

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 $26^{\circ}46'36''$ to a point of tangency;

Thence North $34^{\circ}16'26''$ East a distance of 868.80 feet along said center line to an angle point;

Thence North $34^{\circ}11'52''$ 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;

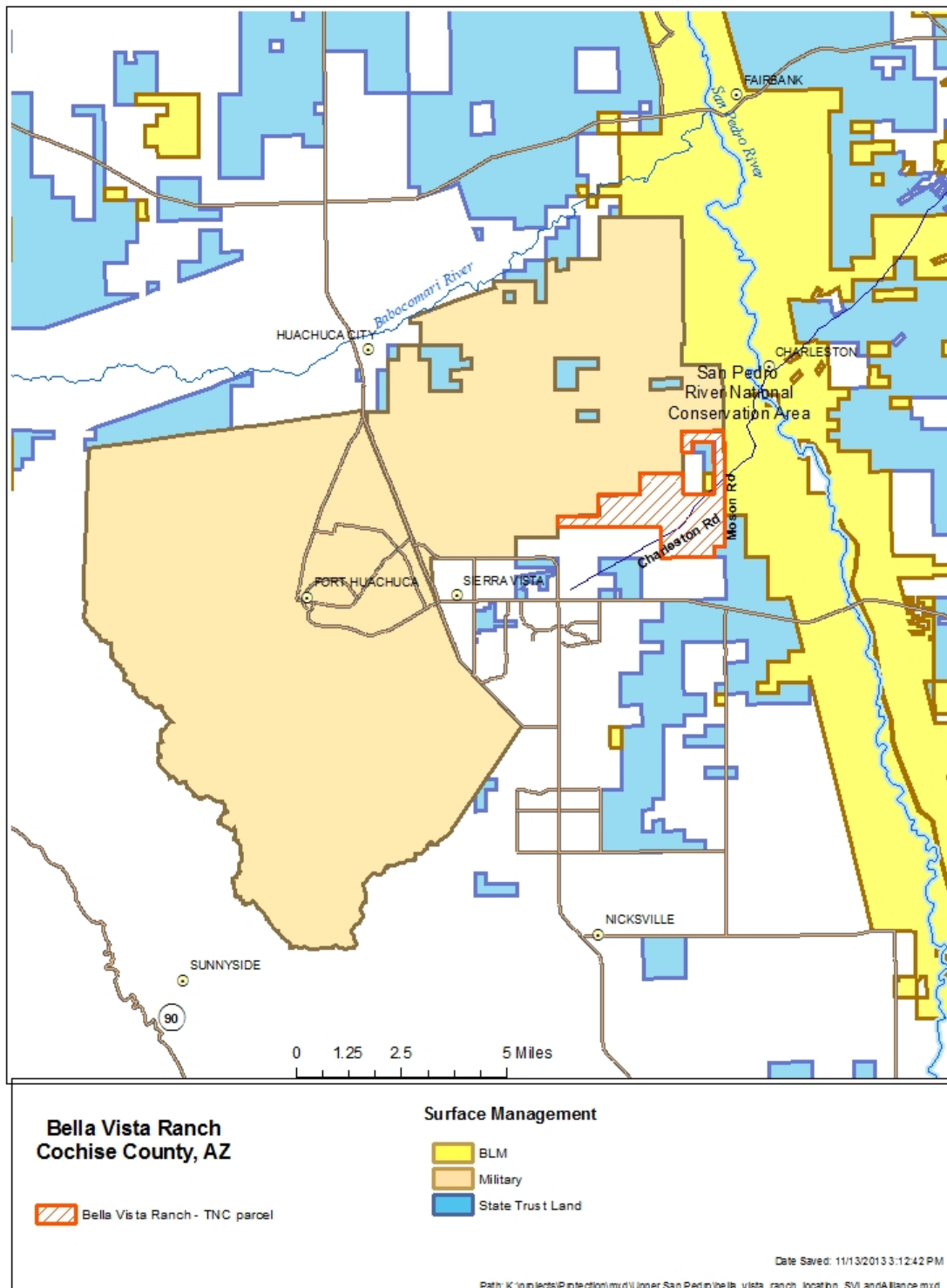
Thence North $46^{\circ}37'43''$ East a distance of 2,556.50 feet along said center line to an angle point;

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
Maps of the Property



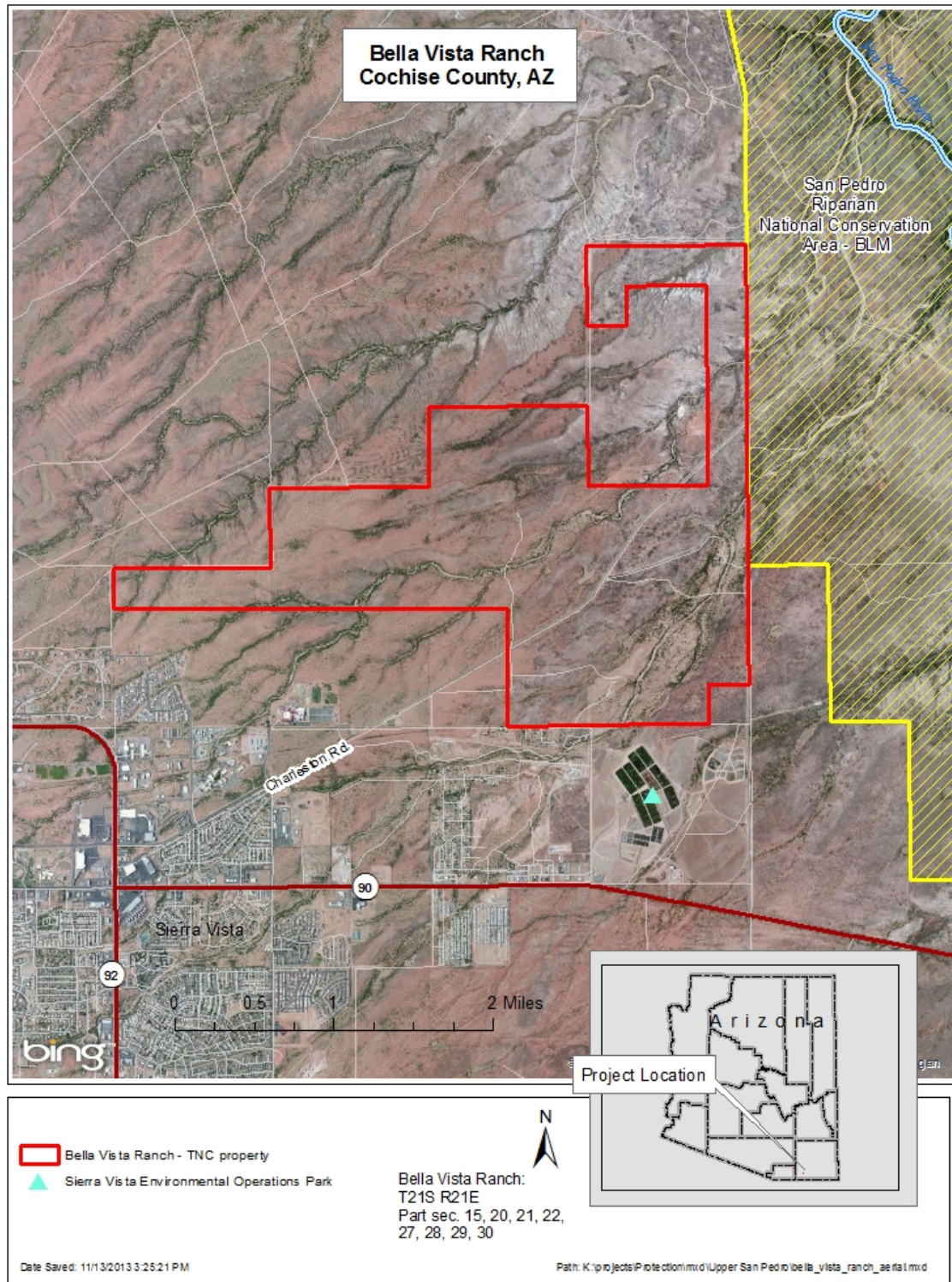


Exhibit C
Form of Conservation Easement

[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 irretrievably destructive of the Conservation Values of the Property, and provided further that the proposed mining or extraction will not substantially diminish or impair the Conservation Values of the Property. No extraction permitted pursuant to this paragraph shall occur without prior written notice to Grantee, which notice shall include a description of the type of extraction, the areas within which such extraction shall occur, and the anticipated impact thereof. 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

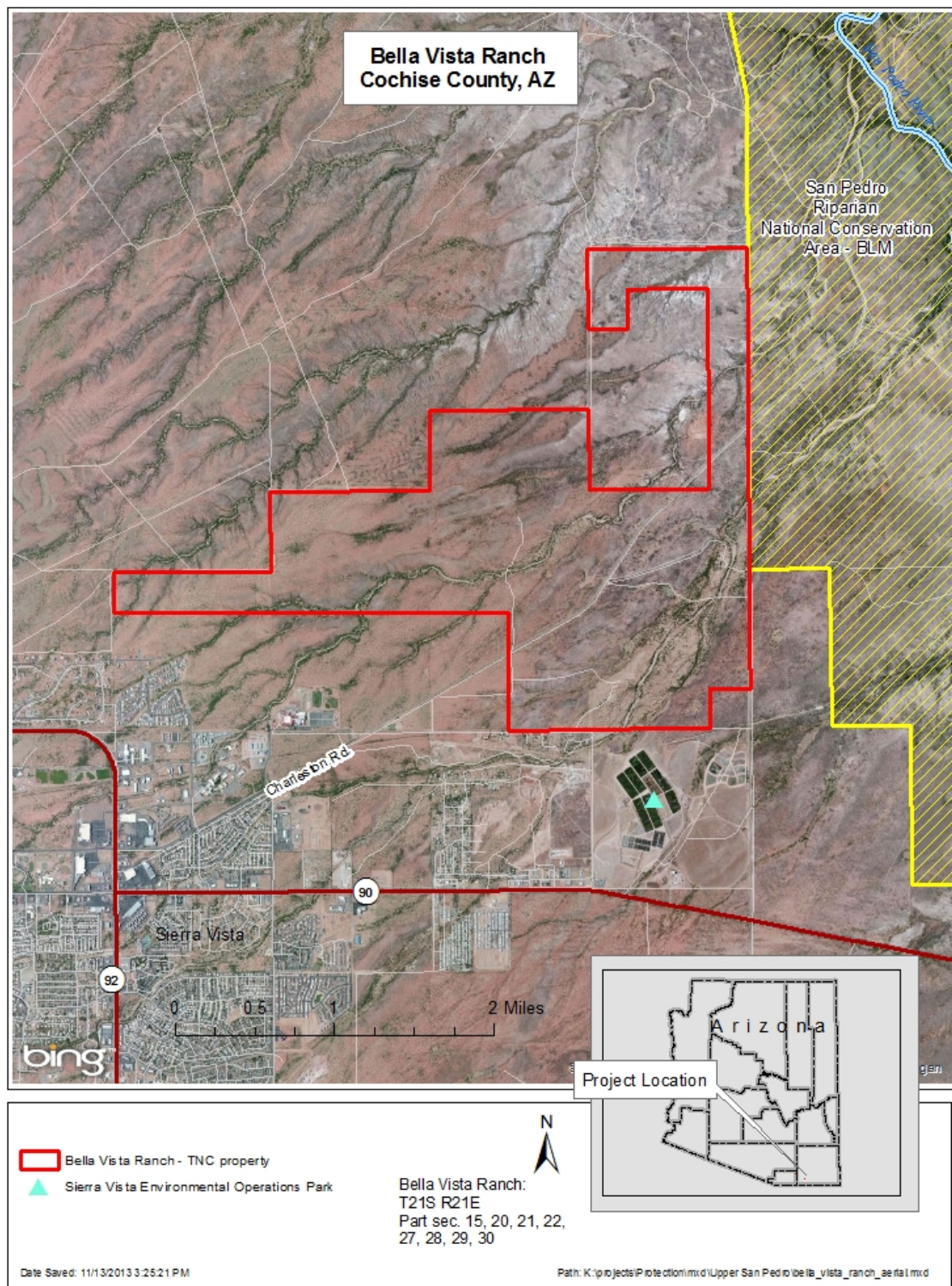


EXHIBIT C
ACKNOWLEDGMENT OF EASEMENT DOCUMENTATION REPORT

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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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 $26^{\circ}46'36''$ to a point of tangency;

Thence North $34^{\circ}16'26''$ East a distance of 868.80 feet along said center line to an angle point;

Thence North $34^{\circ}11'52''$ 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 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 – “NE¼ SE¼ 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 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, 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: _____