



BOARD OF SUPERVISORS AGENDA ITEM REPORT
CONTRACTS / AWARDS / GRANTS

☐ Award ☒ Contract ☐ Grant

Requested Board Meeting Date: December 4, 2018

* = Mandatory, information must be provided

or Procurement Director Award ☐

***Contractor/Vendor Name/Grantor (DBA):**

Allan Dunstan, an unmarried man ("Donor")

***Project Title/Description:**

Accept Donation of Conservation Easement. Acq-0730. Supervisor District 3.

***Purpose:**

Staff recommends that Pima County ("County") enter into a Donation Agreement with Donor for the donation of a Conservation Easement (the "Easement") to encumber his 34.95 acre parcels (APN 401-20-002A; -002B & -002C) located west of Alley Road in Ajo, AZ (the "Property"). The Property is part of a group of properties totaling approximately 545 acres and referred to as Alley Valley, surrounded on 3 sides by land managed by the BLM and in close proximity to Cabeza Prieta National Wildlife Refuge and Organ Pipe Cactus National Monument. Donor expressly reserves the right to construct up to 3 single family residences and associated improvements on up to 3 separate building envelopes not to exceed 1.25 acres each, or on a single building envelope not to exceed 3.75 acres. County will be responsible for annual monitoring for compliance.

***Procurement Method:**

Exempt pursuant to Pima County Code 11.04.020.

***Program Goals/Predicted Outcomes:**

County NRPR will monitor and manage compliance with the terms of the Conservation Easement.

***Public Benefit:**

The Easement will preserve the Property in its current relatively natural state, in perpetuity.

***Metrics Available to Measure Performance:**

The Property will be preserved, as part of a group of related properties, at no cost to the County other than for closing costs which will not exceed \$1,500.00. The property was appraised by an independent appraiser prior to creation of the conservation easement, in compliance with ARS §33-272(E) and §42-12058, in the amount of \$34,950.00.

***Retroactive:**

No.

ATTACHMENT: LOCATION MAP

Contract / Award InformationDocument Type: CTN Department Code: PW Contract Number (i.e., 15-123): 19*071Effective Date: 12/04/2018 Termination Date: 12/31/2018 Prior Contract Number (Synergen/CMS): _____☐ Expense Amount: \$* _____ ☒ Revenue Amount: \$ 0.00***Funding Source(s) required:**Funding from General Fund? ☐ Yes ☒ No If Yes \$ _____ % _____Contract is fully or partially funded with Federal Funds? ☐ Yes ☒ No**If Yes, is the Contract to a vendor or subrecipient?** _____Were insurance or indemnity clauses modified? ☐ Yes ☒ No*If Yes, attach Risk's approval.*Vendor is using a Social Security Number? ☐ Yes ☒ No*If Yes, attach the required form per Administrative Procedure 22-73.***Amendment / Revised Award Information**

Document Type: _____ Department Code: _____ Contract Number (i.e., 15-123): _____

Amendment No.: _____ AMS Version No.: _____

Effective Date: _____ New Termination Date: _____

Prior Contract No. (Synergen/CMS): _____

☐ Expense or ☐ Revenue ☐ Increase ☐ Decrease Amount This Amendment: \$ _____Is there revenue included? ☐ Yes ☐ No If Yes \$ _____***Funding Source(s) required:**Funding from General Fund? ☐ Yes ☐ No If Yes \$ _____ % _____**Grant/Amendment Information** (for grants acceptance and awards) ☐ Award ☐ Amendment

Document Type: _____ Department Code: _____ Grant Number (i.e., 15-123): _____

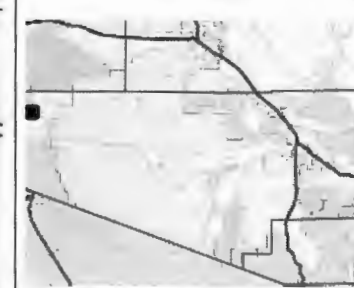
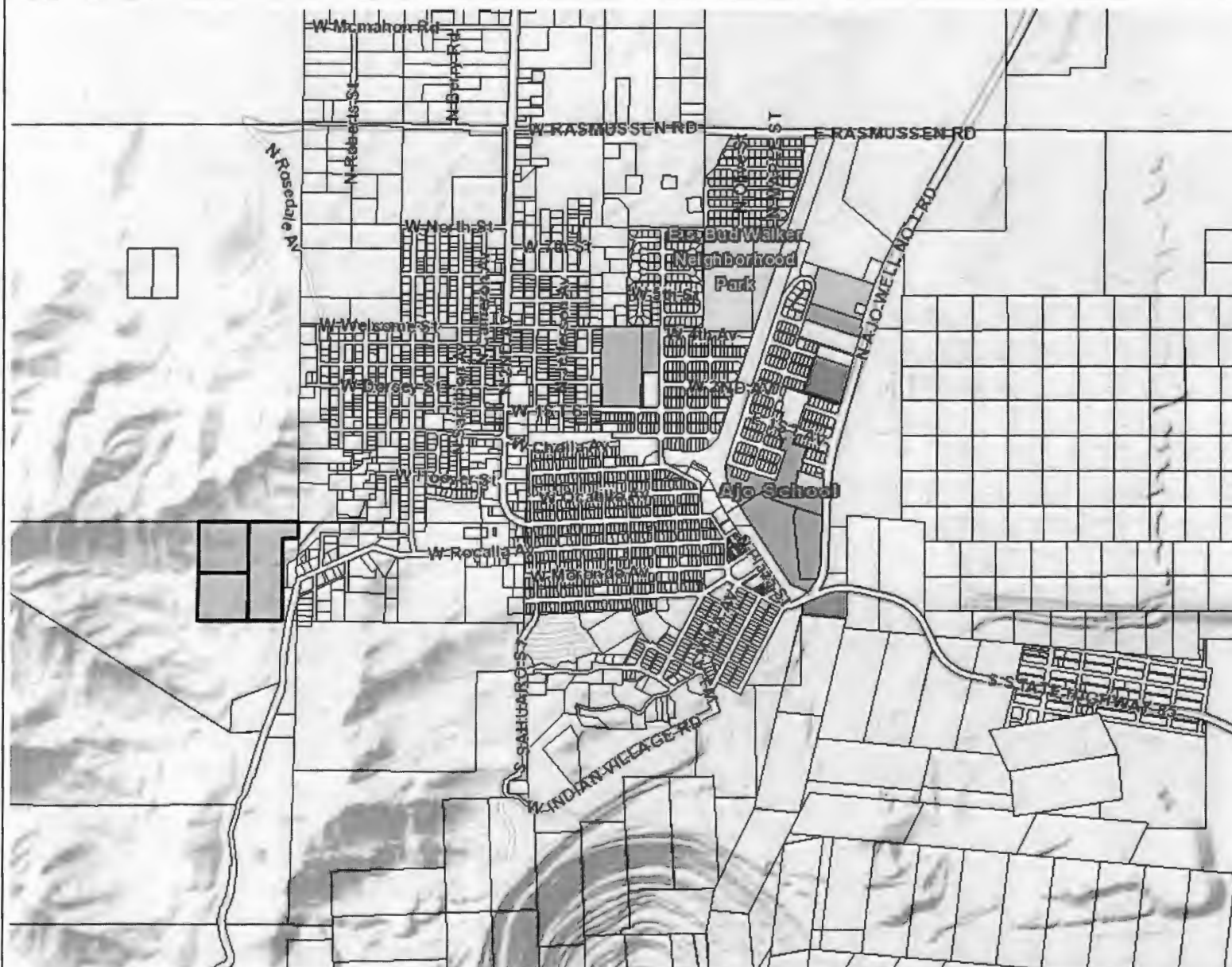
Effective Date: _____ Termination Date: _____ Amendment Number: _____

☐ Match Amount: \$ _____ ☐ Revenue Amount: \$ _____***All Funding Source(s) required:*****Match funding from General Fund?** ☐ Yes ☐ No If Yes \$ _____ % _____***Match funding from other sources?** ☐ Yes ☐ No If Yes \$ _____ % _____***Funding Source:** _____***If Federal funds are received, is funding coming directly from the Federal government or passed through other organization(s)?** _____Contact: Michael D. StofkoDepartment: Real PropertyTelephone: 520-724-6667Department Director Signature/Date: [Signature] 11-9-2018Deputy County Administrator Signature/Date: [Signature] 11/14/18County Administrator Signature/Date: [Signature] 7/1/4/18
(Required for Board Agenda/Addendum Items)

Parcels 40120002A, B, and C

Legend

☐ Parcels



Notes:

3,880.5 0 1,940.24

Feet



This map is a user generated static output from an Internet mapping site and is for reference only. Data layers that appear on this map are subject to Pima County's ITD GIS disclaimer and use restrictions.

11/2/2018

CONTRACT	
NO.	<u>CTN-PW-19-071</u>
AMENDMENT NO.	_____
This number must appear on all invoices, correspondence and documents pertaining to this contract.	



PIMA COUNTY REAL PROPERTY SERVICES

PROJECT: Accept Donation of Conservation Easement

DONOR: Allan P. Dunstan, an unmarried man

AMOUNT: \$1,500.00 for closing costs

FUNDING: GL Department: FN; GL Fund: 1000; GL Unit: 2164

AGREEMENT TO DONATE CONSERVATION EASEMENT

1. **Parties; Effective Date.** This agreement ("**Agreement**") is entered into by and between Allan P. Dunstan, an unmarried man ("**Donor**") and Pima County, a political subdivision of the State of Arizona ("**Donee**"). Donor and Donee are hereinafter referred to collectively as the "**Parties**". This Agreement shall be effective on the date Donor and Donee have executed this Agreement (the "**Effective Date**"). The date Donee signs is the date this Agreement is signed by the Chairman of the Pima County Board of Supervisors.

2. **Background & Purpose.**

2.1. Donor is the owner of that certain real property identified as **Pima County Tax Parcels Numbered 401-20-002A; -002B and -002C**, together consisting of approximately 34.95 acres, and legally described and depicted, respectively, in **Exhibit A** and **Exhibit A-1** attached hereto and made a part hereof (hereinafter referred to as the "**Property**");

2.2. Donor desires to grant to Donee, by donation, a Conservation Easement

over and upon the Property; and

2.3. Donee desires to accept the Conservation Easement from Donor for the purpose of conserving the Conservation Values of the Property in perpetuity for the benefit of the citizens of Pima County and the State of Arizona, subject to the express terms and conditions of this Agreement.

3. **Donation.**

3.1. Donor agrees to donate the Conservation Easement over and upon the Property, free and clear of all liens and encumbrances, except as set forth on **Exhibit B** attached hereto.

3.2. Donor will execute a Deed of Conservation Easement (the "***Conservation Easement***") and any and all related documents conveying the Conservation Easement over and upon the Property to Donee upon presentation of said documents to Donor by Donee's agents or representatives.

3.3. Donor acknowledges and agrees that the decision to donate the Conservation Easement was made without any undue influence or coercive action of any nature and that the right to an appraisal and to just compensation is hereby waived.

4. **Donor's Covenants.**

4.1. No Damage. Prior to Closing, the Property shall not be materially degraded by Donor or otherwise changed in any material aspect by Donor.

4.2. Use of Property by Donor. Donor shall, during the term of this Agreement, use the Property on a basis substantially comparable to Donor's historical use thereof. Donor shall make no use of the Property other than the use being made of the Property as of the date this Agreement is signed by the Parties. Donor shall maintain the Property in substantially the same condition as it is presently in, ordinary wear and tear excepted, and without liens or encumbrances that Donor will be able to cause to be released before the Closing.

4.3. No Encumbrances. Donor shall not encumber the Property with any lien that Donor will be unable to cause to be released before Closing. Donor covenants and agrees that from and after that Agreement Date through the Closing, Donor shall not enter into, execute or record any covenant, deed restriction, or any other encumbrance against the Property.

5. **No Personal Property.** The Parties acknowledge that no personal property is being transferred pursuant to this Agreement.

6. **Escrow and Title.**

6.1. Escrow and Title Agent. The Title Agent and Escrow Company shall be Title Security Agency of Arizona ("Title Company"), Rhonda Herrera, Escrow Officer ("Escrow Agent") and this Agreement shall be used as escrow instructions in connection with the escrow established with Escrow Agent under this Agreement (the "Escrow"). Escrow Agent shall make reasonably suitable arrangements with Donor, upon Donor's request, to have Donor execute any of the documents to be executed by Donor as provided in this Agreement at the office of Escrow Agent that is located the closest to the office of Donor.

6.2. Title Commitment.

6.2.1. *COMMITMENT.* Escrow Agent will distribute to Donor and Donee a Commitment for Standard Owner's Title Insurance (the "Commitment") together with complete and legible copies of all documents which will remain as exceptions (the "Exceptions") to Donee's policy of title insurance.

6.2.2. *DISAPPROVAL PERIOD.* Donee shall have fifteen (15) days after the receipt of the Commitment and the Exceptions (the "Disapproval Period") within which to notify Donor and the Escrow Agent in writing of Donee's disapproval of any Exceptions shown thereon (the "Disapproval Notice"). In the event of such disapproval, Donor shall have ten (10) days from receipt of the Disapproval Notice in which to notify Donee in writing whether Donor intends to eliminate each of the disapproved Exceptions prior to the Closing (the "Notice Period"). If Donor shall fail to notify Donee of its intent with respect to the disapproved items within that time or if Donor elects not to cure all disapproved items, Donee may terminate this Agreement and the Escrow shall be canceled.

6.2.3. *WAIVER OF DISAPPROVAL.* The foregoing notwithstanding, if Donee elects to waive any or all of its disapprovals, the Donation shall proceed to Close with such Exceptions remaining as an encumbrance affecting title to the acquired Conservation Easement. If Donee fails to give the Disapproval Notice to Donor on or before the expiration of the Disapproval Period, Donee shall be deemed to have waived the right to give the Disapproval Notice and elected to proceed with the Donation and the Closing.

6.2.4. *AMENDED COMMITMENT.* In the event the Title Company should issue an Amended Commitment for Title Insurance which discloses an Exception(s) not previously disclosed, Donee shall have five (5) days after receipt of the Amended Commitment for Title Insurance within which to object to the new Exception(s). If the Amended Commitment is issued less than fifteen (15) days prior to the date of the Closing, then the date of the Closing shall be deemed to be extended until the end of the new Disapproval Period.

6.2.5. *MONETARY LIENS.* Notwithstanding the above, Donee need not expressly object to any monetary liens and encumbrances on the Acquired Property, all of which shall be removed before Closing, unless waived by Donee.

6.2.6. *PERMITTED EXCEPTIONS.* The Exceptions that are approved or deemed approved by Donee shall be referred to herein as the "Permitted Exceptions".

6.3. Title Policy. At Closing, Escrow Agent shall furnish Donee a Standard Owner's Title Insurance Policy for the Property, in an amount to be determined by Donee, which Policy shall be paid for by Donee.

7. **Closing.**

7.1. Closing. The Closing shall take place at the Title Company and shall occur on or before the expiration of the Inspection Period and the title review period as provided in section 6.2 (the Disapproval Period and the Notice Period, and any extensions thereof), but no later than December 31, 2018, unless otherwise agreed to by the Parties.

7.2. Deliveries by Donor at Closing. At Closing, Donor shall deliver to Donee the following:

7.2.1. an executed Deed of Conservation Easement ("**Conservation Easement**") in the form of **Exhibit C** attached, granting a Conservation Easement over and upon the Property subject only to the Permitted Exceptions;

7.2.2. access to the Property as set forth in the Conservation Easement.

7.3. Closing Costs. Donee shall pay all closing costs, including but not limited to title insurance premium, escrow fees and recording fees. Those costs are expected to be as follows:

\$ <u>0.00</u>	Acquisition Amount
\$ <u>\$1,500.00</u>	Estimated County Closing Costs
\$ <u>\$1,500.00</u>	TOTAL NOT TO EXCEED AMOUNT

8. **Binding Agreement.** All provisions set forth herein are binding upon the heirs, successors and assigns of the Parties.

9. **Governing Law.** This Agreement shall be construed under the laws of the State of Arizona.

10. **Conflict of Interest.** This Agreement is subject to cancellation within three (3) years after its execution pursuant to A.R.S. § 38-511 if any person significantly involved in initiating, negotiating, securing, drafting or creating this Agreement on behalf of the County is, at any time while this Agreement or any extension of the Agreement is in effect, an employee or agent of any other party to the Agreement with respect to the subject matter of the Agreement.

The Parties have signed this Agreement on the dates set forth below.

Donor:

Allan P. Dunstan, an unmarried man


Allan P. Dunstan

9-25-18
Date

Donee: Pima County, a body politic and corporate of the State of Arizona:

Chairman, Board of Supervisors

Date

ATTEST:

Julie Castaneda, Clerk of Board

Date

APPROVED AS TO CONTENT:

 11/14/18

Carmine DeBonis, Deputy County Administrator for
Public Works



Neil J. Konigsberg, Manager, Real Property Services

APPROVED AS TO FORM:



Kell Olson, Deputy County Attorney, Civil Division

TAX PARCEL NUMBER: 401-20-002A; -002B and -002C

EXHIBIT A

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

A Conservation Easement over the following described Parcels:

PARCEL 1 :

The Northwest quarter of the Northeast quarter of the Northeast quarter of Section 21, Township 12 South, Range 6 West, Gila and Salt River Base and Meridian, Pima County, Arizona.

PARCEL 2 :

The Southwest quarter of the Northeast quarter of the Northeast quarter of Section 21, Township 12 South, Range 6 West, Gila and Salt River Base and Meridian, Pima County, Arizona.

PARCEL 3:

The East half of the Northeast quarter of the Northeast quarter of Section 21, Township 12 South, Range 6 West, Gila and Salt River Base and Meridian, Pima County, Arizona;

EXCEPT the East 200 feet of the South 1100 feet thereof.

This page is only a part of a 2016 ALTA® Commitment for Title Insurance issued by First American Title Insurance Company. This Commitment is not valid without the Notice; the Commitment to Issue Policy; the Commitment Conditions; Schedule A; Schedule B, Part I—Requirements; Schedule B, Part II—Exceptions; and a counter-signature by the Company or its issuing agent that may be in electronic form.

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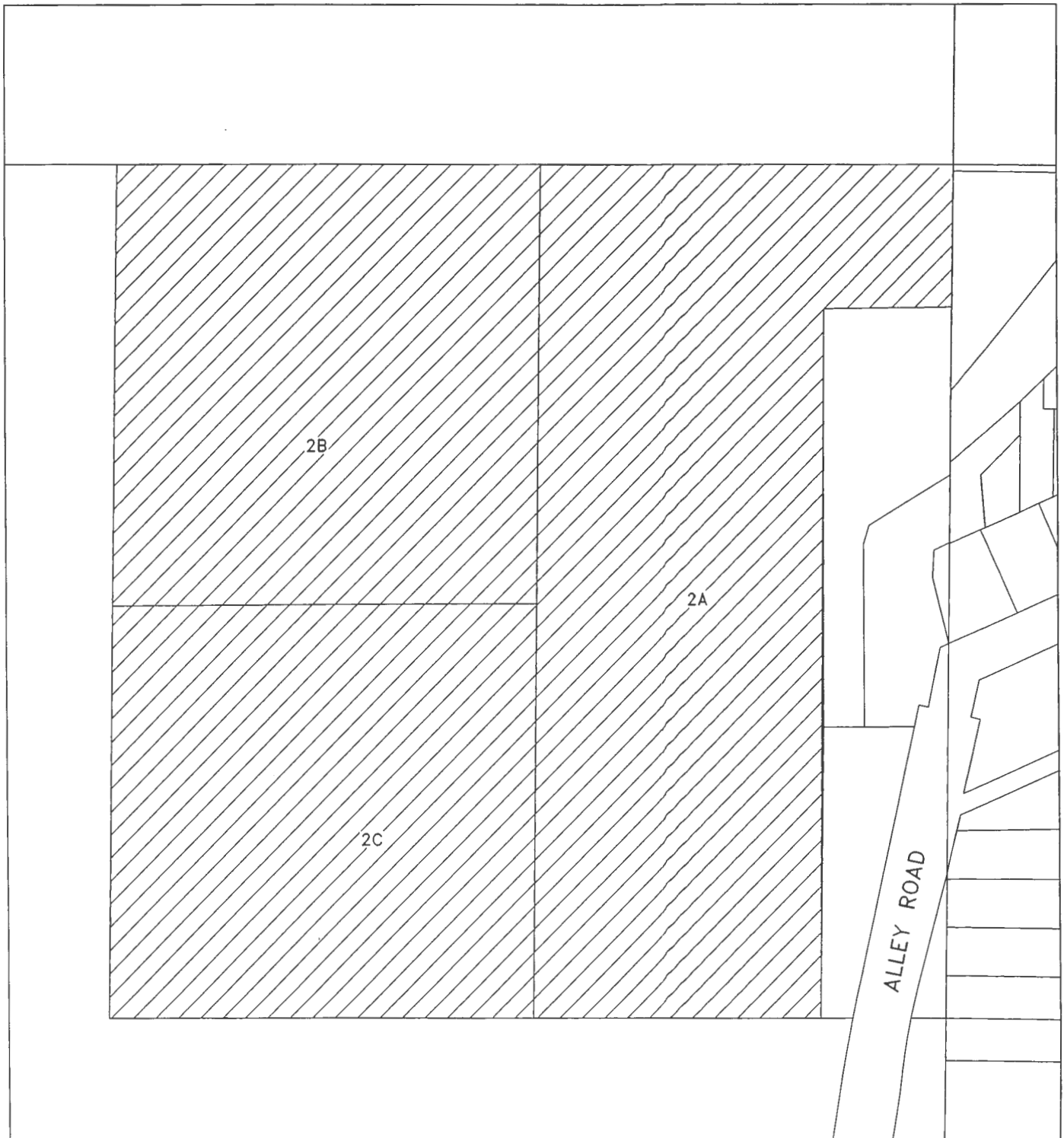
EXHIBIT "A-1"

SECTION 21
TOWNSHIP 12 SOUTH
RANGE 6 WEST

SUBJECT AREA



SECTION 21
G&SRM PIMA COUNTY, ARIZONA



PARCELS 401-20-002A, 401-20-002B & 401-20-002C




18025

PIMA COUNTY DEPARTMENT OF TRANSPORTATION
ENGINEERING INFORMATION MANAGEMENT

DRAWING NOT TO SCALE

DRAWN BY: SBUTLER

DATE: JUNE 2018

 First American Title™	Commitment for Title Insurance ISSUED BY First American Title Insurance Company
Schedule BII	

File No.: 600-117105-RDH

SCHEDULE B, PART II

Exceptions

THIS COMMITMENT DOES NOT REPUBLISH ANY COVENANT, CONDITION, RESTRICTION, OR LIMITATION CONTAINED IN ANY DOCUMENT REFERRED TO IN THIS COMMITMENT TO THE EXTENT THAT THE SPECIFIC COVENANT, CONDITION, RESTRICTION, OR LIMITATION VIOLATES STATE OR FEDERAL LAW BASED ON RACE, COLOR, RELIGION, SEX, SEXUAL ORIENTATION, GENDER IDENTITY, HANDICAP, FAMILIAL STATUS, OR NATIONAL ORIGIN

The Policy will not insure against loss or damage resulting from the terms and provisions of any lease or easement identified in Schedule A, and will include the following Exceptions unless cleared to the satisfaction of the Company:

- A. Any defect, lien, encumbrance, adverse claim, or other matter that appears for the first time in the Public Records or is created, attaches, or is disclosed between the Commitment Date and the date on which all of the Schedule B, Part I—Requirements are met.
- B. a) Taxes or assessments that are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the Public Records; (b) proceedings by a public agency that may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the Public Records.
- C. Any facts, rights, interests, or claims that are not shown by the Public Records but that could be ascertained by an inspection of the Land or that may be asserted by persons in possession thereof.
- D. Easements, liens or encumbrances, or claims thereof, not shown by the Public Records.
- E. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by the Public Records.
- F. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b), or (c) are shown by the Public Records.

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SCHEDULE B
(Continued)

- G. Any lien or right to a lien for services, labor or material not shown by the Public Records.
1. RESERVATIONS or exceptions in Patents or in Acts authorizing the issuance thereof.
2. TAXES AND ASSESSMENTS collectible by the County Treasurer, a lien not yet due and payable for the following year:
- 2018
3. Any matters arising by reason of Resolution No. 2006-261, authorizing a Franchise granted to Arizona Water Company, recorded October 12, 2006 in Docket 12908, Page 2922.
4. Any adverse claim caused by a lack of lateral or subjacent support, or by subsidence, disturbance or alteration of said Land resulting from mining or other operations carried on beneath the surface thereof.
5. A cursory search of the title does not indicate a right of way access to this property. In order to attempt to reduce the potentially vast number of properties that may need to be searched to determine the existence of such right, we require a map showing the physical route taken to and from the Land. No further search for access will be attempted until such map is received. Further, additional charges may be made to make the necessary examinations of property to determine access. However, no work that would incur additional charges shall be commenced without approval of the appropriate parties to this transaction. An exhaustive search of the surrounding properties does not guarantee the existence of insurable access even though the roads providing physical access to the property are maintained by a government entity. In the event this transaction is closed prior to a final determination of the existence of an insurable right of access, the following exception shall be placed in Schedule B of the policy:
- "The lack of a right of access to and from the Land."
(As to Parcels 1, 2 and 3)
6. A judgment, for the amount shown below, and any other amounts due:
- Plaintiff: Marshall Marans and Ann Marans, husband and wife
Defendant: Ramona Maria De La Cruz a/k/a Ramona De La Cruz, Maria De La Cruz and Ramona Heinekamp, a single woman (Prior Owner)
Principal Amount: \$52,575.00
Recording Date: May 15, 2014
Recording No: 20141360188
7. DEED OF TRUST given to secure the original amount shown below, and any other amount payable under

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SCHEDULE B
(Continued)

the terms thereof.

Amount: \$82,500.00

Dated: August 12, 2016

Trustor/Grantor Allan Dunstan, an Unmarried Man

Trustee: Fidelity National Title Agency, Inc., an Arizona Corporation

Beneficiary: Bud Walters, A Single Man

Loan No.: None Shown

Recording Date: September 12, 2016

Recording No: 20162560615

END OF SCHEDULE B – PART II

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When Recorded Return to:

Pima County Real Property Services
Attn.: Michael D. Stofko, Esq.
201 N. Stone Avenue, 6th Floor
Tucson, AZ 85701-1215

Deed of Conservation Easement

THIS DEED OF CONSERVATION EASEMENT is granted by Allan P. Dunstan, an unmarried man (the "Grantor"), in favor of Pima County, a political subdivision of the State of Arizona, (the "Holder") (collectively, the "Parties").

RECITALS

WHEREAS, Grantor is the sole owner in fee simple of that certain real property located in the unincorporated town of Ajo, within Pima County, consisting of approximately 34.95 fee acres, more particularly described and depicted in Exhibits A and A-1, respectively, attached hereto and incorporated herein by this reference (the "Property"); and

WHEREAS, the Property is part of a group of properties referred to as Alley Valley, surrounded on three sides by land managed by the Bureau of Land Management and in close proximity to the Cabeza Prieta National Wildlife Refuge and Organ Pipe Cactus National Monument; and

WHEREAS, the Property currently remains in a relatively natural state, has significant ecological values, and as such, is identified as part of Pima County's Conservation Lands System; and

WHEREAS, all of the natural elements and ecological values on the Property are of great importance to Grantor and Holder and to the people of Pima County and the State of Arizona and are worthy of preservation; and

WHEREAS, Grantor, as owner in fee of the Property, owns the affirmative rights to identify and preserve and protect in perpetuity the natural ecosystems and other significant and relatively natural features and open space of the Property; and

WHEREAS, Grantor desires and intends to transfer such rights to identify, preserve and protect, in perpetuity, the Property's open space character, its significant natural features and ecological values to Holder; and

WHEREAS, the State of Arizona has recognized the importance of private efforts toward the preservation of natural areas and open space in the State through enactment of Arizona Revised Statutes ("A.R.S.") Sections 33-271 to 33-276; and

WHEREAS, Holder has also recognized the importance of the preservation of natural areas and open space through the adoption of the Sonoran Desert Conservation Plan (the "Plan").

NOW, THEREFORE, in consideration of the covenants contained herein and other valuable consideration, Grantor does hereby grant to Holder, by donation, a conservation easement, in gross and in perpetuity, consisting of the rights and reservations enumerated below, over and across the Property (the "Conservation Easement").

1. Purposes. The Parties agree that all of the following are purposes of this Conservation Easement: (i) to assure that the Property will be preserved forever in its predominantly open, scenic, undeveloped and natural condition; (ii) to prevent any use of the Property that will significantly impair or interfere with the Conservation Values of the Property and the Property's natural resources and ecosystems; (iii) to conserve habitat for wildlife; (iv) to protect rare and unique native plants and animals currently known or later identified; (v) to conserve vegetative communities; and (vi) to promote the conservation purposes stated in A.R.S. § 33-271(2)(b).

2. Definitions. For the purpose of this Conservation Easement, the following terms shall have the following defined meanings:

"Associated Improvements" shall mean such buildings, structures, and dwellings within the Property, including, but not limited to living quarters in connection with Authorized Uses on the Property;

"Conservation Values" shall mean the aspects of the Property that remain substantially undeveloped, natural, open space, natural wildlife habitats, areas of biological diversity and/or ecological importance.

"Baseline Documentation Report", or, "the Report", shall mean the Report attached hereto as Exhibit "B", which is an inventory of relevant features of the Property incorporated by this reference herein, which consists of maps, photographs, plot sampling, collection, and observation, and other evidence that the parties provide, or will provide, and presents an accurate representation of the condition of the Property at the time of the conveyance of this Conservation Easement.

"Building Envelope(s)" is that area for which Grantor retains the right, subject to all applicable laws and regulations, to construct improvements as allowed under and limited by the applicable subsections of this Conservation Easement.

3. Grant of Easement and Development Rights. In consideration of the benefits to be provided to the residents of Pima County and to the Conservation Values of the Property through the granting of this Conservation Easement, Grantor hereby voluntarily grants, conveys, transfers and donates to Holder this Conservation Easement, in perpetuity, the terms and conditions of which are stated herein, over and across the Property. The Conservation Easement shall be an easement in gross applying to the Property, shall run with the land and shall bind the Grantor and Holder, and their respective assigns and successors in interest, in perpetuity, subject to the terms and conditions contained herein. Further, as a part of this Conservation Easement, Grantor hereby grants to Holder all development rights (except as specifically reserved herein) that are now or hereafter allocated to, implied, reserved or inherent in the Property, and the Parties agree that such rights are terminated and extinguished, and may not be used on or transferred to any portion of the Property as it is now or hereafter may be bounded or described, or to any other property adjacent or otherwise, nor used for the purpose of calculating permissible lot yield of the Property or any other property.

4. Rights of Holder. Grantor hereby grants and conveys the following rights to Holder, which rights shall be in addition to, and not in limitation of, any other rights and remedies available to Holder, provided further that any right of Holder to enter upon the Property shall not require the payment of any fee, charge, costs or other consideration to Grantor.

4.1 To identify, preserve, protect and monitor, in perpetuity, the Conservation Values of the Property as described in the Baseline Documentation Report;

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

4.3 The right to reasonable entry and access to the Property (except residences) for inspection and monitoring purposes and for enforcement of the terms of this Conservation Easement. Holder will make reasonable efforts to notify Grantor and/or persons in residence on the Property prior to entry onto any portion of the Property. Holder shall not in any case unreasonably interfere with Grantor's use and quiet enjoyment of the Property;

4.4 Holder shall have the right to enter upon the Property at any time during the term of this Conservation Easement under emergency circumstances, provided Holder shall give Grantor such notice as may be practical under the circumstances, to prevent imminent default of the terms of this Conservation Easement or, in Holder's sole discretion, to prevent damage to or destruction of the Conservation Values.

5. Consistent Uses of the Easement Property.

5.1 Subject to the terms and conditions of this Conservation Easement, Grantor reserves to itself, its successors and assigns, all rights accruing from the ownership of the Property, including the right to engage in or permit or invite others to engage in all uses of the Property that are: (i) not expressly prohibited by this

Conservation Easement; and (ii) not inconsistent with the terms, conditions, intent and purpose of this Conservation Easement.

5.2 Pursuant to the terms of A.R.S. Sections 33-271 to 33-276, the Property conserved hereby may not be converted or directed to any uses other than those provided herein.

5.3 Holder acknowledges that the following rights relating to the uses and practices on the Property are consistent with this Conservation Easement, and the uses and practices shall not be precluded, prevented or unreasonably limited by this Conservation Easement other than the requirements, if any, of notice to and/or prior approval of Holder where specifically provided herein which approval shall not be unreasonably withheld or delayed:

- a. Plant removal only as reasonable and necessary for constructing and maintaining roads and utility easements, fire protection, and invasive species control, and within the Building Envelope(s), provided it does not compromise the Conservation Values of the Property.
- b. Repair, maintenance, remodel or replacement of existing structures including outbuildings, residences, utility lines, wildlife water features, or other existing structures, provided they do not substantially increase the existing impact on the landscape and on the Conservation Values of the Property. Any such repair, maintenance, remodel or replacement must also be in compliance with all applicable laws, permit requirements, and rules and regulations including but not limited to Pima County zoning regulations and ordinances.
- c. Repair and maintenance of existing roads, not to exceed 12 feet in width.
- d. Construction of new road(s) to access Building Envelope(s), not to exceed a width of 12 feet, and not to exceed a combined total of one (1) acre of new disturbance, upon written agreement of Holder.
- e. Use of water from designated water developments or natural sources for on-site residential uses, fire-fighting, or dust control that is not excessive or inconsistent with historic and traditional uses of the Property. The construction of one new water tank is permitted outside of the Building Envelope(s) to serve the Building Envelope(s), upon written agreement of Holder.
- f. Replacement of existing wells, pumps, pipelines, windmills and water storage tanks on the Property along with repair of existing water developments.
- g. New or replacement fencing around the perimeter of the property provided the fencing allows safe passage of wildlife. Fencing within or on the perimeter of the Building Envelope(s) may exclude wildlife.

h. Installation of equipment to benefit, monitor or study wildlife, such as a water guzzler, observation blind or camera station, upon written agreement of Holder.

i. Designation up to three (3) Building Envelopes not to exceed 1.25 acre each, or one (1) Building Envelope of no more than 3.75 acres, provided prior notice is given to and acknowledged in writing by Holder.

j. Construction of one (1) single family residence within each Building Envelope and associated improvements such as patios, ramadas, driveways, workshops, outbuilding, garages, and gardens, or construction of three (3) single family residences and associated improvements on a combined Building Envelope of no more than 3.75 acres. Any such construction must also be in compliance with all applicable laws, permit requirements, and rules and regulations including but not limited to Pima County zoning regulations and ordinances, as well as the Pima County Hillside Development Ordinance.

6. Prohibited Uses and Practices: Grantor expressly agrees and states that the following uses and practices, though not an exhaustive or complete list, are specifically prohibited under the terms of the Conservation Easement and are, per se, defaults under the terms of this Conservation Easement, unless otherwise specifically permitted herein.

a. Constructing or placing of any new buildings or improvements, except as necessary to accommodate the use of the Property authorized under Consistent Uses related to the Building Envelopes.

b. Any keeping of livestock, poultry or pasture animals including horses, cattle, raites, sheep, goats, pigs, poultry, and other similar animals.

c. Hunting, shooting, poisoning, and/or trapping of animals, except trapping is permitted for control of undesirable animals within the Building Envelope(s) and non-native animals may be removed from the property by any legal means other than poisoning. If a native animal species increases in population numbers and is determined to be causing negative impacts to the Conservation Values of the Property, with permission of the Holder, that species can also be removed by any legal means other than poisoning.

d. Surface alteration or natural vegetation alteration other than that necessary to accommodate the uses of the Property authorized herein.

e. Severing of surface or subsurface water rights associated with the Property, including the transfer, encumbrance, lease and sale of water rights.

f. Development of, or the granting of rights-of-way, access or easements for, roads or utilities including telecommunications facilities, except where necessary to

enhance or protect Conservation Values of the Property, or to accommodate the use of the Property authorized under Consistent Uses related to the Building Envelopes.

g. Any use of vehicles, including but not limited to, bicycles, ATVs, motorcycles, cars, and trucks, except on roads.

h. Any paving of roads using asphalt, except that short stretches of roads in unstable areas may be stabilized using concrete in a manner that is not environmentally damaging.

i. Filling, excavating, dredging, mining, drilling, exploration or extraction of minerals, hydrocarbons, soils, sand, gravel, rock, or other materials on or below the land surface, except as minimally necessary in connection with such activities as may be required in performing any activities permitted herein or as may be permitted by operation of law (e.g., reservation of state or federal mineral rights).

j. The storage, dumping, accumulation or disposal of toxic and/or hazardous materials, trash, ashes, garbage, waste or other unsightly or offensive material, including any actual or planned underground storage tanks for petroleum or other polluting substances, except septic tanks as approved by Holder.

k. Any surface collection or excavation of Native American or archaeological artifacts and/or materials and/or any surface collection or excavation of paleontological resources including but not limited to vertebrate fossils, except in such cases as may be necessary for the protection or study if agreed to by both Grantor and Holder.

l. The introduction of plant species that are not locally native with a 10 mile radius of the Alley Valley, except in Building Envelopes where plant species not locally native with a 10 mile radius of the Alley Valley may be used in gardens, pots or landscaping so long as they are not invasive.

m. Pumping of groundwater for other than currently existing or permitted uses on the Property as provided for herein, except that any increases in groundwater pumping shall not be permitted that adversely affects the natural values of the Property.

n. Any industrial, farming, ranching or agricultural activities.

o. Any removal of native wood, native animals or native vegetation including trees, shrubs and dead wood, except as allowed under 5.3.a and 6.c.

p. Any spraying or application of herbicides, pesticides, rodenticides, or other chemicals or materials designated or intended to kill, eradicate, and/or eliminate plants, animals, or insects, unless those actions are needed to restore the natural condition of the property, except that pesticide may be used to treat or prevent termites or undesired insects or invertebrates within the Building Envelope(s).

q. Lot splitting or subdivision of the Property, except if reconfiguration of the existing three (3) parcels that make up the Property results in the Property totaling no more than three (3) parcels.

r. Use of mobile homes and/or trailers as residences or permanent structures.

s. Use of the property in a manner that is inconsistent with the purposes of this Conservation Easement or that negatively impacts the Conservation Values of the Property.

7. Baseline Monitoring Report. The Parties hereby acknowledge that a Baseline Documentation Report has been completed by a competent biologist familiar with the Property and its environs. The Parties have reviewed the Report and acknowledge that it is an accurate description of the physical and biological condition of the Property at the time of the grant of this Conservation Easement. In the event a controversy arises with respect to the nature and extent of the biological and/or physical condition of the Property, the Parties shall not be foreclosed from utilizing all other relevant or material documents, surveys, reports, and other information to assist in the resolution of that controversy.

8. Defaults and Remedies:

The Parties will use the following process to resolve disputes regarding compliance with the terms of this Conservation Easement:

8.1. If a dispute arises between the Parties with respect to this Conservation Easement, Grantor and Holder agree to use nonbinding arbitration to attempt to resolve the dispute. Grantor agrees not to proceed with any proposed use or activity pending resolution of the dispute. The arbitrator shall be mutually approved. The arbitration shall be conducted in accordance with the rules of the American Arbitration Association. Nothing herein shall be interpreted to prevent Holder from resorting to judicial proceedings for injunctive relief or otherwise to prevent imminent harm to the Conservation Values or to enjoin a violation pursuant to paragraph 8.2.

8.2. If either party is in breach of the terms of the Conservation Easement, the breaching party shall be given written notice of such breach and a demand to take 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 the Conservation Easement, to restore the portion of the Property so injured. If the breaching party 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 a breach within the thirty (30) day period, or fails to continue diligently to cure such breach until finally cured, then the non-breaching party may bring an action at law or in equity in a court of competent jurisdiction to enforce the

terms of the Conservation 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 the Conservation Easement, including damages for any loss thereof, and to require the restoration of the Easement Property to the condition that existed prior to any such injury. If upon receipt of notice from the non-breaching party, the breaching party fails to cease the activity which caused the breach, the non-breaching party may bring immediate action at law or equity to enjoin the breach by temporary or permanent injunction.

8.3 Nothing contained in this Conservation Easement shall be construed to entitle either party to bring any action against the other for any injury to or change in the Property resulting from causes beyond a party's control, including, without limitation: fire; flood; storm; earth movement; the wrongful acts of third parties other than Grantor's agents, employees, invitees or contractors (provided the Grantor has taken reasonable steps to prevent such third parties from trespassing and from causing harm to the Property and has not consented to or participated in the acts of such third parties); or from any prudent action taken by the respective party under emergency conditions to prevent, abate, or mitigate significant injury to the encumbered land resulting from such cause or from highway accidents. In the event of violations of this Conservation Easement caused by the wrongful acts of a third party, Grantor will cooperate fully with Holder to enforce this Conservation Easement, at the election of the Holder. Nothing in this section limits Holder's right to bring legal action under any legal authority independent of this Conservation Easement.

8.4 Enforcement of the terms of this Conservation Easement shall be at the discretion of each party, and any forbearance by a party to exercise its rights under this Conservation Easement in the event of any breach of any term of this Conservation 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 Conservation Easement or of any such party's rights under this Conservation Easement. No delay or omission by a party in the exercise of any right or remedy upon any breach shall impair such right or remedy or be construed as a waiver.

9. Public Access. Nothing contained in this Conservation Easement shall be construed as affording the public at large access to any part of the Property.

10. Costs, Insurance, Environmental, Taxes.

10.1 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 construction or other activity or use permitted under this Conservation Easement; and said construction or other activity or use shall be undertaken in accordance with all applicable federal, state, and local laws, regulations, and requirements.

10.2 In the event Grantor is not exempt from paying, then 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"), and shall furnish Holder with satisfactory evidence of payment upon request.

10.3 In the event Grantor elects, at its expense, at any time during the term of this Conservation Easement, to maintain a policy or policies of comprehensive general liability insurance, each such policy shall contain a provision that Holder shall be named as an additional insured. Within ten (10) days of issuance of any new policy, commitment or renewal, Grantor shall deliver a certificate of such policy, commitment or renewal to Holder.

10.4 If, at any time, there occurs, or has occurred, a new release 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 to the environment, Grantor agrees to take all steps necessary to assure its containment and remediation, including any cleanup that may be required, unless the release was caused by Holder, in which case Holder shall be responsible therefor.

10.5 Nothing in this Conservation Easement shall be construed as giving rise, in the absence of a judicial decree, to any right or ability in Holder 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").

10.6 Grantor hereby releases and agrees to hold harmless, indemnify, and defend Holder and its Supervisors, members, directors, officers, employees, attorneys, agents, and contractors and the heirs, personal representatives, successors and assigns of each of them (collectively "Indemnified Parties") from and against any and all liabilities, penalties, fines, charges, costs, losses, damages, expenses, causes of action, claims, demands, orders, judgments, or administrative actions, including, without limitation, reasonable attorneys' fees arising from or in any way connected with: (i) injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Property, regardless of cause, (excluding any portion of such liability attributable in whole or in part to the negligence or intentional acts of one or more of the Indemnified Parties); (ii) the violation or alleged violation of, or other failure to comply with, any state, federal or local law, regulation or requirement, including without limitation, CERCLA, by any person other than any of the Indemnified Parties; and (iii) the presence or release in, on, from, or about the Property, at any time, 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 threatening to human health or

the environment (excluding any portion of such liability attributable in whole or in part to one or more of the Indemnified Parties).

11. Condemnation. If all or any part of the Property is taken by exercise of the power of eminent domain or acquired by purchase in lieu of condemnation, whether by public, corporate, or other authority, so as to terminate this Conservation Easement, in whole or in part, Grantor and Holder shall act jointly to recover the full value of the interests in the Property subject to the taking or in lieu purchase and all direct or incidental damage resulting therefrom. All expenses reasonably incurred shall be paid out of the amount recovered.

12. Subsequent Transfers. Prior to any transfer, sale, grant, conveyance, gift, deed, divestiture, lease, hypothecation, quitclaim, mortgage or other interest in the Property (collectively "Transfer"), Grantor shall provide written notice of the transfer to Holder at least thirty (30) days before the Transfer. Such notice shall contain the name and most recent address known to Grantor of the entity that is the subject of the transfer in order for Holder to conduct its obligations and activities with the entity that is the subject of the transfer. Grantor agrees to incorporate the terms of this Conservation Easement by reference in any deed or other legal instrument by which Grantor conducts a transfer, including, without limitation, a leasehold interest.

13. Attorneys' Fees, Costs to Prevailing Party. In the event of a contested court action arising out of the terms of this Conservation Easement, the prevailing party shall be entitled to an award of attorneys' fees and costs against the losing party.

14. No Third Party Enforcement. The terms of this Conservation Easement shall not be enforced by any person who is not a party to this Conservation Easement. The Parties do not intend to cause or allow any person to claim to be a third party beneficiary with any right to enforce or interpret any terms of this Conservation Easement. There is not intended to be and there shall not be any private right of action in favor of any non-party person or entity to enforce or to prevent enforcement of any permission, prohibition or right granted or reserved by or under this Conservation Easement.

15. No Forfeiture. Nothing contained herein will result in a forfeiture or reversion of Grantor's title in any respect.

16. Cancellation. This Conservation Easement is subject to cancellation per A.R.S. Section 38-511.

17. No Subordination. Upon recordation in the records of the Pima County Recorder's Office, this Conservation Easement shall be deemed superior to all after-acquired property interests in the Property. Holder shall have no obligation to subordinate its rights and interests in this Conservation Easement to any party.

18. Release Upon Conveyance. The liabilities, duties or obligations of a party hereunder shall cease upon transfer or conveyance by such party of its interest in the Property, except

that this provision shall in no way purport to release a party from liability for acts, omissions or events occurring prior to the time of such transfer or conveyance.

19. Recordation. The Parties shall record this instrument in timely fashion in the official records of Pima County, Arizona, and shall furnish the other with satisfactory evidence of same upon request.

20. Notices. Any notice, demand, request, consent, approval or other communication that either party desires or is otherwise required to give shall be in writing and either served personally, by facsimile, or sent by Certified Mail, Return Receipt Requested, as follows:

To Grantor: Allan P. Dunstan
200 W. Esperanza Avenue
Ajo, AZ 85321-2403

Copy to: Not Applicable
“ “
“ “
“ “

To County: Pima County Administrator
130 West Congress Street, 10th Floor
Tucson, AZ 85701
Telecopy: (520) 740-8171

Copy to: Manager
Pima County Real Property Services
201 N. Stone Avenue, 6th Floor
Tucson, AZ 85701-1215
Telecopy: (520) 720-6763

And: Chief Civil Deputy
Pima County Attorney's Office
Civil Division
32 N. Stone Avenue, 21st Floor
Tucson, AZ 85701
Telecopy: (520) 620-6556

21. Amendment. If circumstances arise under which an amendment to or modification of this Conservation Easement would be appropriate, Grantor and Holder may jointly amend the Conservation Easement; provided that no amendment shall be allowed that affects the qualification of the Conservation Easement under the Internal Revenue code or A.R.S. Sections 33-271 et. seq., as amended from time to time. Any such amendment shall be consistent with the purposes of the Conservation Easement, shall not affect its perpetual duration, shall not permit additional development or improvements to be

undertaken on the Property other than development or improvements currently permitted by the Conservation Easement, and shall not impair any of the significant Conservation Values of the Property. Any such amendment shall be recorded in the official records of Pima County.

22. General Provisions.

22.1. Controlling Law, Venue. The laws of the State of Arizona govern the interpretation and performance of this Conservation Easement. Any court action pursuant to this Conservation Easement shall be brought in Arizona Superior Court in Pima County.

22.2. Severability. If any provision of this Conservation Easement, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of this Conservation Easement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.

22.3. Entire Agreement. This instrument sets forth the entire agreement of the Parties with respect to this Conservation Easement.

22.4. Successors. The covenants, terms, conditions, and restrictions of this Conservation 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 perpetual servitude running with the Property.

22.5. Exhibits Incorporated. All Exhibits referred to in this Conservation Easement are attached to this Conservation Easement and are incorporated herein by this reference.

22.6. Effective Date. This Conservation Easement is effective and binding when fully executed by both Grantor and Holder.

22.7. Counterparts. This instrument may be executed in any number of counterparts, each of which may be executed by any one or more of the parties hereto, but all of which shall constitute one instrument, and shall be binding and effective when all parties have executed at least one counterpart.

22.8. Recitals Incorporated. The Parties hereto acknowledge and agree that the Recitals stated above are true and correct as of the date hereof. The Parties specifically incorporate the Recitals into this Conservation Easement by this reference.

22.9. Heirs, Successors and Assigns Included. Except where otherwise expressly stated, the terms "Grantor" and "Holder" as used herein, shall be deemed to include, respectively, the Grantor, its executors, personal representatives, heirs, successors and assigns, and the Holder, its successors and assigns.

GRANTOR:

Allan P. Dunstan, an unmarried man

STATE OF _____)
COUNTY OF _____) ss

This instrument was acknowledged before me on this _____ day of _____, 2018, by Allan P. Dunstan,

Notary Public

My Commission Expires:

EXHIBIT ONLY--NOT FOR EXECUTION

ACCEPTED BY HOLDER:
PIMA COUNTY, ARIZONA

Neil J. Konigsberg, Manager,
Pima County Real Property

Date: _____

APPROVED AS TO FORM:

Kell Olson, Deputy Pima County
Attorney, Civil Division

APPROVED AS TO CONTENT:

Chris Cawein, Director, Pima County
Natural Resources Parks & Recreation
Department

APPROVED AS TO CONTENT:

Linda Mayro, Director
Pima County Office of Sustainability
And Conservation