

GRANT OF CONSERVATION EASEMENT

THIS CONSERVATION EASEMENT is made this ____ day of _____, 2011, by the Town of Oro Valley, a municipal corporation existing under the laws of the State of Arizona, ("Grantor"), in favor of Pima County, a political subdivision of the State of Arizona, ("County" or "Grantee") (collectively, the "Parties"), pursuant to A.R.S. § 33-271, et. seq.

In consideration of the mutual covenants contained herein, Grantor hereby voluntarily grants and transfers to County a conservation easement (the "Easement"), in perpetuity, over and across the property described in **Exhibit A** (the "Property"), which Easement shall run with the land and shall bind the Grantor and County in perpetuity, subject to the terms and conditions contained herein.

1. **PURPOSE.** The Parties agree that it is the purpose of this Easement to: (i) assure that the Property will be preserved forever in its predominantly open, scenic, undeveloped and natural condition; (ii) prevent any uses of the Property that will significantly impair or interfere with the Conservation Values of the Property as provided below; (iii) conserve habitat for wildlife; (iv) protect rare and unique native plants and animals currently known or later identified; and (v) promote the conservation purposes stated in A.R. S. § 33-271(2).

2. **CONSERVATION VALUES.** For purposes of this Easement, Conservation Values shall mean areas of biological, ecological, archeological, historical, cultural or geologic importance.

2. **RIGHTS OF COUNTY.** Grantor hereby grants the following rights to County:
 - 2.1 To identify, preserve, protect and monitor, in perpetuity, the Conservation Values of the Property;

 - 2.2 To prevent Grantor or third persons from conducting any activity on or use of the Property that is prohibited or inconsistent with this Easement;

- 2.3 To enter upon the Property for administrative purposes, provided that such entry shall not in any case unreasonably interfere with Grantor's use and quiet enjoyment of the Property;
 - 2.4 Upon thirty (30) days written notice to Grantor, and subject to Grantor's approval, which shall be in Grantor's sole discretion, County or other educational or research agencies and institutions may enter upon the Property to engage in ecological, geological and/or archeological studies, research and special projects, provided that County shall not unreasonably interfere with Grantor's use and quiet enjoyment of the Property, and further provided that such studies, research and special projects do not constitute 'prohibited activities' under Section 4 of this Easement;
 - 2.5 To enter upon the Property at any time during the term of this Conservation Easement under emergency circumstances to prevent an imminent breach of the terms of this Easement or, in County's sole discretion, to prevent damage to or destruction of the Conservation Values.
3. PERMITTED ACTIVITIES. The following activities shall be permitted on the Property:
- 3.1 Vegetation removal as reasonable and necessary for habitat improvements to promote recovery or reestablishment of native species, fencing, maintaining utility easements, livestock developments and residential needs, except where priority vulnerable species may be negatively impacted.
 - 3.2 The use of existing outbuildings as identified herein, that is reasonable and necessary to sustain the recreational operations, provided they do not compromise the Conservation Values for which the Property was acquired.
 - 3.3 The construction of replacement structures on the existing disturbed sites. New structures may be permitted consistent with the purposes of, and not specifically prohibited by the terms of this Easement.
 - 3.4 Prescribed fire and fire management activities affecting areas of 1 acre or less. Prescribed fire on areas exceeding 1 acre requires written approval from Grantee.
 - 3.5 Installation of new or replacement of existing wire-strand fencing, built to wildlife-friendly standards as established by the Arizona Game and Fish Department.
 - 3.6 The use of herbicides or pesticides as needed for non-native vegetation management or fire management purposes.

- 3.7 Replacement of existing wells, pumps, pipelines, windmills, septic systems and storage tanks as necessary for permitted operations on the Property along with maintenance and repair of existing water developments.
- 3.8 Maintenance of existing trails for nonmotorized recreation including hiking, wildlife-watching, mountain biking, hunting access to adjoining public lands, and horseback riding, provided the trails don't compromise the Conservation Values of the Property.
- 3.9 Hunting by licensed and/or permitted hunters consistent with the rules, regulations and seasons established by the Arizona Game and Fish Department.
- 3.10 Wildlife management activities carried out in cooperation with the Arizona Game and Fish Department.

4. PROHIBITED ACTIVITIES. Any activity or use of the Property inconsistent with the purpose of this Easement or the Conservation Values of the Property is prohibited. Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited:

- 4.1 Development of the Property, including subdivision or lot splitting of the Property.
- 4.2 Constructing or placing of any additional buildings or structures, except construction of additional residences, associated outbuildings and agricultural outbuildings or recreational development, as might be provided elsewhere in this Easement.
- 4.3 Surface alteration or natural vegetation alteration other than that necessary to retain, restore or enhance the Property's Conservation Values as defined herein.
- 4.4 Disturbance to archaeological and historic sites, including collection of artifacts and excavation, or construction of any facilities or improvements within archaeological and historic site boundaries.
- 4.5 Severing of surface or subsurface water rights associated with the Property, including the transfer, encumbrance, lease and sale of water rights, except where severance of such water rights benefits the Conservation Values as defined herein.
- 4.6 Manipulating, impounding or altering any natural watercourse, except as may be necessary to retain, restore or enhance the Conservation Values as defined herein.
- 4.7 Development of, or the granting of rights-of-way, access or easements for new roads, except as might be provided elsewhere in this Easement.

- 4.8 Development of, or the granting of rights-of-way, access or easements for new utilities, including telecommunications facilities, except where environmental analysis adequately demonstrates that allowing such activities is not harmful to the Conservation Values of the Property. Review of such environmental analyses and final determination as to the harmful nature of such impacts is granted solely to Grantee.
- 4.9 Filling, excavating, dredging, mining, drilling, exploration, or extraction of minerals, hydrocarbons, soils, sand, gravel, rock or other materials on or below the surface of the Property, except as minimally necessary in connection with such activities as may be required in performing any activities permitted herein or as allowed under Federal law.
- 4.10 The storage, dumping, accumulation or disposal of toxic and/or hazardous materials, trash, garbage, solid waste or other unsightly material on the Property.
- 4.11 The introduction of non-native fish or amphibians or other non-native organisms to or from catchments, tanks, springs or creeks.
- 4.12 The introduction of non-native species of noxious or aggressive character that might adversely affect the Conservation Values of the Property.
- 4.13 Storage and use of biocides and chemical fertilizers except for residential and agricultural purposes that may be provided for herein. Aerial application of biocide or other chemicals is prohibited except where Grantor and Grantee concur that it is an appropriate and necessary management technique to promote the recovery or reestablishment of native species or to reduce threats to ecosystem structure and function.
- 4.14 Pumping of surface or subsurface water from existing diversions for other than on-site residential, wildlife, recreational, habitat enhancement. Increases in the amount of surface or subsurface water per pump shall not be permitted without joint approval from Grantor and Grantee.
- 4.15 Construction of new water diversions that divert surface or subsurface water from any spring or watercourse, except for activities otherwise permitted herein.
- 4.16 Planting non-native, invasive plant species.
- 4.17 Installation of underground storage tanks for petroleum or other polluting substances, except those already existing or permitted septic tanks.
- 4.18 Except as expressly permitted in Paragraph 3.15 above, confinement of livestock where animals are located in enclosures. This includes but is not limited to horses, feeder cattle, dairy, pig, poultry and exotic animal farm operations.

- 4.19 Commercial enterprises inconsistent with protection of the Property's Conservation Values. Commercial enterprises that provide for ecotourism or wildlife-related recreation may be approved subject to the joint consent of Grantor and Grantee.
- 4.20 Use of the Property to provide temporary residential space for mobile homes, travel trailers, tent trailers, self-propelled recreational vehicles and like structures or vehicles
- 4.21 Any paving of roads using asphalt or concrete except where required by County ordinance.
- 4.22 Any modification of the topography of the Property through the placement thereon of soil, dredging spoils, or other material, except for those uses permitted under this Easement.
- 4.23 Off-road vehicular travel except as reasonably necessary to facilitate permitted activities on the Property.

5. DEFAULT AND REMEDIES.

- 5.1 If County determines that Grantor is in breach of the terms of this Easement, County shall give written notice to Grantor of such breach and demand corrective action sufficient to cure the breach and, where the breach involves injury to the Property resulting from any activity inconsistent with the purpose of this Easement, to restore the portion of the Property so injured. If Grantor fails to cure the breach within thirty (30) days after receipt of such notice, or under circumstances where the breach cannot reasonably be cured within a thirty (30) day period, fails to begin curing such breach within the thirty (30) day period, or fails to continue diligently to cure such breach until finally cured, then the County 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 breach by temporary or permanent injunction, to recover any damages to which it may be entitled for breach of the terms of this Easement or injury to any protected uses or Conservation Values, including damages for any loss thereof, and to require the restoration of the Property to the condition that existed prior to any such injury. If upon receipt of notice from the County the Grantor fails to cease the activity which caused the breach, the County may bring immediate action at law or equity to enjoin the breach by temporary or permanent injunction.
- 5.2 Nothing in this Easement shall be construed to entitle County to bring any action against Grantor for any injury to or change in the Property resulting from causes beyond Grantor's control, including unforeseeable acts of trespassers, fire, flood, storm, drought, pests, earth movement, and major vegetative disease, or from any prudent action taken by Grantor under emergency conditions to prevent, abate or

mitigate significant injury to the Property resulting from such causes.

6. COSTS, TAXES. 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. Grantor remains solely responsible for obtaining any applicable governmental permits and approvals for any activity or use which shall be undertaken in accordance with all applicable federal, state, and local laws, regulations, and requirements. Grantor shall pay before delinquent all taxes, assessments, fees, and charges of whatever description levied on or assessed against the Property by competent authority (collectively "taxes"), and shall furnish Grantee with satisfactory evidence of payment upon request.
7. THIRD PARTY BENEFICIARY. Grantor grants to Pima County Regional Flood Control District the right as third party beneficiary to enforce the terms and conditions of this Easement ensuring perpetual preservation of the Conservation Values of the Property.
8. GENERAL PROVISIONS.
 - 8.1 **Severability.** If any provision of this Easement is found to be invalid, the remainder of the provisions of this Easement shall not be affected thereby.
 - 8.2 **Entire Agreement.** This instrument sets forth the entire Agreement of the Parties with respect to this Easement.
 - 8.3 **Public Access.** Nothing contained herein shall be construed as affording the public at large access to any portion of the Property, except that the public shall have ingress and egress over the Property along any and all designated trails maintained pursuant to paragraph 3.12 above, for the purpose of engaging in any properly permitted activity on the Property.
 - 8.4 **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.
 - 8.5 **Cancellation.** This Easement is subject to cancellation per A.R.S. §38-511.
 - 8.6 **No Subordination.** Upon recordation in the Pima County, Arizona, Recorder's Office, this Easement shall be deemed superior to all after acquired property interests in the Property. County shall have no obligation to subordinate its rights and interests in this Easement to any party.

Grantor:

TOWN OF ORO VALLEY:

ATTEST:

Dr. Satish I. Hiremath, Mayor

Julie K. Bower, Town Clerk

Date

Date

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

Tobin Rosen
Town Attorney

Greg Caton
Interim Town Manager

Date

Date

Grantee:

PIMA COUNTY:

ATTEST:

Chairman, Pima County Board of Supervisors

Clerk, Pima County Board of Supervisors

Date

Date

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

Neil J. Konigsberg
Deputy Pima County Attorney

Linda Mayro
Manager, Pima County Office of
Sustainability and Conservation

Date

Date