, as provided by law. The rental so fixed by the State Land Commissioner will be due and payable annually in advance.

3.2 If the Permittee should fail to pay the agreed rental when due, or fail to keep the covenants and agreements herein set forth, the State Land Commissioner at his option, may cancel said Permit or declare the same forfeited in the manner provided by law.

3.3 The State of Arizona shall be forever wholly absolved from any liability for damages which might result to the Permittee herein on account of this Permit having been forfeited for nonpayment of rentals due thereunder prior to the expiration of the full time for which it is issued.

3.4 There shall be added to the delinquent rental or other monies due, a penalty and delinquent interest. The delinquent interest rate shall be set by the State Treasurer according to law. The penalty shall be the greater of a minimum processing cost as determined by the Commissioner or five (5%) percent. The delinquent rent, penalty and interest shall be a lien on the improvements and property on the land.

ARTICLE 4

PERMITTED USE

4.1 This Permit grants authority only for the following specific purpose; any other use by the Permittee of the land described herein, or any of the products therefrom, except as provided below, is expressly prohibited:

Livestock Grazing

4.2 All State Lands to which this SLUP is applicable together with other owned and controlled properties will be fenced into grazing units or the livestock ranged upon these lands controlled by some other means.

4.3 The issuance of this SLUP does not constitute permission being given to range or graze livestock on lands not owned or controlled.

4.4 The numbers of livestock grazed will not exceed the established carrying capacity as permitted under this SLUP. If Permittee desires to graze livestock in excess of established carrying capacity, he must first make application to and receive approval from the Department. Additional grazing fees will be charged for the use of additional AUMs.

4.5 The Department reserves the right to adjust the carrying capacity at any time during the term of the SLUP as required by forage conditions.

4.6 This Permit is subject to any leases, rights of way, and permits which may exist, and any and all present commitments in connection with those leases and permits. Permittee shall in no way interfere with the peaceful possession and use of the Subject Land by a valid surface leaseholder, permittee, licensee (including hunters) of said Subject Land.

4.7 Permitter also reserves the right to grant rights of way and easements over, across, or upon the lands embraced in this Permit for public highways, railroads, tramway, telephone, telegraph and transmission lines, pipe lines, irrigation works, flood control, drainage works, logging and other purposes, and this Permit is issued subject to all existing rights of way.

4.8 Permittee shall not cause nor grant permission to another to cause any waste or loss in or upon the Subject Land. Permittee, its employees and agents shall not cut, consume or remove any timber, or standing trees that may be upon the Subject Land, without the prior written consent of Permitter, except that Permittee may cut wood for fuel for domestic uses and authorized improvements on the Subject Land. Nothing herein shall permit the cutting of saw timber for any purpose.

ARTICLE 5 **CONFORMITY TO LAW**

5.1 Permittee shall not use or permit the Subject Land to be used in any manner that is not in conformity with all applicable federal, state, county and municipal laws, rules and regulations.

5.2 The terms, conditions and covenants of this Permit are subject to present laws relating to State Lands and the rights of both Permitter and Permittee hereunder are each and all subject to such modifications as may be consistent with such amendments, revisions or repeals of existing laws as may hereafter be made and no provisions of this Permit shall create any vested right in the Permittee herein.

ARTICLE 6 **IMPROVEMENTS**

6.1 Any and all structures placed by Permittee upon the Subject Land shall be temporary and removable, and shall be removed upon expiration, cancellation, revocation or termination of this Permit. Approval from the Permitter is required prior to the construction of such improvements. The placement of permanent improvements upon the Subject Land by Permittee is expressly prohibited; any permanent improvements so placed upon the Subject Land by Permittee shall be removed by Permittee without damage to the

Subject Land or at the option of Permitter shall be forfeited and become the property of the State. Permittee shall remain liable for the cost of removal of all improvements and for restoration of the Subject Land, as set forth more fully in Article 11.

6.2 If at any time after the execution of this Permit it is shown to the satisfaction of the State Land Commissioner that the Permittee herein has misrepresented, by implication or otherwise the value of the improvements placed upon the land herein embraced by a former permittee, or any other person or persons and the Permittee herein not being the owner of said improvements at the time of the execution of this Permit, this Permit shall be null and void, at the option of the State Land Commissioner, insofar as it relates to the land upon which said improvements are situated.

ARTICLE 7 CANCELLATION, TERMINATION & ABANDONMENT

7.1 If at any time after the execution of this Permit, it is shown to the satisfaction of the State Land Commissioner, that there has been fraud or collusion upon the part of the Permittee to obtain or hold this Permit at a lesser rental than its value, or through such fraud and collusion a former permittee of said land has been allowed to escape payment of the rental due for the use of said land by the former permittee, this Permit shall be null and void, at the option of the State Land Commissioner, insofar as it relates to the land affected by said fraud or collusion.

7.2 Permittee shall give Permitter thirty (30) days notice in writing in advance of the abandonment of said premises or termination of these presents.

7.3 In the event any land affected by this Permit is reclassified by order of the State Land Commissioner, or sold, this Permit will automatically cancel as to the land reclassified or sold upon the issuance of a new lease or at the time of auction, whichever occurs first.

7.4 If Permittee should fail to keep the covenants and conditions herein set forth, the Commissioner at his option, may cancel said Permit.

7.5 This Special Land Use Permit shall be terminable at will with 25 days written notice.

7.6 This Permit is subject to cancellation pursuant to A.R.S. § 38-511.

ARTICLE 8 INSURANCE AND INDEMNITY

8.1 Permittee hereby expressly agrees to indemnify and hold Permitter harmless, or cause Permitter to be indemnified and held harmless, from and against all liabilities, obligations, damages, penalties, claims, causes of action, costs, charges and expenses,

including attorney's fees and costs, which may be imposed upon or incurred by or asserted against Permittor by reason of the following: (i) any accident, injury or damage to any person or property occurring on or about the Subject Land or any portion thereof; (ii) any use, nonuse or condition of the Subject Land or any portion thereof; (iii) any failure on the part of Permittee to perform or comply with any of the provisions of this Permit; except that none of the foregoing shall apply to Permittor's intentional conduct or active negligence.

8.2 In case any such action or proceeding is brought against Permittor by reason of any such occurrence, Permittee, upon Permittor's request and at Permittee's expense shall resist and defend such action or proceeding, or cause the same to be resisted and defended either by counsel designated by Permittee or, where such occurrence is covered by liability insurance, by counsel designated by the insurer.

ARTICLE 9 ENVIRONMENTAL MATTERS

9.1 Permittee shall strictly comply with Environmental Laws, relating but not limited to hazardous and toxic materials, wastes and pollutants. Compliance means the Permittee shall act in accordance with the necessary reporting obligations, obtain and maintain all permits required, provide copies of all documents as required by Environmental Laws. For purposes of this Permit the term "Environmental Law" shall include but not be limited to any relevant federal, state, or local laws, and applicable regulations, rules and ordinances, and publications promulgated pursuant thereto, including any future modifications or amendments relating to environmental matters.

ARTICLE 10 RESERVATION; RELINQUISHMENTS

10.1 Permittor excepts and reserves out of the Permit hereby made, all oils, gases, coal, ores, limestone, minerals, fossils and fertilizers of every name and description that may be found in or upon the Subject Land, or any part thereof.

10.2 Permittor reserves the right to relinquish to the United States land needed for irrigation works in connection with a government reclamation project and to grant or dispose of rights of way and sites for canals, reservoirs, dams, power or irrigation plants or works, railroads, tramways, transmission lines of any other purpose or use on or over the Subject Land.

10.3 Permittor also reserves the right, as provided by law, to grant to the United States rights of way and easements over, across or upon the lands embraced in this Permit for canals, reservoirs, dams, power or irrigation plants or works, railroads, tramways, transmission lines or other purposes, for irrigation works in connection with any government reclamation project.

ARTICLE 11
NATIVE PLANTS AND CULTURAL RESOURCES

11.1 If the removal of plants protected under the Arizona Native Plant Law is necessary to enjoy the privilege of this Permit, Permittee hereunder must previously acquire the written permission of the Arizona State Land Department and Arizona Department of Agriculture to remove those plants.

11.2 Permittee shall comply with the provisions of the Arizona Native Plant Law, A.R.S. § 3-901 et seq., or any successor statutes, and with the provisions of the Arizona Antiquities Act relating to archaeological discoveries, A.R.S. § 41-841 et seq., or any successor statutes. Permittee shall not disturb any cacti or other protected native plants nor disturb any ruins, burial grounds or other archaeological sites except as may be permitted by these laws. In addition, Permittee shall notify Permitter of any prehistoric or historic archaeological discoveries on the Subject Land.

ARTICLE 12
PERMITTEE SHALL PROTECT AND RESTORE SUBJECT LAND

12.1 In the event of known trespass on the Subject Land resulting in damage thereto, Permittee shall notify Permitter and appropriate law enforcement authorities.

12.2 Upon abandonment, cancellation, revocation or termination of this Permit, Subject Land shall be restored to its original condition, to the satisfaction of the Permitter. Such restoration shall include, but shall not be limited to receding, installation of erosion control structures, removal of any and all material, equipment, facilities, temporary structures, or debris, deposited by Permittee on Subject Land. If Permittee fails to remove all such material, equipment, facilities, temporary structures, or debris within a reasonable period, as determined by the Permitter, they shall be forfeited and become the property of the State, but Permittee shall remain liable for the cost of removal of all materials and for restoration of the site.

ARTICLE 13
CONDEMNATION AND EMINENT DOMAIN

13.1 If at any time during the duration of this Permit the whole or any part of the Subject Land shall be taken for any quasi-public or public purpose by any person, private or public corporation, or any governmental agency having authority to exercise the power of condemnation or eminent domain pursuant to any law, this Permit shall expire on the date when the leased property is taken or acquired as to the leased property so taken or acquired. Except as set forth below, the rights of Permittee and Permitter to compensation for such taking shall be as provided by law. The Permittee shall have no compensable right or interest in the real property being condemned or interest in the unexpired term of this Permit or any renewal except as provided by law and in any event no interest greater than

10 percent of the total award for the land. The Permitter shall be entitled to and shall receive any and all awards for severance damages to remaining proceedings concerning the Subject Land. Permittee shall have the right to (1) prorated reimbursement for prepaid rent, (2) any and all awards for payments made for any authorized improvements which are taken, and (3) severance damages for any damage to Permittee's remaining permitted use resulting from the taking.

ARTICLE 14
MISCELLANEOUS

14.1 It is understood by the Permittee that the establishment of any water right, or rights, shall be by and for the State of Arizona, and no claim thereto shall be made by said Permittee; such rights shall attach to and become appurtenant to the said land.

14.2 This Permit is issued subject to the execution by Permitter of drilling permits and leases for the purpose of prospecting for, and the extraction of, oil and/or gases, coal, ores, limestone, minerals, fossils and fertilizers.

14.3 In the event of dispute between the parties to this Agreement, it is agreed to use arbitration to resolve the dispute but only to the extent required by A.R.S. § 12-1518; and, in no event shall arbitration be employed to resolve a dispute which is otherwise subject to administrative review by the Department pursuant to statute or Department Administrative Rule.

14.4 All of the covenants, conditions and agreements, attached to this Permit, shall be, become and are a part of the Permit, the same as though set forth in full over the signatures of the contracting parties hereto.

14.5 In any action arising out of this Permit, the prevailing party is entitled to recover reasonable attorney's fees in addition to the amount of any judgement, costs and other expenses as determined by the court. In the case of Permitter, reasonable attorneys' fees shall be calculated at the reasonable market value for such services when rendered by private counsel, notwithstanding that it is represented by the Arizona Attorney General's Office or other salaried counsel.

14.6 This Permit is granted subject to all the provisions and requirements thereto, and to the present laws relating to State Lands, and all amendments, revisions or repeals of all existing laws, the same as though they were fully set forth herein. No provisions of this Permit shall create any vested right in Permittee.

14.7 This document is submitted for examination and shall have no binding effect on the parties unless and until executed by the Permitter (after execution by the Permittee), and a fully executed copy is delivered to the Permittee.

14.8 Every obligation of the State under this Permit is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this Permit, this Permit may be terminated by the State at the end of the period for which funds are available. No liability shall accrue to the State in the event this provision is exercised, and the State shall not be obligated or liable for any future payments or any damages as a result of termination under this paragraph.

14.9 The parties agree to be bound by applicable State and Federal rules governing Equal Employment Opportunity, Non-discrimination and Disabilities, including Executive Order No. 2009-09.

APPENDIX A

STATE OF ARIZONA LAND DEPARTMENT
 1616 W. ADAMS
 PHOENIX, AZ 85007

RUN DATE: 1 May 2014
 RUN TIME: 19:11 PM
 PAGE: 1

KE-LEASE# 023-094344-05-010 APPTYPE: RENEWAL
 AMENDMENT#: 0

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LAND#	LEGAL DESCRIPTION	AUS	ACREAGE
21.0-S-21.0-E-15-02-031-8000	SWNE SENW W2SE	1.80	160.000
21.0-S-21.0-E-26-02-031-8000	W2	3.50	320.000
21.0-S-21.0-E-27-02-031-8000	SESE	0.40	40.000
21.0-S-21.0-E-32-02-030-8009	NENE S2NE NWSWNW E2SESW NWSSEW E2NESW W2SWSW W2E2SWSW S2SWSSEW M&B IN NWNWNE N2NW NWNESWNW	4.80	441.240
21.0-S-21.0-E-35-02-031-8000	ALL	7.00	640.000
22.0-S-21.0-E-02-02-030-8000	LOTS 1 THRU 4 S2N2 NESW W2SW E2SESW SE	6.80	621.560
22.0-S-21.0-E-03-02-031-8000	LOTS 1 THRU 4 S2N2 S2	7.00	642.160
22.0-S-21.0-E-04-02-031-8000	LOTS 1 2 S2NE S2	5.30	481.320
22.0-S-21.0-E-09-02-031-8000	NE S2NW	2.60	240.000
22.0-S-21.0-E-11-02-031-8000	NE S2	5.30	480.000
	TOTALS	44.50	4,066.280

IN WITNESS HEREOF, the parties hereto have signed this Permit effective the day and year set forth previously herein.

STATE OF ARIZONA, PERMITTOR
Arizona State Land Commissioner

By: Ken Buckner 5-20-14



The Nature Conservancy

Permittee

Holly Rinker 5/12/14

✓ Authorized Signature

✓ Date

Holly Rinker/conservation

✓ Printed Name

✓ Title

1510 E Ft. Lowell

✓ Address

TUCSON, AZ 85719

✓ City

✓ State

✓ Zip

Flood Control District Meeting

Meeting Date:	11/15/2016		
Acquisition of Riverstone Ranch			
Submitted By:	Britt Hanson, County Attorney		
Department:	County Attorney		
Presentation:	No A/V Presentation	Recommendation:	Approve
Document Signatures:	BOS Signature Required	# of ORIGINALS Submitted for Signature:	2
NAME of PRESENTER:	Britt Hanson or Karen Riggs	TITLE of PRESENTER:	Chief Civil Deputy
Docket Number (If applicable):			
Mandated Function?:	Not Mandated	Source of Mandate or Basis for Support?:	

Information

Agenda Item Text:

Approve Agreement conveying Riverstone Ranch from The Nature Conservancy to Cochise County and authorize the Board Chair to execute all documents necessary to close the transaction.

Background:

As part of the County's efforts to recharge water into the aquifer of the the Sierra Vista sub-watershed, and to otherwise assist in water conservation efforts in that sub-watershed, the County has been negotiating with the The Nature Conservancy to acquire the 1,811 acre Bella Vista Ranch. The Agreement to Convey Real Property that is the subject of this agenda item will accomplish that. The County will not pay any money for this acquisition.

As with the acquisition of the Mansker property, upon acquisition, the County will grant a Conservation Agreement to The Nature Conservancy. One difference is that whereas with Mansker the County retained the right to sell one parcel to a third party for use as a residence, the Conservation Easement for Riverstone allows the County to sell up to three such parcels. Proceeds of any such sales are supposed to be used to further recharge efforts. The Conservation Easement also allows other potential uses, such as a County facility including a road yard or educational facility, not to exceed 15 acres.

The acquisition will come subject to a grazing lease Lee Wood. Income from the grazing lease is \$1,200/year, with a maximum of 600 AUMs. The Flood Control District will manage these leases.

Accompanying this agenda item is a separate agenda item to acquire Bella Vista Ranch.

Department's Next Steps (if approved):

Move towards closing

Impact of NOT Approving/Alternatives:

The County will not have Riverstone available for a recharge project.

To BOS Staff: Document Disposition/Follow-Up:

Have the Chair sign two originals of the agreement and forward to Britt Hanson to distribute to The Nature Conservancy

Attachments

Agreement to convey Riverstone

Grazing Lease - Riverstone - Wood

AGREEMENT TO CONVEY REAL PROPERTY

This Agreement to Convey Real Property (the “Agreement”) is made and entered into by and between THE NATURE CONSERVANCY, a District of Columbia Non-Profit Corporation, hereinafter referred to as “TNC” and COCHISE COUNTY, a political subdivision of the State of Arizona, hereinafter referred to as “COUNTY.”

RECITALS:

1. TNC is a party to Cooperative Agreement W911SSR-07-2-0005 (“TNC Cooperative Agreement”) between TNC and the U.S. Army Research Engineering and Development Command.
2. Pursuant to the TNC Cooperative Agreement TNC purchased certain real property in Cochise County (the “Property”) which for purposes of this Agreement is defined as follows:
 - A. That certain real property, including the land and all buildings, improvements and fixtures thereon, all other surface rights, permits, hereditaments, easements, incidents and appurtenances currently belonging thereto, located in the County of Cochise, State of Arizona, consisting of 1,811 acres, more or less, more particularly described in **Exhibit A** to this Agreement and shown generally on the map attached as **Exhibit B** (the “Real Property”).
 - B. All of the Conservancy’s right, title and interest in and to (i) any and all water, water rights, ditches, ditch rights, reservoirs, storage rights, wells, well permits, ground water rights, ditch and/or reservoir company stock, irrigation districts, and (ii) all other rights in and to the use of water, whether like or unlike the foregoing, adjudicated or unadjudicated, that are appurtenant to or used on or in connection with the Real Property, (collectively, the “Water Rights”). The Water Rights include, without limitation, (i) any and all rights to sub-flow and groundwater in any geological formation underlying the Real Property, whether or not appropriated or adjudicated; (ii) any and all rights, claims, and entitlements associated with the historic beneficial use of any of the Water Rights; and (iii) any and all ditches, reservoirs, embankments, flumes, headgates, measuring devices, wells, pumps, motors, pipelines, and other structures that are appurtenant to the Water Rights, and all easements, rights of way, licenses, permits, and contract rights therefor or pertaining thereto; to the extent the Conservancy has the right and authority to transfer any of the interests in the above.
3. COUNTY is a party to Cooperative Agreement W9124J-15-2-001 (“COUNTY Cooperative Agreement”) between COUNTY and the U.S. Army Mission and Installation Contracting Command.
4. Pursuant to the TNC Cooperative Agreement TNC received Disposition Instructions authorizing TNC to transfer fee title to the Property to COUNTY subject to a conservation easement to be held by TNC in form and substance substantially similar to the form attached hereto as **Exhibit C** (the “Conservation Easement”).
5. COUNTY desires to hold fee title to the Property subject to the Conservation Easement for the purpose of enhancing the management of the County’s groundwater recharge network

and agrees to hold fee title to the Property subject to the terms and conditions of the COUNTY Cooperative Agreement.

NOW THEREFORE, in consideration of the mutual covenants set forth herein, TNC and COUNTY make the following agreements:

AGREEMENT:

1. TNC will donate the Property to COUNTY, subject to the following conditions precedent, reservations and restrictions:
 - a. Simultaneous grant by COUNTY to TNC of the Conservation Easement encumbering the Property which shall include, but not be limited to restrictions agreed upon between the parties regarding building envelopes, footprint size and other mutually agreed upon building restrictions for any proposed building site and recharge facilities.
 - b. Subject to such easements, restrictions and other exceptions of record set forth in that title commitment, Order No.: 52001379-052-52, Reference No.: 60014575, with an Effective Date of October 11, 2016, as may be amended, issued by Title Security Agency of Arizona, with an address at 1 S. Church Street, Suite 2040, Tucson, AZ 85701.
2. Upon mutual execution of this Agreement, the parties shall execute escrow instructions to Title Security Agency of Arizona, with an address at 1 S. Church Street, Suite 2040, Tucson, AZ 85701 (“Escrow Holder”) to consummate the purchase. The provisions of this Agreement shall constitute joint instructions to the Escrow Holder; provided, however, that the parties shall execute such additional instructions as requested by the Escrow Holder not inconsistent with the provisions of this Agreement.
3. TNC will cooperate with COUNTY in conducting reasonable due diligence research regarding the Property.
4. Closing shall be held at the office of the Escrow Holder on a date mutually acceptable to the Conservancy and the Buyer (the “Closing”), but no later than **December 16, 2016** (the “Closing Date”), unless such Closing Date is extended upon the mutual written agreement of TNC and COUNTY.
5. At Closing, TNC shall execute and deliver a quit claim deed conveying the Property to the COUNTY and all other right, title and interest of TNC to the Property in form and substance substantially similar to the form attached hereto as **Exhibit D**. TNC shall also execute and deliver a quit claim deed conveying the Water Rights to the COUNTY and all other right, title and interest of TNC to the Water Rights in form and substance substantially similar to the form attached hereto as **Exhibit E**. At Closing TNC shall also assign to COUNTY the Grazing Lease Agreement dated April 15, 2016 with Lee Wood, an individual, pursuant to an Assignment and Assumption Agreement in form and substance substantially similar to the form attached hereto as **Exhibit F**. At Closing, COUNTY shall execute and deliver the Conservation Easement to TNC and its successors and assigns free and clear of all monetary liens, encumbrances and other exceptions, except such easements, restrictions and other exceptions of record.

6. On or before Closing, TNC and COUNTY shall have executed all necessary forms to affect the transfer of water rights connected with the Property from TNC to COUNTY. Any filing costs to be paid in connection with the submission of such forms shall be paid by COUNTY.
7. **No Representations or Warranties by TNC.** COUNTY acknowledges that it is fully familiar with the Property and has had an ample opportunity to independently investigate and examine all aspects of the Property. COUNTY SPECIFICALLY ACKNOWLEDGES AND AGREES THAT TNC IS CONVEYING AND COUNTY IS ACCEPTING THE PROPERTY ON AN “AS IS, WITH ALL FAULTS” BASIS AND THAT COUNTY IS NOT RELYING ON ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, FROM TNC, ITS AGENTS, ITS CONTRACTORS, EMPLOYEES OR REPRESENTATIVES AS TO ANY MATTERS CONCERNING THE PROPERTY, INCLUDING, WITHOUT LIMITATION, THE FOLLOWING: (i) the quality, nature, adequacy or physical condition of the Property, including, without limitation, the soils, geology and groundwater, if any; (ii) the existence, quality, nature, adequacy, condition or ownership of any means of irrigation and any water or water rights, ditches or ditch rights, reservoirs or reservoir rights serving the Property; (iii) the Property’s use, habitability, merchantability, or fitness for a particular purpose; (iv) the zoning or other legal status of the Property or any other public or private restrictions on use of the Property; (v) the compliance of the Property or its operation with any applicable codes, laws, regulations, statutes, ordinances, covenants, conditions and restrictions of any governmental or quasi-governmental entity or of any other person or entity; (vi) the presence of any hazardous or toxic substances on, under or about the Property or any adjoining or neighboring property; (vii) the condition of title to the Property; (viii) the location of fences in relationship to the Property lines, or the actual boundaries or acreage of the Property; (ix) the existence, quality, nature, condition or ownership of any minerals on or under the Property or any mineral or other surface or subsurface rights relating to the Property; (x) the quality, nature, adequacy and physical and structural condition of any buildings, structures, fences or other improvements on the Property and of any labor and materials used in any such improvements; (xi) the quality or suitability of the land for growing crops or grazing livestock, of any kind; or (xii) the value of the Property for COUNTY’s intended uses
8. TNC shall bear the risk of loss for damage to the Property prior to Closing. After Closing, the risk of loss or damage to the Property shall rest with COUNTY.
9. TNC agrees that all taxes, assessments and encumbrances that are a lien against the Property at closing shall be satisfied of record by TNC at or before Closing. Regular real property taxes payable during the year in which closing shall occur shall be prorated as of Closing.
10. All rents and other income, if any, and water, sewer, utility and maintenance charges, and any other expenses with respect to the operation of the Property shall be prorated between COUNTY and TNC as of the Closing Date, and to the extent information then available, such proration shall be made as of the date of Closing. Such proration shall be adjusted and completed after the Closing Date as and when complete information becomes available, and TNC and COUNTY agree to cooperate and use their best efforts to complete such prorations not later than sixty (60) days after the Closing Date. No insurance prorations shall be made. In the event TNC has prepaid any real estate taxes, TNC may seek a refund from the appropriate county official, or receive a credit from COUNTY at Closing.

11. COUNTY shall be solely responsible for payment of the title insurance premium for the Property, if any, in connection with the Closing of this transaction. TNC shall be solely responsible for payment of the title insurance premium for the Conservation Easement. COUNTY and TNC will split the remaining closing costs, including the escrow, recording and processing fees.
12. COUNTY may not assign its interest in this Agreement, or in any of the documents described herein, to any party.
13. Each party shall execute and deliver or cause to be executed and delivered all instruments reasonably required to convey the Property to COUNTY, grant the Conservation Easement to TNC and to vest in each party all rights, interests and benefits intended to be conferred by this Agreement.
14. All provisions herein shall be binding upon the heirs, successors and assigns of the parties hereto.
15. The Recitals are hereby incorporated into this Agreement.

*REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK
SIGNATURE PAGE FOLLOWS*

TNC and COUNTY have executed this Agreement as of the dates set forth below:

COUNTY: COCHISE COUNTY, a political subdivision of the State of Arizona:

Richard
Searle

Date

Chairman, Board of Supervisors

ATTEST:

Arlethe Rios
Clerk of Board of Supervisors

Date

APPROVED AS TO FORM:

Britt Hanson
Attorney for the County

Date

TNC: THE NATURE CONSERVANCY, a District of Columbia Non-Profit Corporation

By: _____

Date

Its: _____

Exhibit A
Legal Description of the Property

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF COCHISE, STATE OF ARIZONA, AND IS DESCRIBED AS FOLLOWS:

PARCEL I:

The Southeast quarter of Section 13, Township 22 South, Range 21 East of the Gila and Salt River Base and Meridian, Cochise County, Arizona;
Except 1/16th of all oil, gas, other hydrocarbon substances or any other minerals and rights as set forth and reserved in Patent recorded in Recording No. 9109-18022.

PARCEL II:

The Southwest quarter of Section 13, Township 22 South, Range 21 East of the Gila and Salt River Base and Meridian, Cochise County, Arizona.

PARCEL III:

The Southeast quarter of Section 14, Township 22 South, Range 21 East of the Gila and Salt River Base and Meridian, Cochise County, Arizona.

PARCEL IV:

The East half of Section 23, Township 22 South, Range 21 East of the Gila and Salt River Base and Meridian, Cochise County, Arizona.

PARCEL V:

All of Section 24, Township 22 South, Range 21 East of the Gila and Salt River Base and Meridian, Cochise County, Arizona.

PARCEL VI:

Lot 1, Section 7, Township 22 South, Range 22 East of the Gila and Salt River Base and Meridian, Cochise County, Arizona;
Except all oil and gas as reserved in the Patent from the United States of America recorded in Docket 225, Page 290.

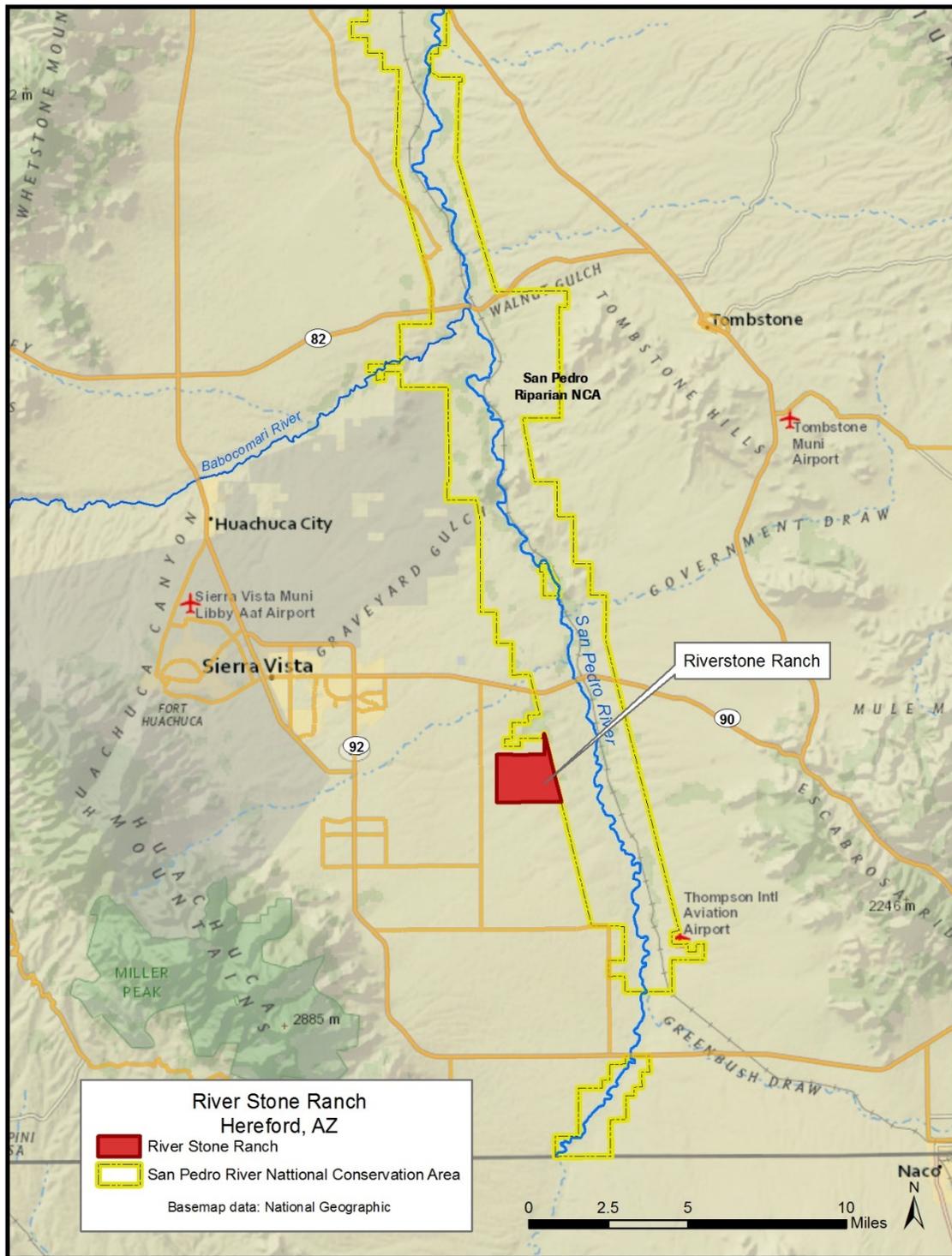
PARCEL VII:

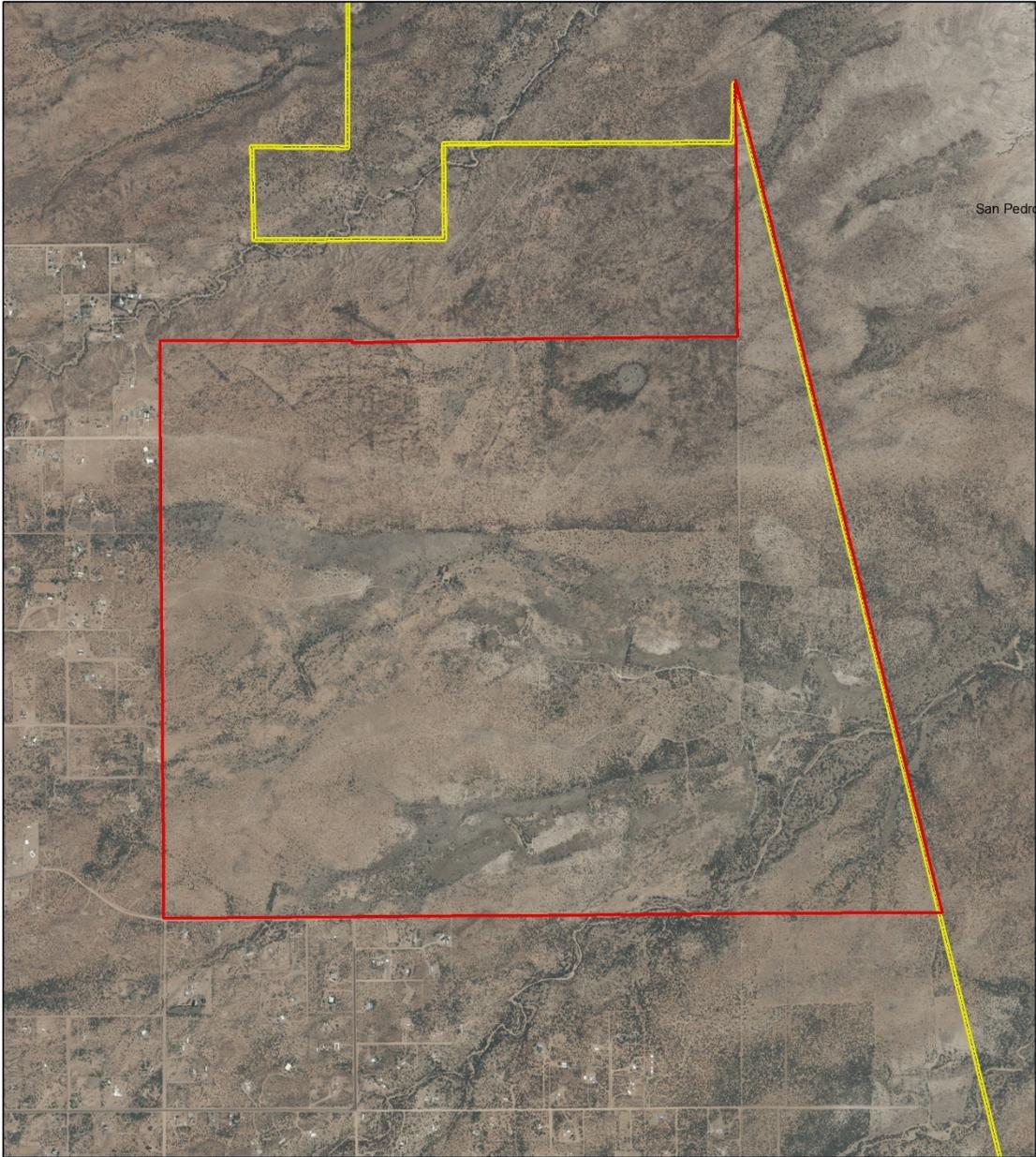
Lots 1, 2, 3, and 4, of Section 18, Township 22 South, Range 22 East of the Gila and Salt River Base and Meridian, Cochise County, Arizona;
Except all oil and gas as reserved in the Patent from the United States of America recorded in Docket 225, Page 290.

PARCEL VIII:

Lots 1, 2, 3 and 4 and the West half of the West half of Section 19, Township 22 South, Range 22 East of the Gila and Salt River Base and Meridian, Cochise County, Arizona.

**Exhibit B
Maps of the Property**





**SAC II aka River Stone Ranch
Hereford, AZ**

Section 24, and portions of Sections 13, 14 and 23,
in Township 22S, Range 21E; and
portions of Sections 7, 18 and 19,
in Township 22S, Range 22E.

- River Stone Ranch
- SPRNCA

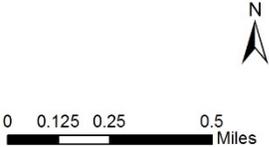


Exhibit C
Form of Conservation Easement

[This page intentionally left blank. Reference document starts on next page.]

RECORDING REQUESTED BY AND
UPON RECORDING RETURN TO:

The Nature Conservancy
Western Resource Office
2424 Spruce Street, Suite 100
Boulder, Colorado 80302
Attention: Legal Department

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

DEED OF PERPETUAL CONSERVATION EASEMENT

NOTICE: THIS PROPERTY INTEREST HAS BEEN ACQUIRED WITH ASSISTANCE FROM THE UNITED STATES ARMY (THE "ARMY") IN FURTHERANCE OF THE U.S. DEPARTMENT OF THE ARMY, ARMY COMPATIBLE USE BUFFER (ACUB) CONTRACT # W911SR-07-2-0005. THIS DEED CONTAINS RESTRICTIONS ON THE USE AND DEVELOPMENT OF THE PROPERTY WHICH ARE INTENDED TO PROTECT ITS CONSERVATION VALUES IN FURTHERANCE OF THE ACUB AGREEMENT. THE ARMY HAS FOUND THAT THE ADOPTION OF THESE DEED RESTRICTIONS IS IN THE PUBLIC INTEREST.

GRANT OF CONSERVATION EASEMENT

THIS GRANT OF CONSERVATION EASEMENT is made by Cochise County, a political subdivision of the State of Arizona ("Grantor"), whose address is 1415 Melody Lane, Building G, Bisbee, Arizona 85603, to THE NATURE CONSERVANCY, a District of Columbia nonprofit corporation, whose principal address is 4245 North Fairfax Drive, Suite. 100, Arlington, Virginia 22203-1606 ("Grantee").

WHEREAS, Grantor is the sole owner in fee simple of certain real property located in Cochise County, consisting of 1,811 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 adjacent to the San Pedro River; and

WHEREAS, the property possesses natural, biological diversity, and open space values, in particular high quality sacaton floodplain grassland, (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 _____, 2016, 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 by the continuation of land use patterns existing at the time of this grant, which, it is acknowledged, do not significantly impair or interfere with the Conservation Values and which protect and support the biodiversity of the area; 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 and continued, in a manner consistent with Grantor’s private ownership, use, and quiet enjoyment of the Property; 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 San Pedro Valley and the Property have the following characteristics:

(a) the Property and surrounding lands are rural in character and have historically been used for ranching, agricultural, open space, and rural residential and recreational uses; and

(b) the area is one of the most important in Cochise County from the standpoint of open space, biological diversity beauty and wildlife habitat and Grantor wants these Conservation Values protected; and

(c) the Property is in a strategic location for protecting and recharging the groundwater aquifer which supports riparian and aquatic habitats along the San Pedro River; and

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 charitable nonprofit corporation 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 intends to 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 stormwater and effluent capture/recharge projects.

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 3.10;
- 2.3 Timber Harvesting. Timber Harvesting is prohibited; provided however, trees may be cut to control insects and disease, to prevent personal injury and property damage and for firewood for domestic use only. Dead trees may be harvested at Grantor’s discretion for firewood or construction purposes. Trees and brush may be removed if for the purpose of reducing evapotranspiration or as needed to construct and maintain the recharge project facilities.
- 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 irremediably 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. Nothing herein purports to create any responsibility or liability of Grantor should there be entry upon the Property by third persons not under control of Grantor, including persons who may lawfully enter upon the land pursuant to rights of mineral entry in state or federal patents. 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 recharge 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.
- 2.8. Commercial or Industrial Activity. Establishment of any commercial activity that may have an adverse effect on the Conservation Values is prohibited. Grantor's rights to use the Property as set forth in Section 3 shall not be deemed a prohibited commercial use
- 2.9. Water Rights. Grantor may consumptively use water that is harvested from storm water or ground water, but the total amount used shall not exceed the amount that would be used for three (3) single family residences and non-irrigated agricultural use. The parties acknowledge the existence of three wells on the Property. Grantor may use these wells so long as the use complies with this subsection regarding the total amount of water used. Any export of water from the Property or streams traversing the Property for any purpose, or authorization for the export of water for any purpose, is prohibited.

- 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.
- 2.11 Non-native plants. Intentional introduction of non-native plants is prohibited, except as permitted in paragraph 3.10.
- 2.12 Roads. No new roads may be constructed on the property except those necessary for uses permitted by this Easement.
- 2.13 Motor vehicles. Using motor vehicles upon and across the Property except as reasonably necessary for permitted uses is 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. Grantor and Grantee acknowledge and understand that the Flood Control and Recharge Uses are currently the subject of a feasibility study and thus the structures and other improvements that ultimately will be required for these Uses are not known for certain. The project scope of work consists of the design and construction of one or more detention/recharge facilities that would reduce peak flows. The designed facilities may also recharge runoff due to increased development upstream, by means that could include injection wells, infiltration galleries, basins, or other means, or some combination of these. Improvements would be designed to enhance recharge in the basins, downstream of them and possibly in off-channel facilities. The Grantor might also partner with the City of Sierra Vista upstream of the Property to capture storm water from the developed surfaces of the city and recharge the storm water closer to the river, if technically and economically feasible. Water or treated effluent originating from other sources may also be recharged at this property, as long as water quality standards are met for recharge facilities. Preliminary studies have been conducted on the Property that indicate the suitability and feasibility of using the site as a recharge facility. Additional infiltration testing on this site will be done as part of Predesign to further quantify the suitability for enhanced recharge at the location already planned for detention. 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 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 and will be designed to have the smallest possible impact to the sacaton floodplain grassland the location of which is shown in the attached map Exhibit D ;

- 3.3 Any new or rebuilt fencing shall be designed and constructed following AZGFD guidelines in a manner that minimizes the adverse effect of the fencing on wildlife or on the natural features of the Property. 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 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, and provided that grazing is done in a manner that maintains or improves soil and desirable vegetation health. 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 non-motorized recreational and educational uses including horseback riding, hiking and hunting. In addition, the Grantor may make the Property accessible to the public for the educational purpose of demonstrating and showcasing the Flood Control and Recharge Uses, as well as other Conservation Values. Grantor may build such structures and improvements, including unpaved trails for non-motorized use, as are reasonably incidental to these purposes with the prior approval of the Grantee;
- 3.7 Using agrichemicals, including but not limited to, fertilizers and biocides, but only in those amounts and with the frequency of application reasonably necessary to accomplish reasonable grazing and agricultural purposes, including weed control. All agrichemical use shall be in accordance with label directions and in compliance with applicable federal, state, and local laws, regulations, and requirements;
- 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 Provided the specific terms and conditions set forth in this paragraph are complied with, Grantor may use the Property for a county facility, including a road yard and educational facility, and for public access facilities to provide for the recreational and educational uses described in paragraph 3.6 above, and build such structures and improvements as are reasonably incidental to this purpose: (i) the total water consumption from all such facilities and uses does not exceed one (1) acre-foot per

year and is documented with a flowmeter(s) installed at Grantor's sole cost and expense that is accessible to the Grantee for monitoring, (ii) any use permitted pursuant to this paragraph and/or construction takes place within three (3) areas of reasonably compact shape, the combined size of which does not to exceed fifteen (15) acres (the "County Building Envelopes"), 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, and (iii) prior to any use permitted pursuant to this paragraph and/or construction occurring, the County Building Envelopes 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 E and incorporated herein by this reference shall be recorded in the official records of Cochise County, all at Grantor's sole cost and expense;

3.10 It is understood that, in the event that a portion of the Property is determined to be unsuitable for Flood Control and Recharge Uses, Grantor may subdivide the unsuitable portion of the property into no more than three (3) parcels and convey its right, title and interest to that unsuitable portion of the Property to a private party or parties, subject to this Conservation Easement. 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. If this occurs, such private parties shall be entitled to construct no more than three (3) single-family dwelling units on the Property, one on each of the permitted parcels, together with any accessory structures of a nature customarily incidental and subordinate in size, impact and purpose to the dwelling unit. Any such dwelling units and accessory structures shall be (i) located within a single area of reasonably compact shape, not to exceed four (4) acres (the "Residential Building Envelopes") 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, and (ii) prior to any construction occurring, each 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 E 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 using non-native plants is permitted in each Residential Building Envelope.

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

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 subject to the purposes, terms and obligations of the Army Compatible Use Buffer (ACUB) Contract # W911SR-07-2-0005 on behalf of Fort Huachuca and the Army for the primary purposes 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. An incidental, but important, result of the purchase of the Easement is avoidance of development of the Property that can result in limitations on training and operations at Fort Huachuca. 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. Taxes. Grantor shall pay, before delinquency, any and all taxes, assessments, fees, and charges levied or assessed by competent authority on the Property (collectively "taxes"), including any taxes imposed upon, or incurred as a result of, this Easement, and shall furnish Grantee with satisfactory evidence of payment upon request.

- 9.3. Representations and Warranties. Grantor represents and warrants that to the best of its knowledge (it being understood, however, that inasmuch as Grantor has acquired the Property in connection with this easement, and has not undertaken any independent inspection except regarding the Flood Control and Recharge Use, Grantor's knowledge is limited):
- (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.
- 9.4. 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.
- 9.5. 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”).

- 9.6. 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 aforestated 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 % 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, Grantee shall only be entitled to % 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 one hundred percent (100%) of any such proceeds that the Grantee receives.
- 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 and the Army (which consent shall not be unreasonably withheld), Grantee shall have the right to transfer this Easement to any 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 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. Notwithstanding the foregoing, the consent of Grantor shall not be required for any transfer required under the Army Compatible Use Buffer Program (the "ACUB Program") so long as the conditions set forth in 10 U.S.C. 2684a(d)(3) are satisfied. Any such assignment required under the ACUB Program shall be made upon request of the Secretary of the Army or his or her authorized designee to the United States. If Grantee desires to transfer this Easement to a qualified organization having similar purposes as Grantee, but Grantor reasonably refuses to approve the transfer or, if Grantee ever ceases to exist or no longer qualifies under §170(h) or applicable state law, a court with jurisdiction shall transfer this Easement to another qualified organization having similar purposes and mission as Grantee and that agrees to assume the responsibility of enforcing this Easement, provided that Grantor receives notice of and an opportunity to participate in the court proceeding. 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 in a timely fashion 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 The Nature Conservancy, Tucson Conservation Center, whose address is 1510 E. Ft. Lowell Rd., Tucson, AZ 85719, with a copy to The Nature Conservancy, Attn: Legal Department, 2424 Spruce Street, Suite 100, Boulder, CO 80302, 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.

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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 _____, 2016.

COCHISE COUNTY (Grantor)

Richard Searle, 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.

THE NATURE CONSERVANCY, a District of
Columbia nonprofit corporation,

By _____

Dated _____, 2012

STATE OF ARIZONA)
) ss.
COUNTY OF)

The foregoing instrument was subscribed, sworn to, and acknowledged before me
this ____ day of _____, 2012 by _____, the _____
of THE NATURE CONSERVANCY, a District of Columbia nonprofit corporation, as Grantee.

Notary Public

My Commission expires:

**EXHIBIT A to Form of Conservation Easement
LEGAL DESCRIPTION**

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF COCHISE, STATE OF ARIZONA, AND IS DESCRIBED AS FOLLOWS:

PARCEL I:

The Southeast quarter of Section 13, Township 22 South, Range 21 East of the Gila and Salt River Base and Meridian, Cochise County, Arizona;
Except 1/16th of all oil, gas, other hydrocarbon substances or any other minerals and rights as set forth and reserved in Patent recorded in Recording No. 9109-18022.

PARCEL II:

The Southwest quarter of Section 13, Township 22 South, Range 21 East of the Gila and Salt River Base and Meridian, Cochise County, Arizona.

PARCEL III:

The Southeast quarter of Section 14, Township 22 South, Range 21 East of the Gila and Salt River Base and Meridian, Cochise County, Arizona.

PARCEL IV:

The East half of Section 23, Township 22 South, Range 21 East of the Gila and Salt River Base and Meridian, Cochise County, Arizona.

PARCEL V:

All of Section 24, Township 22 South, Range 21 East of the Gila and Salt River Base and Meridian, Cochise County, Arizona.

PARCEL VI:

Lot 1, Section 7, Township 22 South, Range 22 East of the Gila and Salt River Base and Meridian, Cochise County, Arizona;
Except all oil and gas as reserved in the Patent from the United States of America recorded in Docket 225, Page 290.

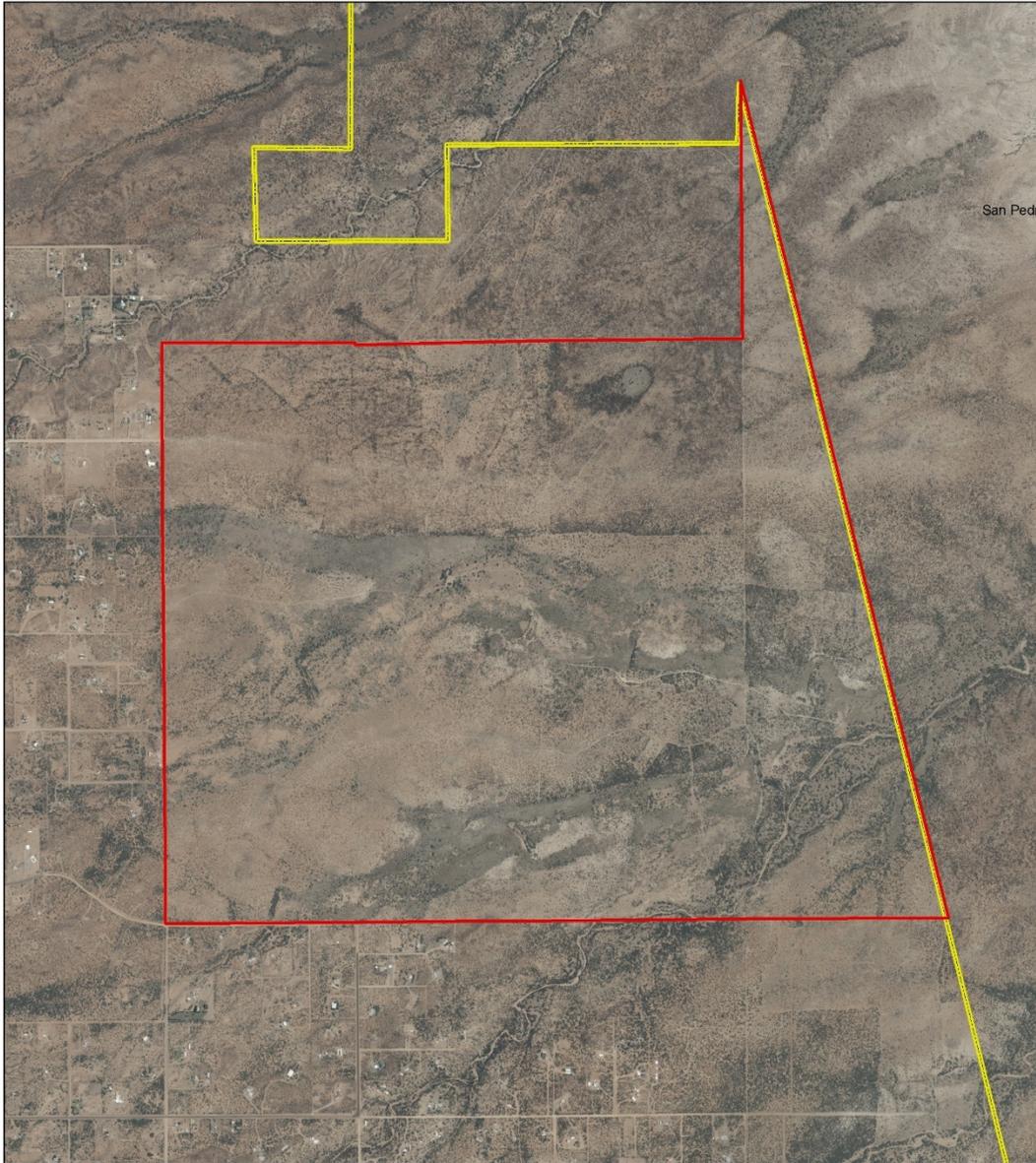
PARCEL VII:

Lots 1, 2, 3, and 4, of Section 18, Township 22 South, Range 22 East of the Gila and Salt River Base and Meridian, Cochise County, Arizona;
Except all oil and gas as reserved in the Patent from the United States of America recorded in Docket 225, Page 290.

PARCEL VIII:

Lots 1, 2, 3 and 4 and the West half of the West half of Section 19, Township 22 South, Range 22 East of the Gila and Salt River Base and Meridian, Cochise County, Arizona.

**EXHIBIT B to Form of Conservation Easement
MAP OF PROPERTY**



**SAC II aka River Stone Ranch
Hereford, AZ**

Section 24, and portions of Sections 13, 14 and 23,
in Township 22S, Range 21E; and
portions of Sections 7, 18 and 19,
in Township 22S, Range 22E.

-  River Stone Ranch
-  SPRNCA



0 0.125 0.25 0.5
Miles

**EXHIBIT C to Form of Conservation Easement
ACKNOWLEDGMENT OF EASEMENT DOCUMENTATION REPORT**

Grantor and the Grantee acknowledge that each has read the “River Stone Tract” Conservation Easement Documentation Report,” dated _____, 2016, and the report accurately reflects the condition of the Property subject to the Easement as of the date of conveyance of the Easement.

GRANTEE:
THE NATURE CONSERVANCY, a District of
Columbia nonprofit corporation

GRANTOR:
COCHISE COUNTY

By: _____

By: _____

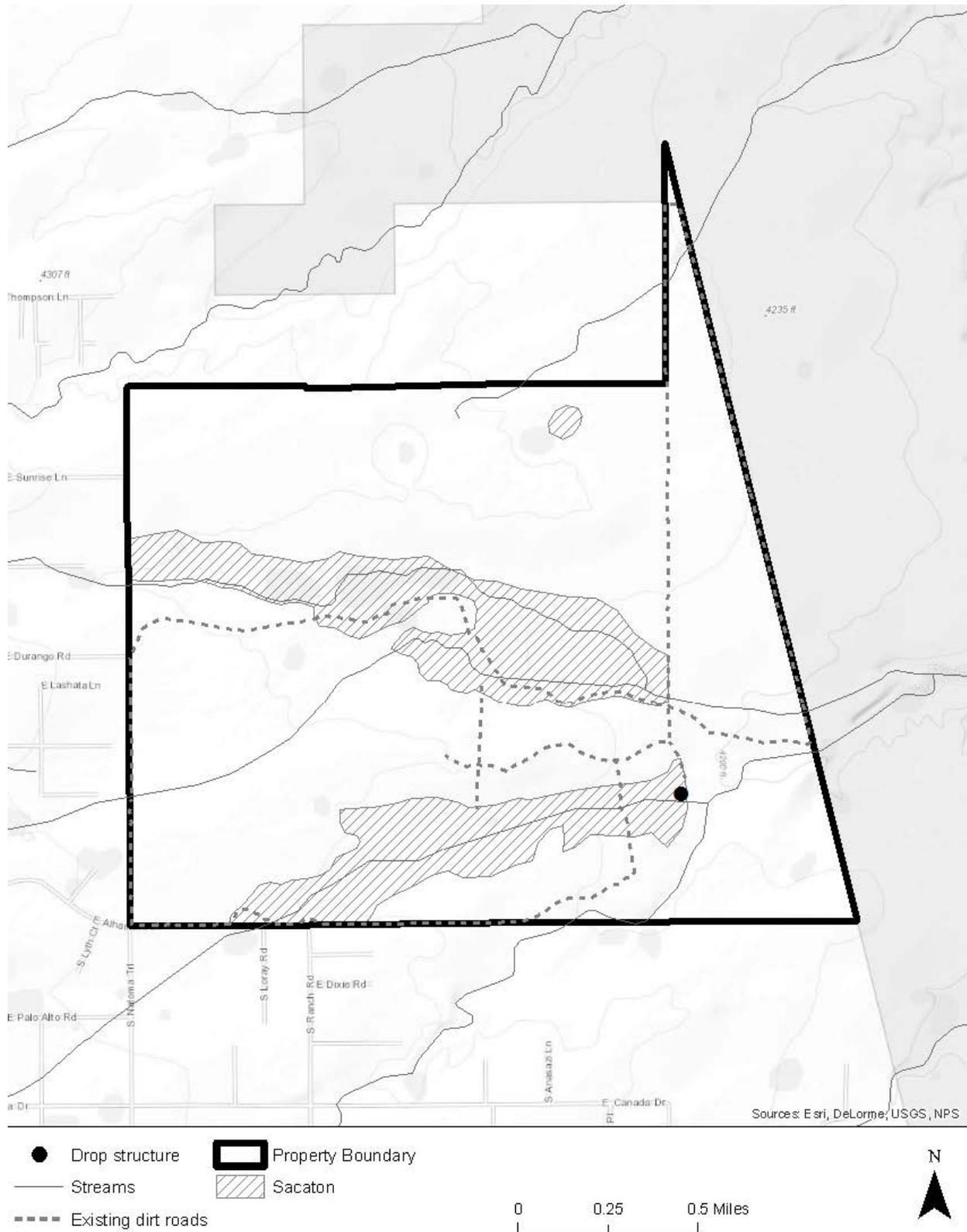
Chairman, Board of Supervisors

Its: _____

Date: _____

Date: _____

**EXHIBIT D to Form of Conservation Easement
MAP OF SACATON FLOODPLAIN GRASSLAND LOCATION**



**EXHIBIT E to Form of Conservation Easement
NOTICE OF BUILDING ENVELOPE DESIGNATION**

RECORDING REQUESTED BY AND)
WHEN RECORDED RETURN TO:)
The Nature Conservancy)
Western Resource Office)
Attn: Legal Department)
2424 Spruce Street, Suite 100)
Boulder, Colorado 80302)

NOTICE OF BUILDING ENVELOPE DESIGNATION

Pursuant to a Deed of Perpetual Conservation Easement granted to The Nature Conservancy, a District of Columbia nonprofit corporation, dated _____, 2016, 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]

Exhibit D
Form of Quitclaim Deed for Real Property

RECORDING REQUESTED BY AND)
WHEN RECORDED RETURN TO:)
Cochise County, Board of Supervisors)
1415 Melody Lane, Building G)
Bisbee, Arizona 85603)
Attention: Clerk of the Board)

EXEMPT FROM AFFIDAVIT PURSUANT TO ARS 11-1134 SECTION ____

Quitclaim Deed
San Pedro River/Mule Mountains (SAC II a.k.a. River Stone Ranch) AZ

THE GRANTOR, THE NATURE CONSERVANCY, a District of Columbia non-profit corporation, whose address is 4245 North Fairfax Drive, Suite 100, Arlington, Virginia 22203, for value received, has remised, released, sold, conveyed, QUIT CLAIMED, and assigned, and by these presents does hereby remise, release, sell, convey, QUIT CLAIM and assign unto **COCHISE COUNTY**, a political subdivision of the State of Arizona, whose address is 1415 Melody Lane, Building G, Bisbee, Arizona 85603, **THE GRANTEE**, and its successors and assigns forever, all the right, title, interest, claim and demand which the Grantor has in and to the real property, together with improvements, if any, situate, lying and being in the County of Cochise and State of Arizona, described as follows:

See Exhibit “A” attached hereto and incorporated herein by reference.

SUBJECT TO any exceptions, encumbrances, liens, easements, rights of way, reservations or restrictions of record.

FURTHER SUBJECT TO that Lease Agreement with Lee Wood, an individual, dated April 15, 2016.

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SIGNATURE PAGE FOLLOWS

Dated _____, 20__.

GRANTOR:

THE NATURE CONSERVANCY, a District of Columbia non-profit corporation

By: _____

Its: _____

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing was acknowledged before me this ___ day of _____, 20__, by _____, as _____ of The Nature Conservancy, a District of Columbia non-profit corporation.

Witness my hand and official seal.

My commission expires: _____

Notary Public

**Exhibit A to Quit Claim Deed
Legal Description of the Real Property**

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF COCHISE, STATE OF ARIZONA, AND IS DESCRIBED AS FOLLOWS:

PARCEL I:

The Southeast quarter of Section 13, Township 22 South, Range 21 East of the Gila and Salt River Base and Meridian, Cochise County, Arizona;
Except 1/16th of all oil, gas, other hydrocarbon substances or any other minerals and rights as set forth and reserved in Patent recorded in Recording No. 9109-18022.

PARCEL II:

The Southwest quarter of Section 13, Township 22 South, Range 21 East of the Gila and Salt River Base and Meridian, Cochise County, Arizona.

PARCEL III:

The Southeast quarter of Section 14, Township 22 South, Range 21 East of the Gila and Salt River Base and Meridian, Cochise County, Arizona.

PARCEL IV:

The East half of Section 23, Township 22 South, Range 21 East of the Gila and Salt River Base and Meridian, Cochise County, Arizona.

PARCEL V:

All of Section 24, Township 22 South, Range 21 East of the Gila and Salt River Base and Meridian, Cochise County, Arizona.

PARCEL VI:

Lot 1, Section 7, Township 22 South, Range 22 East of the Gila and Salt River Base and Meridian, Cochise County, Arizona;
Except all oil and gas as reserved in the Patent from the United States of America recorded in Docket 225, Page 290.

PARCEL VII:

Lots 1, 2, 3, and 4, of Section 18, Township 22 South, Range 22 East of the Gila and Salt River Base and Meridian, Cochise County, Arizona;
Except all oil and gas as reserved in the Patent from the United States of America recorded in Docket 225, Page 290.

PARCEL VIII:

Lots 1, 2, 3 and 4 and the West half of the West half of Section 19, Township 22 South, Range 22 East of the Gila and Salt River Base and Meridian, Cochise County, Arizona.

Exhibit E
Form of Quitclaim Deed for Water Rights

RECORDING REQUESTED BY AND)
WHEN RECORDED RETURN TO:)
Cochise County, Board of Supervisors)
1415 Melody Lane, Building G)
Bisbee, Arizona 85603)
Attention: Clerk of the Board)

Quitclaim Deed and Assignment
San Pedro (SAC II aka River Stone) AZ

THE GRANTOR, THE NATURE CONSERVANCY, a District of Columbia nonprofit corporation, whose address is 4245 North Fairfax Drive, Arlington, VA 22203-1606, for value received, has remised, released, sold, conveyed, QUIT CLAIMED, and assigned, and by these presents does hereby remise, release, sell, convey, QUIT CLAIM and assign, without representation or warranty of any kind, express or implied, unto **COCHISE COUNTY**, a political subdivision of the State of Arizona, whose address is 1415 Melody Lane, Building G, Bisbee, Arizona 85603, and its successors and assigns forever, all the right, title, interest, claim and demand which the Grantor has in and to the following:

All of Grantor’s right, title and interest in and to (i) any and all water, water rights, ditches, ditch rights, reservoirs, storage rights, wells, well permits, ground water rights, ditch and/or reservoir company stock, irrigation districts, and (ii) all other rights in and to the use of water, whether like or unlike the foregoing, adjudicated or unadjudicated, that are appurtenant to or used on or in connection with the property described in **Exhibit A**, attached hereto (the “Real Property”), including, but not limited to, the water and water rights described in **Exhibit B** inclusive attached hereto (collectively, the “**Water Rights**”). The Water Rights include, without limitation, (i) any and all rights to sub-flow and groundwater in any geological formation underlying the Real Property or other property leased or permitted to Seller, whether or not appropriated or adjudicated; (ii) any and all rights, claims, and entitlements associated with the historic beneficial use of any of the Water Rights; and (iii) any and all ditches, reservoirs, embankments, easements, rights of way, licenses, permits, and contract rights therefor or pertaining thereto

Dated _____, 20__.

GRANTOR:

THE NATURE CONSERVANCY, a District of Columbia non-profit corporation

By: _____

Its: _____

**Exhibit A to Quit Claim Deed for Water Rights
Legal Description of the Real Property**

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF COCHISE, STATE OF ARIZONA, AND IS DESCRIBED AS FOLLOWS:

PARCEL I:

The Southeast quarter of Section 13, Township 22 South, Range 21 East of the Gila and Salt River Base and Meridian, Cochise County, Arizona;
Except 1/16th of all oil, gas, other hydrocarbon substances or any other minerals and rights as set forth and reserved in Patent recorded in Recording No. 9109-18022.

PARCEL II:

The Southwest quarter of Section 13, Township 22 South, Range 21 East of the Gila and Salt River Base and Meridian, Cochise County, Arizona.

PARCEL III:

The Southeast quarter of Section 14, Township 22 South, Range 21 East of the Gila and Salt River Base and Meridian, Cochise County, Arizona.

PARCEL IV:

The East half of Section 23, Township 22 South, Range 21 East of the Gila and Salt River Base and Meridian, Cochise County, Arizona.

PARCEL V:

All of Section 24, Township 22 South, Range 21 East of the Gila and Salt River Base and Meridian, Cochise County, Arizona.

PARCEL VI:

Lot 1, Section 7, Township 22 South, Range 22 East of the Gila and Salt River Base and Meridian, Cochise County, Arizona;
Except all oil and gas as reserved in the Patent from the United States of America recorded in Docket 225, Page 290.

PARCEL VII:

Lots 1, 2, 3, and 4, of Section 18, Township 22 South, Range 22 East of the Gila and Salt River Base and Meridian, Cochise County, Arizona;
Except all oil and gas as reserved in the Patent from the United States of America recorded in Docket 225, Page 290.

PARCEL VIII:

Lots 1, 2, 3 and 4 and the West half of the West half of Section 19, Township 22 South, Range 22 East of the Gila and Salt River Base and Meridian, Cochise County, Arizona.

**Exhibit B to Quit Claim Deed for Water Rights
Schedule of Water Rights**

Surface Claims

36-60621

36-60622

36-60623

Wells

55-601364

55-601385

55-601386

Exhibit F
Form of Assignment and Assumption of Lease Agreement

**ASSIGNMENT AND ASSUMPTION
OF
LEASE AGREEMENT
(River Stone)**

This Assignment and Assumption of Lease Agreement (“Assignment”) is entered into as of _____, 2016, by and between THE NATURE CONSERVANCY, a District of Columbia non-profit corporation (“Assignor”), and COCHISE COUNTY, a political subdivision of the State of Arizona (“Assignee”).

RECITALS:

A. Assignor and Assignee are parties to that certain Agreement to Convey Real Property dated _____, 2016, (the “Agreement”), wherein Assignor agreed to transfer and Assignee agreed to accept certain real property as further described in the Agreement (the “Property”).

B. Assignor desires to assign to Assignee, and Assignee desires to accept from Assignor, all of Assignor’s rights and obligations under that certain River Stone Ranch Grazing Lease dated April 15, 2016 by and between THE NATURE CONSERVANCY, a District of Columbia non-profit corporation, as Lessor, and Lee Wood, an individual, as Lessee (collectively the “Lease”).

AGREEMENT:

FOR VALUABLE CONSIDERATION, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Assignment. Assignor hereby assigns and conveys to Assignee all of Assignor’s rights and obligations under the Lease, from and after the date hereof. Assignee hereby accepts the foregoing Assignment.

2. Assumption. Assignee hereby assumes and agrees to be bound by all of Assignor’s obligations and liabilities as Lessor under the Lease arising from and after the date of this Assignment, and agrees to perform and observe all of the covenants of Assignor as Lessor under the Lease, from and after the date of this Assignment.

3. Binding Effect. This Assignment shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto.

4. Counterparts. This Assignment may be executed in any number of counterparts, all of which taken together shall constitute a single integrated document. The parties may deliver their signatures by facsimile or email transmission.

IN WITNESS WHEREOF, the parties have executed this Assignment as of the date above first written.

ASSIGNOR:

THE NATURE CONSERVANCY, a District of Columbia non-profit corporation

By: _____

Name: _____

Title: _____

ASSIGNEE:

COCHISE COUNTY, a political subdivision of the State of Arizona

By: _____

Chairman, Board of Supervisors

Date: _____

ATTEST:

Clerk of Board of Supervisors

Date: _____

APPROVED AS TO FORM:

Attorney for the County

Date: _____

RIVER STONE RANCH
GRAZING LEASE

THIS GRAZING LEASE (this "Lease") is made and entered into this 15 day of April, 2016, by and between THE NATURE CONSERVANCY, a District of Columbia non-profit corporation, acting through its Arizona Chapter with a business address at 1510 E. Ft. Lowell Blvd., Tucson, Arizona 85719 (hereinafter "Lessor") and Lee Wood, an individual, (hereinafter "Lessee") whose address for purposes of this Lease is P.O. Box 4122, Bisbee, Arizona 85603.

1. **AGREEMENT TO LEASE.** Lessor, for and in consideration of the covenants and promises hereinafter defined in this Lease, does hereby lease unto Lessee, for the purpose of grazing cattle and horses ("Livestock"), upon the premises described in **Exhibit A** attached hereto (the "Premises"). Notwithstanding anything herein to the contrary, Lessor and Lessee agree that this Lease shall take effect on April 15, 2016, (the "Commencement Date") even if either or both parties shall execute and/or deliver the Lease on a different date, and shall terminate on April 15, 2017 (the "Termination Date"), the time between the Commencement Date and the Termination Date is hereinafter referred to as the "Term". Both parties acknowledge that there is significant and sufficient consideration and value to the Lessor by reason of the Lessee's active use of the Premises for the Lessee's specified agricultural activities. Both parties also acknowledge the significant and sufficient consideration and value to the Lessee by reason of the Lessee's use of the Premises for his agricultural purposes. Notwithstanding the foregoing, Lessee agrees to pay the sum of One thousand two hundred dollars (\$1,200) as rent for the Premises during the Term which payment shall be made by check payable to Lessor upon execution of the Lease by Lessee.

2. **USE OF THE PREMISES.** Lessee shall use the Premises for the purpose of pasturing Livestock that shall not exceed more than 600 animal-unit-months (AUMs) per year (an AUM defined as one cow and calf until weaning, or one-half horse) and Lessee shall not without the written consent of Lessor, which consent shall be in the sole and absolute discretion of Lessor: (i) sublet or assign this Lease, or part thereof, or any interest therein; (ii) change the natural course of any waterway on said Premises; (iii) cut down trees growing on the Premises, nor will permit any other person to do so; (iv) allow the entry of any person for the purposes of outfitting, ecotourism, picking of berries or flowers or any other such plant material, fishing or hunting; (v) remove any sand, gravel, clay, stone, or any such substances existing on, or under the surfaces of said Premises; and (vi) bring into cultivation any of the Premises. Lessee shall control weeds and insects on the Premises in a sustainable manner, which necessitates that any application of pesticides be done so in a manner consistent with the labeled directions. Lessee hereby indemnifies Lessor for any environmental liabilities or losses as more particularly set forth in **Paragraph 6** of this Lease that may arise from Lessee's use of the Premises. To further mitigate such potential liability, Lessee shall not: (i) allow overgrazing of any of the Premises that has grass or forages; (ii) overload nutrient levels of the Premises or adjacent water bodies; (iii) allow pesticides to drift on to non-grazing portions of the Premises, including adjacent tracts of land and waterways; (iv) permit or allow to accumulate any waste material, debris, refuse or

garbage; and (v) allow any contamination of the Premises by chemicals, oil spills, hydrocarbons or any other waste material.

3. **IMPROVEMENTS.** The Lessee shall not make major improvements, other than installation of fencing necessary to bound and impede the movement of the Livestock while grazing, and what is considered normal repair and maintenance thereof, to the Premises without written permission of Lessor. Major improvements, without restricting the generality of the term, shall include water development, erosion control, electric fencing, building construction, clearing, breaking, and seeding to pasture and hay land ("Improvements"). In the case that Lessor approves of any Improvements, as provided herein, title to all Improvements shall vest in Lessor and no Improvements shall be sold, removed, disposed of or encumbered without written consent of Lessor.

4. **COMPLIANCE WITH LAW.** Lessee shall, at his own cost and expense, promptly execute and comply with all present or future rules, regulations, laws and orders of all governmental authorities that are or may become applicable to the Premises. Lessee hereby waives any claim against Lessor for any expense or damage resulting from compliance with said rules, regulations, laws and orders.

5. **INSPECTION AND ENTRY.** Lessor and Lessor's agent shall have the right to enter the Premises and any part thereof at any time.

6. **ENVIRONMENTAL ACTIONS AND INDEMNIFICATIONS.** Lessee agrees not to store in, on or under the Premises, any hazardous materials of any type, as defined by any local, state or federal agency, or any other toxic, corrosive, reactive, or ignitable material without first obtaining in each case all governmental approvals and permits required for such storage, and also obtaining the prior written approval of the Lessor. Lessee agrees to document all hazardous waste disposal, if any, by one of the following types of documentation: a hazardous waste manifest, a bill of lading from a bonded hazardous substance transporter showing shipment to a licensed hazardous waste facility; or a confirmation of receipt of materials from a recycler, a waste exchange operation, or other permitted hazardous waste management facility and to keep the same on file for no less than five (5) years following the Termination Date hereof. Lessee agrees not to generate hazardous and/or noxious effluents. Lessee agrees to allow reasonable access to the Premises for monitoring of the above by Lessor, the appropriate Department of Cochise County, Arizona, and the Arizona Department of Environmental Quality to assure compliance with the above as well as any other conditions relating to the use of the Premises.

Lessee hereby covenants and agrees that Lessee shall defend, indemnify and hold Lessor and Lessor's members, directors, officers, employees, agents and contractors and, its successors and assigns (collectively "Indemnitees"), harmless from and against any and all loss, damage, cost, expenses, injury or liability Indemnitees may suffer or incur by reason of the existence of (a) any "hazardous substance" as defined in §101(14) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. 9601(4) or "Hazardous waste", "infectious waste" or "Hazardous materials" as defined in any applicable sections of the law of the State of Arizona or any local governmental authority, including but not limited to, asbestos, petroleum products and their derivatives; (b) any

additional substances or materials which at such time are classified or considered to be hazardous or toxic, or otherwise regulated under the laws of the State of Arizona or any other applicable laws, rules or regulations relating to the Premises and/or any adjacent lands; and (c) any substances or material listed in the U.S. Department of Transportation Table at 49 C.F.R. 172.01 and amendments thereto from time to time. This indemnification shall include the cost of processing, defending, settling or paying such claims against Indemnitees, including all attorneys' fees.

7. **NO PARTNERSHIP OR AGENCY RELATIONSHIP.** Nothing contained within this Lease shall be deemed to make Lessor and Lessee partners or joint venturers in the ranching and grazing of Livestock or to create a relationship of principal and agent between them, nor shall either Lessor Lessee hold themselves out as partners, joint venturers, or agents of the other contrary to the terms of this Lease by advertising or otherwise. Neither party shall be bound by any representation, act or omission whatsoever of the other contrary to the provisions of this Lease.

8. **MAINTENANCE OF PREMISES.** Lessee shall keep the Premises in a clean and safe condition at all times and shall be solely responsible for maintaining the fencing on the Premises and for any repairs made necessary by the actions or inaction of Lessee and Lessee's guest, invitees, employees and Livestock. Lessor shall be responsible for all other repairs to the Premises upon notice by Lessee to Lessor that such repairs are required; however, failure by Lessor to make such repairs shall not constitute a constructive eviction under this Lease.

Lessee acknowledges that immediately prior to execution of this Lease and Lessee's possession of the Premises, Lessee has inspected the Premises to the extent desired by Lessee and confirms that the Premises are suitable for the purpose of grazing Livestock as of the Commencement Date of the Lease.

In addition to the above, Lessee shall also be solely responsible at all times to insure that the Livestock are fully and completely confined within and upon the Premises. Lessee shall be solely liable for any injury or death to person(s) or damage to property caused as a result of the escape or release of Livestock from the Premises.

9. **SURRENDER OF PREMISES.** At the termination of this Lease or of Lessee's right of possession by lapse of time or otherwise, Lessee shall yield immediate possession of the Premises to Lessor, and deliver all keys, combinations, and locks to Lessor or Lessor's agent.

10. **RIGHTS AND REMEDIES.** If Lessee (i) fails to make payment of Rent, as and when due; (ii) permits the Premises to remain vacant or unoccupied by Livestock for a period that jeopardizes the agricultural status for assessment of property taxes; or (iii) in the event of the breach of any covenants or agreement contained in this Lease, Lessee's right to the possession of the Premises thereupon shall terminate without notice or demand, and the mere retention of possession thereafter by Lessee shall constitute a forcible detainer. Lessor shall thereupon have the right to accelerate all Rent remaining payable under this Lease and, if the Lessor so elects at its sole and absolute discretion, but not otherwise, this Lease shall thereupon terminate, and upon the termination of Lessee's right of possession, whether this Lease be terminated or not, Lessee

agrees to surrender possession of the Premises immediately. If Lessee fails to remove from the Premises any and all Livestock and/or articles of personal property therein, whether they be the property of Lessee or others, then in such case, Lessee hereby grants to Lessor full and complete right to enter the Premises and remove therefrom any such Livestock and/or articles of personal property as may be found therein and to dispose of such property without accounting to Lessee therefore, without any liability to Lessee or others whose property may be left on the Premises.

11. **GOVERNING LAW AND LITIGATION.** This Lease and the interpretation and enforcement thereof shall be governed by and construed according to the laws of the State of Arizona. The venue for any action in connection with this Lease shall be Cochise County, Arizona. In the event it shall be necessary for Lessor to bring suit to enforce any provision hereof, Lessee shall be responsible, in addition to the relief granted as a result of such litigation, for all costs and expenses of such litigation and a reasonable attorneys' fee as fixed by the Court, both on the trial and appellate levels. Both parties hereto hereby waive the right to jury trial in connection with any dispute concerning this Lease.

12. **LEGAL EXPENSES.** Lessee shall pay and discharge all costs, expenses and attorneys' fees, which shall be incurred or expended by Lessor due to breach of the covenants of this Lease by Lessee, the same constituting so much additional Rent hereunder, payable on demand.

13. **LESSOR'S RIGHTS NOT WAIVED.** The knowledge of any breach hereof by Lessee, or the giving of any notice or making any demand, whether according to any statutory provision or not, or any other act or waiver other than written waiver shall not be construed as a waiver of Lessor's right to act without notice or demand or of any other right hereby given to Lessor, or as an election not to proceed under the provisions of this Lease.

14. **RENEWAL.** Lessor may in its sole and absolute discretion agree to extend the Term for successive periods of twelve (12) months each under the terms and conditions of the original Term of this lease by sending written notice to Lessee of Lessor's consent to extending said lease for a new twelve (12) month term. The election by Lessor or Lessee to cancel the then-applicable Term shall be exercised by providing the other with thirty (30) days written notice and upon such expiration of the thirty (30) day notice the Term and this Lease shall expire. Notwithstanding anything to the contrary in the foregoing sentence, in the event Lessor does not consent to extend the Term, then this Lease shall expire by its terms without any action required by either Lessor or Lessee.

15. **LESSEE'S LIABILITY NOT WAIVED.** The obligation of Lessee to pay the Rent reserved hereby during the Term or during any extensions hereof pursuant to **Paragraph 14** of this Lease or any holdover tenancy shall not be deemed to be waived, released or terminated, by the service of any notice, demand for possession, notice that the tenancy hereby created will be terminated on the date therein named, the institution of any action of forcible detainer or ejectment or any judgment for possession that may be rendered in such action, or any other act or acts resulting in the termination of Lessee's right to possession of the Premises. The payment or receipt of Rent due shall not waive or affect any such notice, demand, suit or judgment or in any manner waive, affect, change, modify or alter any rights or remedies of Lessor, and it is agreed

that no act of Lessor, Lessor's agent in apparent acquiescence in, or failure to object to, any breach by Lessee of any other terms, covenants, conditions or agreements in this Lease shall not act as a bar to or waiver Lessor's right to thereafter insist upon the complete performance of all such terms, covenants, conditions and agreements herein contained.

16. **LESSOR'S REMEDIES CUMULATIVE.** The rights and remedies of the Lessor under this Lease are cumulative, and the use of one or more thereof shall not exclude or waive the right to the use of any other remedy.

17. **LESSEE TO INSURE POSSESSIONS.** Lessor is not an insurer of Lessee's person, Livestock, or possessions. Lessee agrees that all of Lessee's person and property on the Premises shall be at the risk of Lessee and that Lessee shall carry such insurance as Lessor deems necessary therefore. Accordingly, Lessee shall carry and provide to Lessor a liability insurance policy in the amount of no less than \$1,000,000.00 per occurrence. Lessee agrees that Lessor, Lessor's members, directors, officers, employees, agents and contractors shall not be liable for any damage to the person or property of Lessee or any other person occupying or visiting the Premises, sustained due to the condition of the Premises or any part thereof or any appurtenance thereof becoming out of repair (as example and not by way of limitation, damage caused by water, steam, sewerage, sewer gas or odors, heating, cooling, and ventilating equipment, bursting or leaking pipes, faucets and plumbing fixtures, mechanical breakdown or failure, electrical failure, security services or devices or mailboxes being misused or becoming temporarily out of order, and fire) or due to any act or neglect of any other person, or of neighboring property.

18. **BROKERAGE.** Lessee represents and warrants to Lessor that Lessee has not consulted, dealt or negotiated with any real estate broker, finder, salesperson or agent in connection with this Lease. Lessee hereby agrees to indemnify and hold harmless Lessor from any losses, damages, costs, liabilities or expenses, including reasonable costs and attorneys' fees (incurred in trial, appellate or post judgment proceedings) related to or arising out of any breach of this representation and warranty. This indemnity shall survive the expiration of the Term or any other termination of this Lease.

19. **CONDITION OF THE PROPERTY.** The Lessee is fully familiar with the physical condition of the Premises. The Lessor has made no representation of any nature in connection with condition of the Premises, including but not limited to its suitability for grazing and pasturing Livestock, and shall not be liable for any latent or patent defects thereon.

20. **NOTICES.** For all notices permitted to be sent pursuant to this Lease, any one of the following methods of delivery shall be sufficient: (i) United States certified mail, return receipt requested, which notice shall be conclusively presumed delivered three (3) business days following mailing; (ii) Federal Express or similar commercial overnight service, which notice shall be conclusively presumed delivered in accordance with the carrier's delivery records, but in no event later than three (3) business days following delivery to the carrier; (iii) by commercial courier with either a receipt of delivery signed by the addressee or a sworn affidavit executed by the courier that delivery was attempted but the addressee was absent or refused to sign or that delivery was refused; (iv) by telefacsimile, with written confirmation showing the date and time

of transmission and the number of pages transmitted, followed by mailing of the original by certified mail as set forth above; or (v) by electronic transmission as a digital file attached to an email, followed by mailing of the original by certified mail as set forth above. Notices shall be sent to the addresses shown at the beginning of this Lease.

21. **AGRICULTURAL CLASSIFICATION.** Lessee represents to Lessor that Lessee shall use the Premises in a manner consistent with the terms and conditions of this Lease at all times during the Term necessary for the Lessor to qualify for agricultural classification status under the applicable Cochise County requirements. Lessee represents and warrants to Lessor that as of the Commencement Date and throughout the Term of the Lease, Lessee shall comply with the requirements for the State of Arizona and Cochise County, Arizona to maintain the Premises in agricultural status for purposes of assessment for property taxes. Lessee acknowledges and agrees that the representations, warranties and requirements of this **Paragraph 21** are material conditions to Lessor consenting to and entering into this Lease and that the failure to comply with the same shall be a material breach of this Lease.

22. **ENTIRE AGREEMENT.** This Lease represents the entire agreement of the parties and may not be changed, altered, modified, or amended unless the same is in writing and is signed by all the parties hereto.

23. **TERMINATION.** Either party may cancel this Lease, for any reason, by giving at least thirty (30) days written notice to the other party at the address first set forth above.

IN WITNESS WHEREOF, the parties have executed this Grazing Lease effective as of the date and year written above.

LESSOR:

THE NATURE CONSERVANCY, a District
of Columbia non-profit corporation

By: _____

Its: _____

LESSEE:



that no act of Lessor, Lessor's agent in apparent acquiescence in, or failure to object to, any breach by Lessee of any other terms, covenants, conditions or agreements in this Lease shall not act as a bar to or waiver Lessor's right to thereafter insist upon the complete performance of all such terms, covenants, conditions and agreements herein contained.

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IN WITNESS WHEREOF, the parties have executed this Grazing Lease effective as of the date and year written above.

LESSOR:

LESSEE:

THE NATURE CONSERVANCY, a District
of Columbia non-profit corporation

By: 

Its: Sonja Stoppel

Director of Finance & Operations

EXHIBIT A

DESCRIPTION OF LEASED PREMISES

All that real property located in the County of Cochise, State of Arizona more particularly described as follows:

PARCEL I:

The Southeast quarter of Section 13, Township 22 South, Range 21 East of the Gila and Salt River Base and Meridian, Cochise County, Arizona;
EXCEPT 1/16th of all oil, gas, other hydrocarbon substances or any other minerals and rights as set forth and reserved in Patent recorded in Instrument No. 9109-18022.

PARCEL II:

The Southwest quarter of Section 13, Township 22 South, Range 21 East of the Gila and Salt River Base and Meridian, Cochise County, Arizona.
EXCEPT all oil and gas as reserved in Patents from the United States of America.

PARCEL III:

The Southeast quarter of Section 14, Township 22 South, Range 21 East of the Gila and Salt River Base and Meridian, Cochise County, Arizona.
EXCEPT all oil and gas as reserved in the Patents from the United States of America.

PARCEL IV:

The East half of Section 23, Township 22 South, Range 21 East of the Gila and Salt River Base and Meridian, Cochise County, Arizona.
EXCEPT all oil and gas as reserved in the Patents from the United States of America.

PARCEL V:

All of Section 24, Township 22 South, Range 21 East of the Gila and Salt River Base and Meridian, Cochise County, Arizona.
EXCEPT all oil and gas as reserved in the Patents from the United States of America.

PARCEL VI:

Lot 1, Section 7, Township 22 South, Range 22 East of the Gila and Salt River Base and Meridian, Cochise County, Arizona.
EXCEPT all oil and gas as reserved in the Patents from the United States of America.

PARCEL VII:

Lots 1, 2, 3, and 4 of Section 18, Township 22 South, Range 22 East of the Gila and Salt River Base and Meridian, Cochise County, Arizona.
EXCEPT all oil and gas as reserved in the Patents from the United States of America.

PARCEL VIII:

Lots 1, 2, 3, and 4 and the West half of the West half of Section 19, Township 22 South, Range 22 East of the Gila and Salt River Base and Meridian, Cochise County, Arizona.
EXCEPT all oil and gas as reserved in the Patents from the United States of America.

