

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 FLOOD CONTROL DISTRICT, a political subdivision of the State of Arizona, hereinafter referred to as “COUNTY.”

RECITALS:

1. TNC is a party to Cooperative Agreement W911SR-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 104 acres, more or less, more particularly described in **Exhibit A** to this Agreement and shown generally on the map attached as **Exhibit B** (the “Property”).
 - B. All of TNC’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 to the extent TNC has the right and authority to transfer any of the interests in the above.
3. Cochise County is a party to Cooperative Agreement W9124J-15-2-0001 (“COUNTY Cooperative Agreement”) between Cochise County and the U.S. Army Mission and Installation Contracting Command.
4. Pursuant to the TNC Cooperative Agreement, TNC received the Notice to Proceed from the U.S. Army Mission and Installation Contracting Command which authorized TNC to transfer fee title to the Property to COUNTY, subject to a conservation easement to be held by TNC in the 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 convey 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 property uses including development and construction, subdivision and other mutually agreed upon terms for any Flood Control and Recharge Uses.
 - b. Subject to such easements, restrictions and other exceptions of record set forth in that title commitment, No. 90201799 as may be amended, issued by Pioneer Title Agency prepared under the direction of 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 TNC and the COUNTY (the “Closing”), but no later than **June 28, 2019** (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 quitclaim 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**. 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.
 - a. COUNTY waives any and all requirements, if any, under ARS 33-422 entitled “Land divisions; recording; disclosure affidavit” and ARS 11-809 entitled “Review of land divisions, definitions.”
6. After closing, COUNTY shall execute all necessary forms to affect the transfer of ownership of well registrations connected with the Property. 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.
 - a. The Property is subject to an Agreement for Road Maintenance recorded on September 3, 2004 as Document No. 0505-16421 and noted as Exception 14 in the Title Commitment referenced in Paragraph 1.b above. Upon TNC’s acquisition of the Property, its due diligence research indicated that the annual dues from 2011 through 2018 were not paid by the previous owner. TNC collected \$1,200.00 (\$150.00 per year) when it acquired the Property for road maintenance annual dues that have accrued during this period. TNC shall remit to COUNTY \$1,200.00 at closing to represent annual dues owed from 2011 through 2018 and will pay a prorated amount of the \$150.00 annual dues for 2019 in the

manner described above in the event a request for payment is made under the above-referenced agreement.

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 FLOOD CONTROL DISTRICT, a political subdivision of the State of Arizona:

Peggy Judd
Chair, Flood Control District

Date

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

Patrick J. Graham
State Director - Arizona

Date

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:

That portion of the SAN IGNACIO DEL BABOCOMARI Private Land Grant, situated in Township 20 South, Range 20 East of the Gila and Salt River Base and Meridian, Cochise County Arizona, being a portion of Parcel 18, according to Book 23 of Surveys, page 89, records of Cochise County, Arizona, described as follows:

BEGINNING at a General Land Office (GLO) Corner No. 1 of said Land Grant as shown on said Record of Survey recorded in Book 23 of Surveys, page 89, records of Cochise County, Arizona;

THENCE South 71°10'50" West, along the Southerly line of said Land Grant, a distance of 2,401.37 feet to a GLO stone marking the 1-1/2 mile marker of said Land Grant;

THENCE South 71°08'49" West continuing along said Southerly line, a distance of 423.46 feet;

THENCE North 00°00'00" West, a distance of 2,213.74 feet;

THENCE North 82°11'26" East, a distance of 1,434.95 feet;

THENCE South 10°28'26" East, a distance of 298.12 feet;

THENCE North 79°31'34" East, a distance of 752.62 feet to the Easterly line of said Land Grant;

THENCE South 18°51'51" East (basis of bearings), along said Easterly line, a distance of 1,179.17 feet to a GLO stone marking the 1 mile marker of said Land Grant;

THENCE South 18°47'19" East, continuing along said Easterly line of said Land Grant, a distance of 237.73 feet to the POINT OF BEGINNING.

EXCEPT any gold, silver or quicksilver mines or minerals of the same within the boundaries of the Grant as reserved in Patent from United States of America.

PARCEL II:

An easement for ingress, egress and utilities over the North 30.00 feet of following described property:

That portion of the SAN IGNACIO DEL BABOCOMARI Private Land Grant, situated in Township 20 South, Range 20 East of the Gila and Salt River Base and Meridian, Cochise County Arizona, being a portion of Parcel 18, according to Book 23 of Surveys, page 89, records of Cochise County, Arizona, described as follows:

COMMENCING at a GLO corner No. 1 of said Land Grant;

THENCE South 71° 10' 50" West a distance of 2,401.37 feet to Mile Marker 1-1/2;

THENCE South 71° 08' 49" West a distance of 423.46 feet to the POINT OF BEGINNING;

THENCE North a distance of 2,213.74 feet to a point;
THENCE South 82° 11' 26" West 1,611.70 feet to a point on the West line of Parcel 18;
THENCE South 00° 00' 00" West, along the West line of Parcel 18 a distance of 2,540.60 to the Southwest corner of said Parcel 18;
THENCE North 71° 08' 49" East 1,690.43 feet to the POINT OF BEGINNING;

EXCEPT any gold, silver or quicksilver mines or minerals of the same within the boundaries of the Grant as reserved in Patent from United States of America.

Exhibit B Maps of the Property

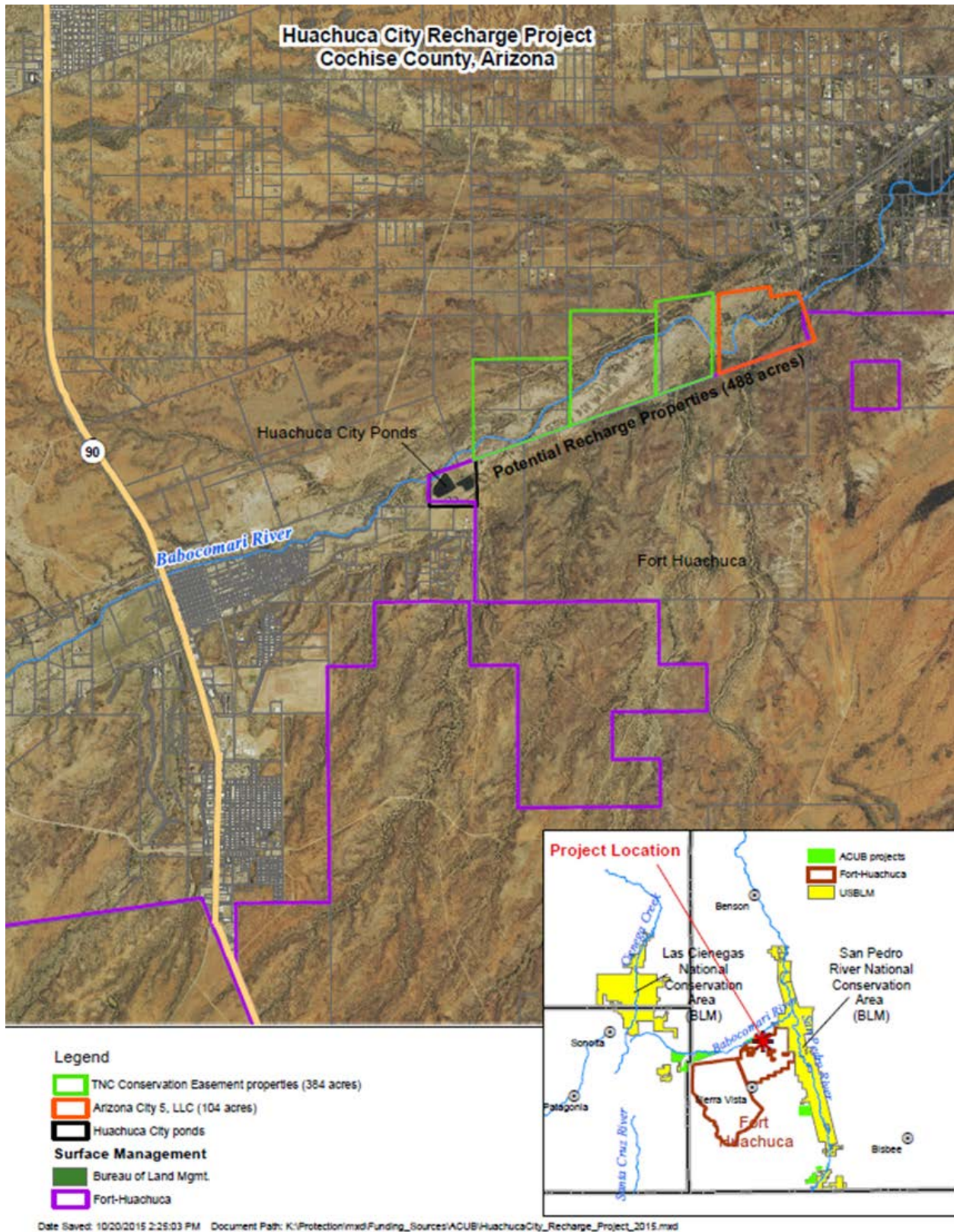


Exhibit C
Form of Conservation Easement

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

RECORD AND RETURN TO:
The Nature Conservancy
Western Resource Office
2424 Spruce Street, Suite 100
Boulder, CO 80302
Attention: Legal Department

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

**CONSERVATION EASEMENT
Huachuca Mountains (Arizona City 5) AZ**

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 (THE "ACUB AGREEMENT"). 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.

THIS CONSERVATION EASEMENT ("**Conservation Easement**" or "**Easement**") is granted and accepted by COCHISE COUNTY FLOOD CONTROL DISTRICT, a political subdivision of the State of Arizona ("Grantor"), whose address is 1415 Melody Lane, Building G, Bisbee, Arizona 85603, and THE NATURE CONSERVANCY, a District of Columbia nonprofit corporation, whose principal address is 4245 North Fairfax Drive, Suite. 100, Arlington, Virginia 22203-1606 and doing business in Arizona at its Tucson Conservation Center located at 1510 E. Fort Lowell Rd., Tucson, AZ 85719 ("Grantee").

Exhibits to this Conservation Easement include the following:

- Exhibit A -- Property Description
- Exhibit B – Map of Property Description
- Exhibit C –Wells

RECITALS

- A. PROPERTY.** Grantor is the owner in fee simple of the property legally described in **Exhibit A** which consists of approximately 104 acres located in Cochise County, Arizona and further graphically depicted on the map included in the attached **Exhibit B** (the **Property**). For the purposes of this Conservation Easement the Property includes any water, water rights and wells beneficially used or conditionally decreed for use on the land described in **Exhibit A** that are owned by the Grantor. The water and/or water rights include surface water and groundwater, of any legal character whatsoever, including, but not limited to, the wells specifically described on **Exhibit C** attached hereto.
- B. MISSION.** The mission of The Nature Conservancy is to conserve the lands and waters on which all life depends.
- C. QUALIFIED ORGANIZATION.** Grantee is a "qualified organization" as that term is defined in 26 U.S.C. § 170(h)(3) and applicable regulations.

- D. AUTHORIZING STATUTE.** The State of Arizona has authorized the creation of conservation easements pursuant to the Arizona Conservation Easement Act, A.R.S. §§ 33-271 to 33-276, as amended (the “Act”), and Grantor and Grantee wish to avail themselves of the provisions of that law without intending that the existence of this Conservation Easement be dependent on the continuing existence of such law.
- E. THIRD PARTY INTERESTS.** The U.S. Army through Fort Huachuca is a third party in interest to this transaction.
- F. WHOLE SYSTEM.** Grantor and Grantee have identified the San Pedro River Basin as a significant whole system wherein the health of the system and the residents of its surrounding area are inextricably linked to the health of its tributaries, including the Babocomari River, surrounding uplands, subsurface flows, and aquifers. The Property is located within the San Pedro River Basin Whole System and this Conservation Easement will protect multiple elements of this whole system.
- G. THE NATURE CONSERVANCY’S CONSERVATION PRACTICES.** Grantee’s conservation goals include enhancing river flows in high priority reaches of the Lower Colorado, Verde, San Pedro, and Bill Williams Rivers and assisting in design and management of water recharge projects and other measures to increase flow on the San Pedro River. Furthermore, Grantee’s key conservation strategy in this geography is to develop and promote new water management policies and practices that offer flexibility to managers in meeting economic, social and environmental outcomes. Additionally, Grantee has identified maintaining unfragmented landscapes and ensuring connectivity as a key goal in priority wildlife corridors, including the Babocomari River. This Conservation Easement seeks to preserve and protect the ecological and hydrologic values on and downstream of the Property, by preventing incompatible development and unsustainable groundwater withdrawal, and provide the flexibility to develop and implement new conservation strategies including but not limited to groundwater protection and recharge measures.
- H. CURRENT USE OF THE PROPERTY.** The Property is currently vacant and undeveloped, providing ecological services including, but not limited to, wildlife habitat and landscape connectivity, and it is in a strategic location for protecting and recharging the groundwater aquifer which supports riparian and aquatic habitats in the San Pedro River system. The Property and surrounding lands are rural in character and have historically been, and will continue to be, used for ranching, agriculture, open space, and recreational uses. The area is one of the most important in Cochise County from the standpoint of open space, biological diversity, beauty and wildlife habitat as recognized in Cochise County’s *Babocomari Area Plan* (2007). Additionally, the property lies in a priority buffer area for Fort Huachuca, as it is located within low-altitude training airspace, known as R-2303; it is within the Fort’s electronic test range; and, it lies one mile north of the Hubbard Assault Strip on the Fort’s East Range. This Conservation Easement precludes incompatible development, new sources of electro-magnetic radiation and night-time light unless necessary for a Recharge Use (defined below) and is in conformance with Cochise County’s Light Pollution Code. The Conservation Values (defined below) of the Property have not been and are not likely to be adversely affected to any substantial extent by continuing to allow the uses of the Property that presently exist or which are authorized under this Conservation Easement. Also the Conservation Values of the Property have not been and are not likely to be adversely affected to any substantial extent by limited development which is authorized under this Conservation Easement.

NOW THEREFORE, for and in consideration of good and valuable consideration, the receipt whereof is hereby acknowledged at and before the sealing and delivery of this Conservation Easement,

Grantor does hereby give, grant and convey to Grantee a Conservation Easement in gross on, over, across, under and above the Property and the right in perpetuity to restrict the use of the Property of the nature and character as set forth below.

1. PURPOSE. The purpose of this Conservation Easement is to preserve and protect in perpetuity the Conservation Values (defined below) (the Conservation Purpose). The Property is a natural area that consists of “a relatively natural habitat of fish, wildlife, or plants, or similar ecosystem,” as that phrase is used in 26 U.S.C. § 170(h)(4)(A)(ii) and applicable regulations. Specifically the Property includes an approximately 0.5-mile stretch and adjacent flood plains of the Babocomari River, the largest tributary of the Upper San Pedro River. The Babocomari River supports several aquatic and riparian endangered species, which are shared with the San Pedro River, including the Gila chub, Gila topminnow, Huachuca water umbel, Chiricahua leopard frog, and yellow-billed cuckoo. The globally-rare (and groundwater dependent) Fremont cottonwood-Goodding willow riparian forest and the surrounding semi-desert grassland uplands present on the Property provide important nesting habitat for numerous neotropical migratory and resident birds, and riparian-dependent conservation targets. The Property is located in a priority wildlife corridor connecting upland areas in the Huachuca Mountains, Canelo Hills, and Mustang Mountains to the San Pedro River. Additionally, the property lies to the east and directly downstream of three contiguous tracts that were previously protected by conservation easements and extends protection to cover almost 500 acres within this priority corridor. Groundwater protection and recharge measures at this Property have the potential to not only influence water availability within the Property, but also to protect and enhance groundwater dependent riparian communities along the Babocomari and San Pedro Rivers downstream.

Additionally, the parties specifically acknowledge and understand that Grantor intends to use a portion of the Property for Groundwater Protection 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 protect and support the biodiversity of the area. For purposes of this Easement the term “Groundwater Protection and Recharge Uses” shall mean the objective of sustaining flows in the Babocomari River and thus the San Pedro River, by precluding significant groundwater pumping within this hydrologically-sensitive Property, removing non-native phreatophytes, and/or replenishing groundwater storage through the possible development of stormwater capture and/or effluent recharge projects. Additional sources of water for recharge may also be acceptable to enhance conservation values, provided they are acceptable to Grantee.

The attributes of the Property described in this section are collectively referred to in this Conservation Easement as the **Conservation Values**.

2. EASEMENT DOCUMENTATION REPORT. The parties acknowledge that an **Easement Documentation Report** has been prepared by Grantee and approved in writing by Grantor and Grantee. The report contains: (a) an accurate representation of the natural resources and physical condition of the Property at the time of this conveyance, (b) a description of the current and historical uses of the Property, and (c) a statement signed by the Grantor and a representative of Grantee as required by Treasury Regulations §1.170A-14(g)(5)(i). The report also documents the nature and extent of historic use of water and/or water rights on the Property, if any. The report may be used to determine compliance with, and to enforce, the terms of this Conservation Easement; however, the parties are not precluded from using other relevant evidence or information to assist in that determination or for enforcement of this Conservation Easement. In case of any conflict or inconsistency between the terms of the Conservation Easement and the report, the terms of this Conservation Easement shall prevail. A copy of the report is on file with Grantor and Grantee at their respective addresses for notices set forth below. The Grantee shall provide a copy of the report to the Grantor’s successors in title upon written request.

3. **PROPERTY USES.** The following uses and practices by Grantor are not an exhaustive recital of uses and practices that are permitted, limited and/or prohibited on the Property. Certain of these uses and practices are subject to specified conditions or to the requirement of and procedures for prior approval by Grantee and procedures for such prior approval are provided below. Except as prohibited or otherwise limited by this section 3, Grantor reserves the right to use and enjoy the Property in a manner which is consistent with the Conservation Purpose and protection of the Conservation Values of this Conservation Easement.

3.1 **Approval Process.** Grantor and Grantee agree that they will work together collaboratively and in good faith to support appropriate activities consistent with the Permitted Uses of the Property by Grantor while also protecting the Conservation Values of the Property. Activities consistent with Grantor's Permitted Uses do not require prior written approval, however Grantor will notify Grantee of the planned activities before starting the activity. For any activity outside of the Permitted Uses, where the Grantee's approval is required for that activity prior to Grantor engaging in the activity, Grantor's shall submit a written request for approval that contains detailed information regarding the proposed activity, including location, design, materials or equipment to be used, dates and duration, and any other relevant information. Such a request shall be delivered to Grantee at least sixty (60) days prior to the anticipated start date of such activity. Grantee agrees to use reasonable diligence to respond to the request within sixty (60) days and further agrees that such approval will not be unreasonably withheld. A decision by Grantee to disapprove must be based on Grantee's determination that the proposed activity may affect the Conservation Values of the Property.

3.2 **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 follows:

(a) Constructing and maintaining structures and other improvements relating to the Groundwater Protection and Recharge Uses, including but not limited to one or more basins or other water conveyance, storage, sewage treatment or recharge facilities that would result in the enhanced infiltration and recharge (the "Permitted Uses") are permitted, subject to submission of plans and specifications to Grantee for review and comment and mutually agreed upon between the parties. Grantor and Grantee acknowledge and understand that the Permitted Uses will require the completion 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 Grantor might also partner with the Town of Huachuca City, Fort Huachuca, or other entities to convey accelerated runoff and/or treated effluent from developed areas to the Property, if water quality standards are met for recharge facilities. No groundwater or stormwater will be used for offsite consumptive purposes. The portion of the Property that could ultimately be used for Permitted Uses is also not known. Because the structures and other improvements relating to Permitted 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 Permitted Uses.

3.3 **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.

3.4 Livestock Management. Pasturing, grazing, feeding, and care of horses, and cattle and/or other livestock by Grantor and the leasing or pasturing of livestock owned by others may be conducted using best management practices documented in a Stewardship and Grazing Management Plan which shall be developed by the Grantor, submitted to Grantee for review and comment, and mutually agreed upon between the parties.

a. The Stewardship and Grazing Management Plan shall include a seasonal grazing system that identifies stocking rates, season of use, frequency of use, kind or mix of animals, and related necessary infrastructure; identify best management practices for livestock management and water quality; describe food supplements (such as hay or other) that may be placed on the Property; and must maintain and/or enhance riparian conditions and Conservation Values on the Property.

b. Grantor's activities may include those normally incident to range management and enhancement. Such activity may include controlled burns, habitat restoration, seasonal confining of livestock into an area for limited durations for range management, and other land management activities that may be appropriate and as described in the Stewardship and Grazing Management Plan. All Stewardship Activities on the Property shall be carried out in compliance with all applicable laws, rules, and regulations and in compliance with the Purpose and terms of this Easement.

3.5 Recreational & Educational Use. Utilizing the Property for non-commercial, non-motorized recreational uses including hiking, horseback riding, wildlife observation, nature photography, educational field trips, picnicking and hunting that do not materially negatively affect the Conservation Values of the Property is permitted. In addition, the Grantor may make the Property accessible to the public for the educational purpose of demonstrating and showcasing the Permitted Uses, as well as other Conservation Values. With prior approval of Grantee, Grantor may build such structures and improvements, including unpaved trails for non-motorized use, as are necessary to these purposes so long as they do not compromise Conservation Values.

3.6 Removal of Native Vegetation. Cutting, removing, or destruction of native vegetation is prohibited except as follows:

(a) The selective harvesting of native trees and vegetation is permitted for the following purposes: controlling insects and disease; protecting persons or property from the hazards of falling trees or branches or wildfire; constructing the Buildings, Structures, and roads authorized in this Conservation Easement. These conditions apply to both living and standing dead trees and vegetation. Subject to Grantee's prior written approval, if Grantor desires to sell products as a result of selective harvesting of trees and vegetation permitted herein, such activity shall not be deemed a commercial activity prohibited by this Conservation Easement.

(b) Cutting, removing, burning, or destruction of native vegetation is permitted to the extent necessary to allow for uses and activities as needed for Permitted Uses.

3.7 Changing the Topography of the Property. Changing the topography of the Property by placing on it or removing from it any soil, dredging spoils, land fill, or other material, is prohibited except as follows:

(a) Construction of stockponds or in furtherance of Permitted Uses.

3.8 Fences. Maintenance, removal, repair, and, if destroyed, reconstruction of existing fencing, as documented in the Easement Documentation Report, and the construction of new fences to prevent trespass or to facilitate livestock management is permitted. It is the responsibility of the Grantor to limit trespass uses, provided that new or reconstructed boundary or pasture-division fences shall not unduly restrict or exclude wildlife use of the Property. Any new or rebuilt fencing shall be designed and constructed following applicable legal standards and minimizes the adverse effect of the fencing on wildlife or on the natural features of the Property.

3.9 Roads. No new roads may be constructed on the property except those necessary for uses permitted by this Easement as mutually agreed upon between the parties. 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 is permitted when reasonably necessary to maintain the use thereof.

3.10 Motor vehicles. Using motor vehicles upon and across the Property except as reasonably necessary for Permitted Uses is prohibited except on the roads and trails described in the Easement Documentation Report or otherwise determined by mutual agreement between the parties. Recreational off-road vehicle use is not permitted.

3.11 Trash. The dumping or accumulation of any kind of trash or refuse on the Property, other than trash and refuse produced on the Property as result of Permitted Uses, 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.

3.12 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.

3.13 Agricultural Chemicals. Application of agrichemicals, including but not limited to biocides, herbicides, defoliant, chemical fertilizers, or other chemicals is prohibited except as follows:

(a) Using agrichemicals, but only in those amounts and with the frequency of application reasonably necessary for Permitted Uses; natural resource management associated with livestock grazing, recreational, and educational uses; and, other property uses permitted in this Easement. All agrichemical use shall be in accordance with label directions and in compliance with applicable federal, state, and local laws, regulations, and requirements.

(b) Application of herbicides, defoliant or other chemicals for the control of noxious weeds, as required by Arizona state law, and for the control of other invasive exotic plant species is permitted; provided that herbicides, defoliant or other chemicals may be used only in those amounts and with a frequency of application that constitute the minimum necessary for control and shall be applied consistent with labeled instructions and all applicable governmental regulations.

(c) Regardless of anything to the contrary, aerial spraying of biocides, herbicides, defoliant, chemical fertilizers, or other agrichemicals is permitted only with the prior written approval of Grantee.

3.14 Biological Agents. Use of biological weed and insect control agents is permitted, subject to prior written approval by Grantee, except that the following biological agents are deemed approved in advance by Grantee:

- Biological agents for fly control (such as Fly Eliminators from Arbico Organics), provided that such agents are native species to this region.
- Bti (*Bacillus thuringiensis israelensis*) (such as Mosquito Dunks) to control mosquito larvae.

Grantor and Grantee acknowledge and agree that the list of permissible biological agents may be amended, upon mutual agreement of the parties.

3.15 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 Permitted Uses.

3.16 Hazardous Materials. The release of or other disposal (such as by burying) of Hazardous Materials as defined in this Conservation Easement on the Property is prohibited. The storage of Hazardous Materials on the Property is also prohibited, except that storage and use of Hazardous Materials in limited quantities for purposes and uses permitted under this Conservation Easement shall be permitted in compliance with all laws.

3.17 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 permitted by this Conservation Easement shall not be deemed a prohibited commercial use.

3.18 Water Usage. Grantor may consumptively use water that is harvested from storm water or ground water for Permitted Uses, and non-irrigated agricultural use only; no commercial, industrial or residential use of water on the Property is permitted. The parties acknowledge the existence of a groundwater monitoring well on the Property and acknowledge that a well for the purpose of livestock management may be constructed, the size, location and other features of which shall be mutually agreed upon by the parties. Any export of water from the Property or streams traversing the Property is prohibited, except that export of water for Grantor's livestock management and stewardship activities on adjacent properties may be permitted with prior approval by Grantee.

3.19 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 more than 50 feet in height are prohibited.

3.20 Nonnative Plants. Intentional introduction of non-native plants is prohibited.

3.21 Nonnative Animal Species. Introduction or release of nonnative animal species is prohibited, except as permitted in section 3.3:

3.22 Impairment of Conservation Values. Subject to the foregoing, any use of the Property that materially impairs the Conservation Values of the Property is prohibited.

4. NOTICE AND APPROVAL REQUIREMENTS.

4.1 Notice. For activities for which Grantee's prior approval is not expressly required, Grantor hereby agrees to notify Grantee in writing fifteen (15) days before exercising any reserved or retained right under this Conservation Easement that may have an adverse impact on the Conservation Values (unless a different time period is otherwise expressly required in this Conservation Easement).

4.2 Approval. When Grantee's approval is required prior to Grantor engaging in any activity (or when Grantee's approval is required for any other purpose under this Conservation Easement), Grantor's request for approval shall be in writing and contain detailed information regarding the proposed activity, and Grantee's approval (if the request is approved) shall be in writing. Grantor's request shall be delivered to Grantee at least sixty (60) days prior to the anticipated start date of such activity. Grantee agrees to use reasonable diligence to respond to the request in writing within 60 days; however, approval shall not be deemed to have been given in the event Grantee fails to respond within 60 days, affirmative approval must be provided.

This section is only intended to request approval for activities which are expressly allowed in the Conservation Easement or are Permitted Uses but are subject to Grantee's approval or consent. It is not intended for any other purpose, including, without limitation, to request approval for activities that are expressly prohibited or activities for which an amendment of this Conservation Easement is needed.

5. GRANTEE'S RIGHTS. To accomplish the Conservation Purpose, the following rights are granted to Grantee (and Grantee's agents, representatives and invitees) by this Conservation Easement:

5.1 Right to Enforce. The right to preserve and protect the Conservation Values of the Property and enforce the terms of this Conservation Easement.

5.2 Right of Entry. The right to enter the Property at reasonable times for the purposes of: (a) inspecting the Property to determine if there is compliance with the terms of this Conservation Easement; (b) obtaining evidence for the purpose of seeking judicial enforcement of this Conservation Easement; (c) monitoring and research as described below; (d) posting of signage as described below; and (e) provided, however, that the foregoing rights of Grantee shall not relieve Grantor from any obligations to comply with the terms of this Conservation Easement or waive any of Grantee's rights or remedies to enforce this Conservation Easement against any violation.

Grantee agrees that entry will be done in a manner that will not interfere unreasonably with Grantor's Permitted Uses of the Property. Grantee also agrees to provide advance notice to Grantor prior to entering the Property, except in any case where immediate entry is necessary or desirable to prevent, terminate, or mitigate damage to, or the destruction of, the Conservation Values, or to prevent, terminate or mitigate a violation of the terms of this Conservation Easement. In the event Grantor elects to maintain gated, locked access to and through the Property, Grantor shall provide Grantee with keys for all such locks.

5.3 Monitoring and Research. The right, but not the obligation, to engage in ecological or hydrologic monitoring and research, including biological surveys, inventories of plant and wildlife populations, plant communities and natural habitats on the Property. Monitoring and research shall not

interfere with approved property management or Flood Control/Recharge projects by Grantor. Grantor shall cooperate with Grantee in establishing, at no expense to Grantor, a written Monitoring and Research Plan, if desired by Grantee.

5.4 Signage. The right to install and maintain, at Grantee's sole cost and expense, signage on the Property in order to indicate Grantee's participation and/or any of Grantee's public or private funding sources in the acquisition and maintenance of the Conservation Easement; provided, however, that the size, location, number, text, and design of the signage will be subject to the written agreement of Grantor, Grantee and any funding source, which agreement will not be unreasonably withheld, conditioned, or delayed.

5.5 Mineral Rights. As more specifically set forth in Subsection 3.15 of this Conservation Easement, the right, but not the obligation, to influence and control impacts to the surface of the Property from development of Minerals by third parties who, as of the effective date of this Conservation Easement, already own some or all of the Minerals located beneath the Property.

6. VIOLATION AND REMEDIES.

6.1 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.

6.2 Injunctive Relief. If Grantor fails to cure the violation within sixty (60) days after receipt of notice thereof from Grantee, or under circumstances where the violation cannot reasonably be cured within a sixty (60) day period, fails to begin curing the violation within the sixty (60) 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.

6.3 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 Sections 5.2 and 6.6 below, 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 18 with respect to any claims made against Grantee by any third party arising from a controlled burn by Grantor.

6.4 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.

6.5 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.

6.6 Emergency Enforcement. If Grantee, in its sole discretion, determines that circumstances require immediate action to prevent, terminate or mitigate significant damage to the Conservation Values of the Property, or to prevent, terminate or mitigate a violation of this Conservation Easement, the Grantee may pursue its remedies under this section without prior notice to Grantor and/or without waiting for the period provided for cure to expire.

6.7 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 Conservation Easement. Grantor agrees that Grantee's remedies at law for any violation of the terms of this Conservation Easement are inadequate and that Grantee shall be entitled to the injunctive relief described above, both prohibitive and mandatory, in addition to such other relief to which Grantee may be entitled, including without limitation: (a) specific performance of the terms of this Conservation Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies; and (b) the right to enter the Property to undertake any corrective action Grantee may elect to complete. 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.

6.8 Costs of Enforcement. If the court determines that Grantor has failed to comply with this Conservation Easement, Grantor shall reimburse Grantee for any reasonable costs associated with enforcement, including Grantee's staff time, costs of restoration, court costs and reasonable attorneys' fees, in addition to any other payments ordered by such court.

6.9 Waiver of Certain Defenses. Grantor hereby waives any defense of laches, estoppel or prescription with respect to any failure to act or any delay by Grantee in enforcing any restriction or exercising any rights under this Conservation Easement.

6.10 Natural Events. Nothing contained in this Conservation Easement shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the Property resulting from any natural event, natural cause, or natural disaster (collectively, **Natural Events(s)**) beyond Grantor's control, including, without limitation, weather, fire, flood, storm, infestation, natural deterioration, earth movement, climate change, or from any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such a Natural Event. Grantor shall notify Grantee of any Natural Event or acts taken in response to such a Natural Event that may adversely affect or interfere with the Purpose or Conservation Values, whether caused by the Natural Event or the Grantor's or a third party's acts or omissions in response to the Natural Event. If a Natural Event alters the Property, Grantor and Grantee will work together to identify restoration or rehabilitation activities and develop a restoration plan. Nothing in this subsection shall prohibit Grantee from bringing an action against Grantor for any violation of the terms of this Conservation Easement resulting from Grantor's negligence or intentional misconduct in response to the Natural Event.

6.11 Acts of Third Parties. Nothing contained in this Conservation Easement shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the Property resulting from (a) acts of third parties legally authorized to act by recorded instrument or other legally established rights to which this Easement is subject or (b) the wrongful acts of third parties other than Grantor's agents, employees, invitees or contractors (provided the Grantor has taken reasonable actions to prevent such third

parties from trespassing and from causing harm to the Property and has not authorized, consented to or participated in the acts of such third parties). Grantor shall notify Grantee of any act or occurrence that would adversely affect or interfere with the Conservation Purpose, whether caused by the Grantor's acts or omissions or by a third party or parties. In the event of a violation of this Conservation Easement caused by the wrongful acts of a third party, Grantor shall cooperate fully with Grantee in enforcement of this Conservation Easement, including but not limited to: gathering facts and information relevant to the violation; assigning its right of action to the Grantee; joining in any claim or legal action; and/or appointing the Grantee as its attorney-in-fact for purposes of enforcement, all at the election of the Grantee. In the event that such third party acts interfere with the Conservation Purpose and/or Conservation Values of this Conservation Easement, Grantor and Grantee will work together to identify restoration or rehabilitation activities and develop a restoration. This Subsection shall not be construed to relieve Grantor of the obligation to clean up garbage or materials dumped on the Property by third parties, to take all reasonable actions to prevent violations of the Conservation Easement by third parties, or to otherwise maintain the Property in a condition consistent with the Purpose of this Conservation Easement. Nothing in subparagraph (b) of this Subsection 6.10 shall prohibit Grantee from bringing an action against Grantor resulting from Grantor's failure to take reasonable actions to prevent violations of the Conservation Easement by third parties or from Grantor's authorization, consent, or participation in the wrongful acts of third parties resulting in violations of the Conservation Easement.

7. 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 on or near 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 the avoidance of development of the Property that can result in limitations on training and operations at Fort Huachuca and additional water usage in the area. The contingent rights set forth in Paragraphs 7.1 through 7.3 and Paragraph 12 protect the Army's interests in this transaction.

7.1 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.

7.2 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.

7.3 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.

8. COSTS 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, or the protection of Grantor, the public, or any third parties from risks relating to conditions on the Property. Grantor shall maintain adequate comprehensive general liability insurance coverage on the Property.

Grantor shall keep the Property free of any liens arising out of any work performed for, materials furnished to, or obligations incurred by Grantor.

9. **TAXES.** Grantor shall pay before delinquency all taxes, assessments, fees, and charges of whatever description levied on or assessed against the Property by competent authority (collectively **taxes**). Grantee may, at its discretion, pay any outstanding taxes or assessments and shall then be entitled to reimbursement by Grantor.

10. **ENVIRONMENTAL COMPLIANCE.** Grantor is solely responsible, and Grantee has no responsibility, for the operation of the Property or the monitoring of hazardous or other conditions thereon. Grantor covenants, represents, and warrants that, after investigation and to the best of their knowledge:

(a) Grantor and the Property are in compliance with, and shall remain in compliance with, all applicable Environmental Laws (as defined below). Grantor has no actual knowledge of any use or release of Hazardous Materials (as defined below) on the Property that is in violation of any Environmental Law. Grantor has received no notices from any governmental authority of any violation or alleged violation of, noncompliance or alleged noncompliance with, or any liability under any Environmental Law relating to the operations or conditions on the Property.

(b) **Environmental Laws** means any and all federal, state, local, or administrative agency statutes, regulations, rules, codes, ordinances or requirements of any governmental authority regulating or imposing standards of liability or standards of conduct (including common law) regarding air, water, solid waste, Hazardous Materials, petroleum products, worker and community right-to-know, hazard communication, radioactive material, resource protection, wetlands and watercourses, health protection and similar environmental health, safety, building and land use laws and regulations as may now or at any time hereafter be in effect.

(c) **Hazardous Materials** means any petroleum, petroleum products, fuel oil, waste oils, explosives, reactive materials, ignitable materials, corrosive materials, hazardous chemicals, hazardous wastes, hazardous substances, extremely hazardous substances, toxic substances, toxic chemicals, radioactive materials, infectious materials and any other element, compound, mixture, solution or substance that may pose a present or potential hazard to human health or the environment. The term "Hazardous Materials" shall also include related materials defined in the CERCLA (42 USC 9601 et seq.), and the Hazardous Materials Transportation Act (49 USC section 6901 et seq.), and in the regulations adopted and publications promulgated pursuant to them, and any other applicable federal, state, or local laws, ordinances, rules, or regulations now in effect or enacted after this date.

10.1 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.

10.2 **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.

10.3 **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").

11. ACCESS. Nothing contained in this Conservation Easement shall give or grant to the public a right to enter upon or to use the Property or any portion thereof. Grantor will undertake all reasonable actions to prevent the unlawful entry and trespass by persons whose activities might diminish or impair the Conservation Values.

12. TRANSFER OF EASEMENT. The parties recognize and agree that the benefits of this Conservation Easement are in gross and assignable.

12.1 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.

13. TRANSFER OF PROPERTY. As set forth below, Grantor agrees that a reference to this Conservation Easement will be inserted by Grantor in any subsequent deed or other legal instrument by which Grantor divests either the fee simple title or possessory interest in the Property, including without limitation a leasehold or mortgage interest. Grantor further agrees to notify Grantee of any pending transfer at least thirty (30) days in advance of transfer, a draft copy of the legal instrument, and to provide Grantee with a copy of any legal instrument affecting such transfer within thirty (30) days following its execution. The failure of Grantor to comply with this section shall not impair the validity of this Conservation Easement or limit its enforceability in any way. Any successor in interest of Grantor, by acceptance of a deed or other document purporting to convey an interest in the Property, shall be deemed to have consented to, reaffirmed and agreed to be bound by all of the terms, covenants, restrictions and conditions of this Conservation Easement.

14. PRESUMPTION AGAINST AMENDMENT. It is the parties' intention that this Conservation Easement will not be amended or modified. In the event of unforeseen circumstances or exceptional situations the Grantee may in its sole discretion consider an amendment or modification to this Conservation Easement, but in no event shall such amendment be made without compliance with Grantee's internal procedures and standards for such modification, and federal, state and local laws regarding the creation and amendment of conservation easements. No amendment shall be allowed that would adversely affect the qualifications of this Conservation Easement as a charitable gift (if applicable) or the status of Grantee under any applicable laws, including §170 (h) of the Internal Revenue Code or the laws of the State where the Property is located, or that would be inconsistent with the purpose of the Conservation Easement, diminish the Conservation Values or affect the Conservation Easement's perpetual duration. Any such amendment shall be signed by both parties, and shall be recorded in the official records of the county in which the Property is located.

15. EASEMENT VALUATION, EXTINGUISHMENT, TERMINATION, EMINENT DOMAIN.

15.1 Value of Easement and Proceeds. Grantor hereby agrees that at the time of the conveyance of this Conservation Easement, this Conservation Easement gives rise to a real property right, immediately vested in Grantee, with a fair market value that is at least equal to the proportionate value that this Conservation Easement, at that time, bears to the value of the Property as a whole at that time, which the parties have determined through an appraisal to be [REDACTED] %.

Accordingly, if this Conservation Easement is extinguished, terminated, or taken by eminent domain as described below, then prior to the payment of any expenses reasonably incurred by Grantee and Grantor in connection with such eminent domain action, Grantee on any sale, exchange or involuntary conversion of the Property shall be entitled to a portion of the proceeds at least equal to that proportionate value. Grantee's interest shall be valued at the greater of the following: (1) the proportionate value that the Conservation Easement at the time of the conveyance, bears to the value of the Property as a whole at that time, as described above; or (2) the proportionate value that this Conservation Easement at the time of termination, extinguishment or condemnation bears to the then value of the Property as a whole.

Grantee shall use any proceeds received in conjunction with this provision and the following provisions in a manner consistent with the Conservation Purpose of this Conservation Easement.

15.2 Extinguishment or Termination. This Conservation Easement may be released, terminated or otherwise extinguished, whether in whole or in part, only if (1) a court with jurisdiction determines a subsequent unexpected change in conditions surrounding the Property makes impossible or impractical the continued use of the Property for the Conservation Purpose of this Conservation Easement, and (2) any conditions or limitations imposed by federal and state law are also complied with. No loss of any or all of the Water Rights through injury or abandonment shall be considered a termination or extinguishment of all or any part of this Conservation Easement.

15.3 Eminent Domain. Whenever all or part of the Property is taken with authority to exercise eminent domain by public, corporate, or other authority so as to terminate or extinguish the restrictions imposed by or so as to make it impossible to fulfill the Conservation Purpose of this Conservation Easement, Grantor and Grantee shall join in appropriate actions and negotiations at the time of such taking to recover the full value of the taking and all incidental or direct damages resulting from the taking, which proceeds shall be divided in accordance with the value of Grantor's and Grantee's interests, as described above.

16. CHANGED CONDITIONS. In making this grant, Grantor has considered the possibility that uses prohibited by the terms of this Conservation Easement may become more economically valuable than Permitted Uses, and that neighboring properties may in the future be put entirely to such prohibited uses. In addition, the unprofitability of conducting or implementing any or all of the uses permitted under the terms of this Conservation Easement shall not impair the validity of this Conservation Easement or be considered grounds for its termination or extinguishment. It is the intent of both Grantor and Grantee that any such economic changes shall not be deemed to be changed conditions or a change of circumstances justifying the judicial termination, extinguishment or amendment of this Conservation Easement.

17. INTERPRETATION. This Conservation Easement shall be interpreted under the laws of the state or commonwealth in which the Property is located, resolving any ambiguities and questions of the validity of specific provisions so as to give maximum effect to its Conservation Purpose. No remedy or election given by any provision in this Conservation Easement shall be deemed exclusive unless so indicated, but it shall, wherever possible, be cumulative with all other remedies at law or in equity. The parties acknowledge that each party has reviewed and revised this Conservation Easement and that no rule of construction that ambiguities are to be resolved against the drafting party shall be employed in the interpretation of this Conservation Easement. In the event of any conflict between the provisions of this Conservation Easement and the provisions of any use and zoning restrictions of the state or county in which the Property is located, or any other governmental entity with jurisdiction, the more restrictive provisions shall apply.

18. INDEMNIFICATION; HOLD HARMLESS. Grantor hereby releases and agrees to hold harmless, indemnify, and defend Grantee and its members, directors, officers, attorneys, employees, agents, and contractors and its heirs, personal representatives, successors, volunteers and assigns each of them (collectively "Indemnified Parties") from and against any and all claims by persons or entities other than the parties hereto, including claims asserting liabilities, penalties, fines, charges, costs, losses, damages, expenses, causes of action, claims, demands, orders, judgments, or administrative actions, including, without limitation, reasonable attorneys' fees (collectively, "third party claims"), arising from: (1) injury to or the death of any person, or physical damage to any property, resulting from any act or omission of Grantor occurring on or about the Property including, but not limited to, any such third party claims made against Grantee by any third party arising from a controlled burn by Grantor referred to in Section 3.4 hereof; (2) Grantor's violation of, or failure to comply with, any state, federal, or local law, regulation, or requirement in any way affecting, involving, or relating to the Property; (3) the presence or release in, on, from, or about the Property, by act of Grantors or its agents, at any time, now or hereafter,

of any hazardous or toxic substance or pollutant regulated under state or federal law, except as contemplated or permitted hereunder. Grantor and Grantee agree that the purpose of the foregoing indemnity provision is to require the Grantor to bear the expense of the aforesaid third party claims made by a third party against the Grantee which arise solely because the Grantee has an interest in the Property as a result of this Easement. Nothing herein shall require that Grantor indemnify, defend or hold harmless any of the Indemnified Parties for any third party claims for injury, death, physical damage, property damage, personal injury or any other damage, cost, expense or liability caused by the acts, omissions or negligence of any Indemnified Parties, nor for any third party claims for injury, death, physical damage, property damage, personal injury or any other damage, cost, expense or liability caused by third parties, except Grantor's lessees or invitees, and not the fault of Grantor. Grantee shall at all times maintain commercial general liability insurance insuring Grantee for acts or omissions giving rise to personal injury or property damage.

19. TITLE. Grantor covenants, represents and warrants that Grantor is the sole owner and is seized of the Property in fee simple and has good right to grant and convey this Conservation Easement; that the Property is free and clear of any and all encumbrances, including but not limited to, any mortgages or deeds of trust not subordinated to this Conservation Easement, and that Grantee shall have the use of and enjoy all of the benefits derived from and arising out of this Conservation Easement; and that there is no pending or threatened litigation in any way affecting, involving or relating to the Property.

20. NOTICES. Any notices required by this Conservation Easement shall be in writing and shall be served by any of the following means: (i) by delivery in person, in which case notice shall be deemed given upon delivery (or refusal of delivery), (ii) by certified U.S. mail, return receipt requested, postage prepaid, in which case notice shall be deemed given upon the earlier of the date of first attempted delivery or the third day after deposit in the mail, or (iii) by reputable commercial courier service, charges prepaid, in which case notice shall be deemed given upon the earlier of the date of first attempted delivery or the third day after deposit with the courier service. All notices shall be sent to the following addresses, or such other address as either party may hereafter specify by written notice to the other:

To Grantor:

County Engineer
Cochise County
1415 Melody Lane
Bisbee, AZ 85603

To Grantee:

Legal Department
The Nature Conservancy
2424 Spruce Street
Boulder, CO 80302

21. DENSITY. Neither the Property nor any portion of it shall be included as part of the gross area of other property not subject to this Conservation Easement for the purposes of determining density, lot coverage or open space requirements under otherwise applicable laws, regulations or ordinances controlling land use and building density. No development rights that have been encumbered or extinguished by this Conservation Easement shall be transferred to any other lands pursuant to a transferable development rights scheme, cluster development arrangement or otherwise.

22. COMPLIANCE WITH APPLICABLE LAWS. Grantor shall comply with all Federal, state, and/or local statutes, laws, ordinances, rules, regulations, codes, orders, guidelines, or other restrictions, or requirements applicable to the Property. Nothing herein shall be construed to allow Grantor to engage in any activity which is restricted or prohibited by Applicable Laws.

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

24. PARTIES. Every provision of this Conservation Easement that applies to Grantor or Grantee shall also apply to their respective heirs, executors, administrators, assigns, and all other successors as their interest may appear. A person's or entity's obligation hereunder as Grantor, or successor owner of the Property, shall be joint and several, and will cease, if and when such person or entity ceases to have any present, partial, contingent, collateral, or future interest in the Property (or pertinent portion thereof), but only to the extent that the Property (or relevant portion thereof) is then in compliance herewith. Responsibility of owners for breaches of this Conservation Easement that occur prior to transfer of title will survive such transfer, provided that the new owner shall also be responsible for bringing the Property into compliance.

25. RE-RECORDING. In order to ensure the perpetual enforceability of the Conservation Easement, Grantee is authorized to re-record this instrument or any other appropriate notice or instrument; for such purpose, Grantor appoints Grantee as Grantor's attorney-in-fact to execute, acknowledge and deliver any necessary instrument on Grantor's behalf. Without limiting the foregoing, Grantor agrees to execute any such instruments upon request.

26. SUBSEQUENT LIENS ON PROPERTY. No provision of this Conservation Easement should be construed as impairing the ability of Grantor to use this Property as collateral for subsequent borrowing. Any mortgage or lien arising from a borrowing subsequent to the granting of this Conservation Easement is subordinate to this Conservation Easement. Said subsequent mortgage or lien shall not violate the terms and conditions of this Conservation Easement and may not be interpreted to allow anything that is prohibited in this Conservation Easement including subdivision.

27. ACCEPTANCE & EFFECTIVE DATE. As attested by the signature of its authorized representative, Grantee hereby accepts without reservation the rights and responsibilities conveyed by this Conservation Easement. This Conservation Easement is to be effective the date recorded in the Land Records of the county in which the Property is located.

28. 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.

29. ENTIRE AGREEMENT. This instrument sets forth the entire agreement of the parties with respect to the Conservation Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Conservation Easement, all of which are merged herein. No alteration or variation of this instrument shall be valid or binding unless contained in an amendment that complies with the terms of this Conservation Easement.

30. CAPTIONS, RECITALS AND EXHIBITS. The captions herein have been inserted solely for convenience of reference, are not a part of this Conservation Easement, and shall have no effect upon its construction or interpretation. The Recitals set forth above and all Exhibits referred to in this Conservation Easement are an integral part of this Conservation Easement and are incorporated herein by reference.

31. GOVERNING LAW. This Conservation Easement will be interpreted in accordance with the laws of the state or commonwealth in which the Property is located.

32. DISCLAIMER. Grantee does not represent the interests of Grantor. Grantee has advised Grantor to have the document reviewed by Grantor's attorney, and Grantor has had ample opportunity to do so. Grantee makes no representation as to whether this Conservation Easement qualifies for a charitable deduction or if it is in the proper form for that purpose, in the event Grantor claims a charitable gift deduction on its federal or state income tax returns.

33. SUBSEQUENT ACTIVITIES: NO REPRESENTATIONS OR WARRANTIES. Permission to carry out any proposed use or activity will not constitute consent to any subsequent use or activity of the same or any different nature, unless explicitly included in said permission. Likewise, permission by the Grantee to carry out, or failure by the Grantee to object to, or any language in this Conservation Easement that allows any proposed use or activity or designates a specific area of the Property where the use or activity is to be conducted, will not be deemed to constitute any representation or warranty by the Grantee regarding the use or activity, including, without limitation, the fitness of the Property for the use or activity or the legality of the use or activity.

34. MERGER. The parties agree that the terms of this Conservation Easement shall survive any merger of the fee and conservation easement interests in the Property.

TO HAVE AND TO HOLD this Conservation Easement, together with all appurtenances and privileges belonging or in any way pertaining thereto, either in law or in equity, either in possession or expectancy, for the proper use and benefit of Grantee forever.

IN WITNESS WHEREOF, Grantor and Grantee have executed this Grant of Conservation Easement this ____ day of _____, 2019.

COCHISE COUNTY FLOOD CONTROL DISTRICT (Grantor)

Peggy Judd, 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 _____

Its _____

Dated _____, 2019

STATE OF ARIZONA)
) ss.
COUNTY OF)

The foregoing instrument was subscribed, sworn to, and acknowledged before me this ____ day
of _____, 2019 by _____, the
_____ of THE NATURE CONSERVANCY, a District of Columbia
nonprofit corporation, as Grantee.

Notary Public

My Commission expires:

EXHIBIT A
Property Description

The Land referred to herein below is situated in the County of Cochise, State of Arizona, and is described as follows:

PARCEL I:

That portion of the SAN IGNACIO DEL BABOCOMARI Private Land Grant, situated in Township 20 South, Range 20 East of the Gila and Salt River Base and Meridian, Cochise County Arizona, being a portion of Parcel 18, according to Book 23 of Surveys, page 89, records of Cochise County, Arizona, described as follows:

BEGINNING at a General Land Office (GLO) Corner No. 1 of said Land Grant as shown on said Record of Survey recorded in Book 23 of Surveys, page 89, records of Cochise County, Arizona;

THENCE South 71°10'50" West, along the Southerly line of said Land Grant, a distance of 2,401.37 feet to a GLO stone marking the 1-1/2 mile marker of said Land Grant;

THENCE South 71°08'49" West continuing along said Southerly line, a distance of 423.46 feet;

THENCE North 00°00'00" West, a distance of 2,213.74 feet;

THENCE North 82°11'26" East, a distance of 1,434.95 feet;

THENCE South 10°28'26" East, a distance of 298.12 feet;

THENCE North 79°31'34" East, a distance of 752.62 feet to the Easterly line of said Land Grant;

THENCE South 18°51'51" East (basis of bearings), along said Easterly line, a distance of 1,179.17 feet to a GLO stone marking the 1 mile marker of said Land Grant;

THENCE South 18°47'19" East, continuing along said Easterly line of said Land Grant, a distance of 237.73 feet to the POINT OF BEGINNING.

EXCEPT any gold, silver or quicksilver mines or minerals of the same within the boundaries of the Grant as reserved in Patent from United States of America.

PARCEL II:

An easement for ingress, egress and utilities over the North 30.00 feet of following described property:

That portion of the SAN IGNACIO DEL BABOCOMARI Private Land Grant, situated in Township 20 South, Range 20 East of the Gila and Salt River Base and Meridian, Cochise County Arizona, being a portion of Parcel 18, according to Book 23 of Surveys, page 89, records of Cochise County, Arizona, described as follows:

COMMENCING at a GLO corner No. 1 of said Land Grant;

THENCE South 71° 10' 50" West a distance of 2,401.37 feet to Mile Marker 1-1/2;

THENCE South 71° 08' 49" West a distance of 423.46 feet to the POINT OF BEGINNING;

THENCE North a distance of 2,213.74 feet to a point;

THENCE South 82° 11' 26" West 1,611.70 feet to a point on the West line of Parcel 18;

THENCE South 00° 00' 00" West, along the West line of Parcel 18 a distance of 2,540.60 to the Southwest corner of said Parcel 18;

THENCE North 71° 08' 49" East 1,690.43 feet to the POINT OF BEGINNING;

EXCEPT any gold, silver or quicksilver mines or minerals of the same within the boundaries of the Grant as reserved in Patent from United States of America.

**EXHIBIT B
Map of Property**

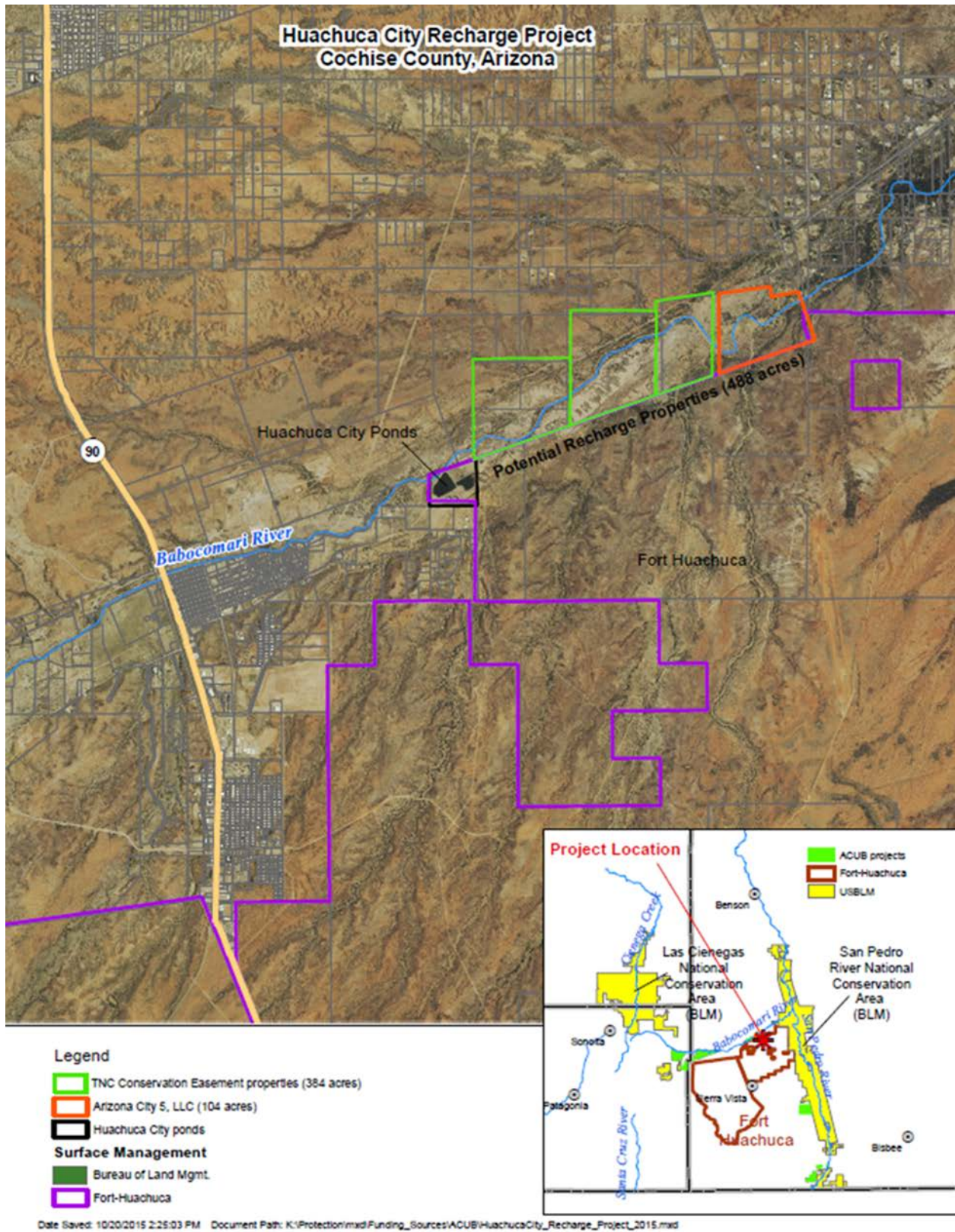


EXHIBIT C
Well Registrations

Wells:

Arizona Department of Water Resources (ADWR) Registration #55- 922878

Exhibit D
Form of Quitclaim Deed for Real Property

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

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

Huachuca Mountains (Arizona City 5) AZ – TO Cochise County

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 FLOOD CONTROL DISTRICT**, 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.

TOGETHER WITH any water rights associated with the property described in **Exhibit A**, including the well situated thereon and more described in **Exhibit B**.

*REMAINDER OF PAGE INTENTIONALLY LEFT BLANK
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:

That portion of the SAN IGNACIO DEL BABOCOMARI Private Land Grant, situated in Township 20 South, Range 20 East of the Gila and Salt River Base and Meridian, Cochise County Arizona, being a portion of Parcel 18, according to Book 23 of Surveys, page 89, records of Cochise County, Arizona, described as follows:

BEGINNING at a General Land Office (GLO) Corner No. 1 of said Land Grant as shown on said Record of Survey recorded in Book 23 of Surveys, page 89, records of Cochise County, Arizona;

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THENCE South 10°28'26" East, a distance of 298.12 feet;

THENCE North 79°31'34" East, a distance of 752.62 feet to the Easterly line of said Land Grant;

THENCE South 18°51'51" East (basis of bearings), along said Easterly line, a distance of 1,179.17 feet to a GLO stone marking the 1 mile marker of said Land Grant;

THENCE South 18°47'19" East, continuing along said Easterly line of said Land Grant, a distance of 237.73 feet to the POINT OF BEGINNING.

EXCEPT any gold, silver or quicksilver mines or minerals of the same within the boundaries of the Grant as reserved in Patent from United States of America.

PARCEL II:

An easement for ingress, egress and utilities over the North 30.00 feet of following described property:

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THENCE South 00° 00' 00" West, along the West line of Parcel 18 a distance of 2,540.60 to the Southwest corner of said Parcel 18;

THENCE North 71° 08' 49" East 1,690.43 feet to the POINT OF BEGINNING;

EXCEPT any gold, silver or quicksilver mines or minerals of the same within the boundaries of the Grant as reserved in Patent from United States of America.

**Exhibit B to Quit Claim Deed
Well Registrations**

Wells:

Arizona Department of Water Resources (ADWR) Registration #55- 922878