

Recording requested by and return to:  
landowner's representative  
address

NOT INTENDED AS LEGAL ADVICE

**FORM FOR:  
DEED OF CONSERVATION EASEMENT  
FOR THE  
\_\_\_\_\_ [insert name] \_\_\_\_\_ RANCH**

THIS DEED OF CONSERVATION EASEMENT ("Deed") is granted effective as of the day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_, whose address is \_\_\_\_\_, **(if multiple parties, insert the word "collectively" here]** "Grantor"), to ARIZONA LAND AND WATER TRUST, INC., an Arizona nonprofit corporation ("Grantee") having its principal office at 3127 North Cherry Avenue, Tucson, Arizona 85719, for the purpose of forever conserving the open space character, agricultural productivity, wildlife habitat, and scenic qualities of the subject property.

**WITNESS THAT:**

Grantor is the sole owner in fee simple of the ranch property ("Property") legally described in **Exhibit A** attached to and made a part of this Deed, which consists of approximately \_ acres of land, together with buildings and other improvements, located in \_ County, State of Arizona.

The Property is primarily open ranchland, and is an important part of the productive agricultural land still remaining in \_\_\_\_\_ County. The \_\_\_\_\_ flows through the Property for approximately \_\_\_\_\_ miles **[if applicable]**. The Property also includes relatively natural habitat with a variety of wildlife species, including **[insert representative list]**.

The Property contains **[insert relevant information such as the features that make the Property valuable ranchland, topographic features, types of meadows, historic ranch identity, and historic structures]**.

The agricultural, ecological and other characteristics of the Property, its current use and state of improvement, will be described in a present condition report to be prepared by Grantor with the cooperation of Grantee, which report is subject to approval by both Grantor and Grantee. The report will be used by Grantee to assure that any future changes in the use of the Property will be consistent with the terms of this Deed. However, this report is not intended to preclude the use of other evidence to establish the present condition of the Property if there is a controversy over its use.

Grantor intends to make a charitable gift of the property interest conveyed by this Deed to Grantee for the exclusive purpose of assuring that, under Grantee's perpetual stewardship, the agricultural productivity, open space character, wildlife habitat, and scenic qualities of the Property will be conserved and maintained forever, and that uses of the land that are inconsistent with these conservation purposes will be prevented or corrected. The parties agree, however, that the current agricultural use of, and improvements to, the Property are consistent with the conservation purposes of this Deed.

The conservation purposes of this Deed are recognized by, and the grant of this Deed will serve, at least and without limitation, the following clearly delineated governmental conservation policies:

· The Farmland Protection Policy Act, P.L. 97-98, 7 U.S.C. §§4201, *et seq.*, whose purpose is "to minimize the extent to which Federal programs and policies contribute to the unnecessary and irreversible conversion of farmland to nonagricultural uses, and to assure that Federal programs are administered in a manner that, to the extent practicable, will be compatible with State, unit of local government and private programs and policies to protect farmland;"

Arizona Revised Statutes §§ 33-271, *et seq.*, providing for the establishment of conservation easements to maintain land "in a natural, scenic or open condition, or for wildlife habitat, or for agricultural . . . or other use or condition consistent with the protection of open land having wholesome environmental quality or life-sustaining ecological diversity."

**[insert local government policies, i.e. agricultural policies from county master plan and or other.]**

Grantee is a "qualified conservation organization," as defined by the United States Internal Revenue Code, and accepts the responsibility of enforcing the terms of this Deed and upholding its conservation purposes forever.

Grantor owns the fee simple interest in the Property, subject to a deed of trust held by \_\_\_\_\_, which has agreed to subordinate its interest in the Property to this Deed as evidenced by the Subordination attached to this Deed.

NOW, THEREFORE, for the reasons given, and in consideration of their mutual promises and covenants, Grantor voluntarily grants and conveys to Grantee, and Grantee voluntarily accepts, a perpetual Conservation Easement, an immediately vested interest in real property defined by Arizona Revised Statutes §§ 33-271, *et seq.*, and of the nature and character described in this Deed, exclusively for the purpose of conserving and forever maintaining the agricultural productivity, open space character, wildlife habitat, and scenic qualities of the Property (the "Conservation Values").

1. *Use of Property.* It is the intention of Grantor to preserve the ability of the Property to be agriculturally productive, including continuing farming and ranching activities, to engage in future ranching activities, **[insert brief description of any reserved uses]**, and to

preserve the open space character, wildlife habitat, and scenic qualities of the Property. The Property may not be used for industrial activities, but may be used for other activities which are not prohibited by the terms of this Deed.

2. *Prohibited Acts.* Grantor promises not to perform, nor knowingly allow others to perform, any act on or affecting the Property that is inconsistent with the covenants herein. Grantor hereby authorizes Grantee to enforce these covenants in the manner described below. However, unless otherwise specified, nothing in this Deed shall require Grantor to take any action to restore the condition of the Property after any fire, Act of God or other event over which Grantor had no control. Grantor understands that nothing in this Deed relieves them of any obligation or restriction on the use of the Property imposed by law.

3. *Construction of Buildings and Other Structures.* The construction of any building or other structure, except those existing on the date of this Deed or those approved by Grantee subsequent to the date hereof but prior to construction, is prohibited except in accordance with subparagraphs A through D below. Before undertaking any construction that requires advance permission, Grantor shall notify Grantee of such request.

A. *Fences.* Existing fences may be repaired and replaced, and new fences may be built anywhere on the Property for purposes of reasonable and customary management of livestock, without any further permission of Grantee. Grantor shall not be required to erect any new fences for any purpose, including, but not limited to, fencing out livestock from riparian areas or other designated habitats.

B. *Agricultural Structures and Improvements.* All existing agricultural buildings and agricultural structures may be repaired, reasonably enlarged and replaced at their current location without further permission of Grantee. New buildings and improvements to be used solely for agricultural purposes, including the processing or sale of farm or ranch products predominantly grown or raised on the Property, may be built within the building envelope described on **Exhibit B** attached to and made a part of this Deed (the "Building Envelope"). Loafing sheds, corrals and other minor agricultural buildings and improvements may be constructed anywhere on the Property. Grantor will notify Grantee prior to construction within the Building Envelope, so Grantee can update its records. No construction of any other new agricultural buildings or improvements other than those covered by the preceding three sentences shall be constructed.

C. *Single-Family Residential Dwellings.* All existing single-family residential dwellings may be repaired, reasonably enlarged (not to exceed 25% of their current size) and replaced at their current location without further permission of Grantee. Not more than \_\_ new single-family residential dwellings, together with associated outbuildings such as barns, garages and sheds, may be built on the Property within the Building Envelope without further permission of Grantee. At the time that construction of such dwelling or dwellings is to commence, Grantee shall be notified so that its records can be updated.

D. *Repair and Replacement.* All buildings which are permitted to be constructed hereunder may be repaired, reasonably enlarged, and replaced at their permitted location without further permission from Grantee. At the time that construction is to commence, Grantee shall be notified so that its records may be updated.

4. *Subdivision.* The division or subdivision of the Property into two or more parcels, whether by physical or legal process, is prohibited.

5. *Development Rights.* Grantor hereby grants to Grantee all development rights except as specifically reserved herein, and the parties agree that such rights are terminated and extinguished, and may not be used on or transferred off of the Property to any other property adjacent or otherwise.

6. *Conservation Practices.* Grantor recognizes the importance of good resource management and stewardship to present and future generations. To this end, all agricultural uses of the Property shall be conducted using standard stewardship and management practices, which shall include compliance with governmental noxious weed control regulations.

7. *Timber Harvesting.* Trees may be cut to control insects and disease, to prevent personal injury and property damage, and for firewood and other domestic uses, including construction of permitted buildings and fences on the Property. Any commercial timber harvesting on the Property shall be conducted on a sustainable yield basis and in substantial accordance with a forest management plan prepared by a competent professional forester.

8. *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.

9. *Grantor Extractions.* Notwithstanding anything in paragraph 8 above to the contrary, soil, sand, gravel or rock may be extracted without further permission from Grantee so long as such extraction is solely for use on the Property, is in conjunction with activities permitted herein, is accomplished in a manner which is consistent with the Conservation Values expressed in this Deed, and that not more than one acre of the Property is disturbed by such extraction. This provision shall be interpreted in a manner consistent with § 170(h) of the United States Internal Revenue Code and the Treasury Regulations adopted pursuant thereto.

10. *Paving and Road Construction.* No portion of the Property shall be paved or otherwise be covered with concrete, asphalt, or any other paving material, nor shall any road for

access or other purposes be constructed, except for any unpaved road necessary to provide access to the buildings currently located on or permitted to hereafter be constructed on the Property. Any such road permitted by this Paragraph shall be constructed in a manner that does not substantially diminish or impair the Conservation Values of the Property.

11. *Trash.* The dumping or accumulation of any kind of trash or refuse on the Property, other than farm-related trash and refuse produced on the Property, is strictly prohibited. However, this shall not prevent the storage of agricultural products and by-products on the Property in accordance with all applicable government laws and regulations.

12. *Recreational Uses.* Golf courses, airstrips, and helicopter pads are strictly prohibited on the Property. Other buildings and facilities for any other public or private recreational use may only be built on the Property in accordance with Paragraph 3, and then only in a manner that does not substantially diminish or impair the Conservation Values of the Property, except that use of the Property for more than "de minimis" commercial recreation activity is prohibited. The term "de minimis" shall have the meaning as set forth in § 2031(c)(8)(B) of the United States Internal Revenue Code and the Treasury Regulations adopted pursuant thereto.

13. *Feed Lot.* The establishment or maintenance of a commercial feed lot is prohibited. For purposes of this Deed, "commercial feed lot" is defined as a permanently constructed confined area or facility within which the property is not grazed or cropped annually, and which is used and maintained for purposes of engaging in the business of the reception and feeding of livestock. Nothing in this section shall prevent Grantor from seasonally confining Grantor's livestock into an area for feeding, from leasing pasture for the grazing of livestock owned by others, and from feeding on a seasonal basis not more than \_ head of cattle owned by others than Grantor.

14. *Water Rights.* Grantor shall retain and reserve the right to use the water rights described on **Exhibit C** (the "Water Rights") for use in present or future agricultural production on the Property, and shall not transfer, lease, sell, or otherwise separate the Water Rights from title to the Property itself; provided that Grantor may transfer, lease, sell, or otherwise separate from the Property such portion of the Water Rights which Grantor demonstrates to Grantee's reasonable satisfaction are not necessary for present or future agricultural production on the Property.

15. *Rights Retained by Grantor.* Subject to interpretation under Paragraph 22, as owners of the Property, Grantor retains the right to perform any act not specifically prohibited or limited by this Deed. These ownership rights include, but are not limited to, the right to exclude any member of the public from trespassing on the Property and the right to sell or otherwise transfer the Property to anyone they choose.

16. *Responsibilities of Grantor and Grantee Not Affected.* Other than as specified herein, this Deed is not intended to impose any legal or other responsibility on Grantee, or in any way to affect any existing obligation of Grantor as owner of the Property. Among other things, this shall apply to:

A. *Taxes.* Grantor shall continue to be solely responsible for payment of all taxes and assessments levied against the Property. If Grantee is ever required to pay any taxes or assessments on its interest in the Property, Grantor will reimburse Grantee for the same.

B. *Upkeep and Maintenance.* Grantor shall continue to be solely responsible for the upkeep and maintenance of the Property, to the extent it may be required by law. Grantee shall have no obligation for the upkeep or maintenance of the Property.

C. *Liability and Indemnification.* If Grantee is ever required by a court to pay damages resulting from personal injury or property damage that occurs on the Property, Grantor shall indemnify and reimburse Grantee for these payments, as well as for reasonable attorneys' fees and other expenses of defending itself, unless Grantee or any of its agents have committed a negligent or deliberate act that is determined by a court to be the sole cause of the injury or damage. In addition, Grantor warrants that Grantee is and will continue to be an additional insured on Grantor's liability insurance policy covering the Property. Grantor shall provide certificates of such insurance to Grantee on an annual basis.

17. *Enforcement.* Grantee shall have the right to prevent and correct or require correction of violations of the terms of this Deed. With reasonable advance notice to Grantor, Grantee or Grantee's agents may enter the Property for the purpose of inspecting for violations. If Grantee finds what it believes is a violation, Grantee may at its discretion take appropriate legal action. Except when an ongoing or imminent violation could irreversibly diminish or impair the Conservation Values of the Property, Grantee shall give Grantor written notice of the violation and sixty (60) days to correct it, before filing any legal action. If a court with jurisdiction determines that a violation may exist or has occurred, Grantee may obtain an injunction to stop it, temporarily or permanently, in addition to such other relief as the court deems appropriate. A court may also issue an injunction requiring Grantor to restore the Property to its condition prior to the violation. In any case where a court finds that a violation has occurred, Grantor shall reimburse Grantee for all its expenses incurred in stopping and correcting the violation, including but not limited to reasonable attorneys' fees. The failure of Grantee to discover a violation or to take immediate legal action shall not bar it from doing so at a later time, and Grantor hereby waives any defense available to Grantor pursuant to C.R.S. § 38-41-119, or the defense of laches or estoppel.

18. *Transfer of Easement.* With the prior written consent of Grantor (which consent shall not be unreasonably withheld), Grantee shall have the right to transfer the easement created by this Deed to any public agency or private nonprofit organization that, at the time of transfer, is a "qualified organization" under §170(h) of the United States Internal Revenue Code, and under Arizona Revised Statutes §§ 33-271, *et seq.*, and only if the agency or organization expressly agrees to assume the responsibility imposed on Grantee by this Deed. If Grantee desires to transfer this easement to a qualified organization having similar purposes as Grantee, but Grantor unreasonably 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 that agrees to assume the

responsibility provided that Grantor receives notice of and an opportunity to participate in the court proceeding.

19. *Transfer of the Property.* Any time the Property itself, or any interest in it, is transferred by Grantor to any third party, Grantor shall notify Grantee in writing at least twenty (20) days prior to the transfer of the Property, and the document of conveyance shall expressly refer to this Deed.

20. *Amendment of Easement.* This easement may be amended only with the written consent of Grantee and Grantor by an instrument duly executed and recorded in the real property records of \_\_\_\_\_ County, Arizona. Any such amendment shall be consistent with the purposes of this Deed and shall comply with §170(h) of the United States Internal Revenue Code, or any regulations promulgated thereunder. Any such amendment shall also be consistent with Arizona Revised Statutes §§ 33-271, *et seq.*, or any regulations promulgated thereunder.

21. *Termination of Easement.* If it is determined that conditions on or surrounding the Property change so much that it becomes impossible to fulfill its conservation purposes, a court with jurisdiction may, at the joint request of both Grantor and Grantee, terminate the easement created by this Deed. If condemnation of a part of the Property or of the entire Property by public authority renders it impossible to fulfill any of these conservation purposes, the easement may be terminated through condemnation proceedings. If the easement is terminated in whole or in part and all or part of the Property is sold or taken for public use, then, as required by Treasury Regulation §1.170A-14(g)(6), Grantee shall be entitled to \_\_ percent of the gross sale proceeds or condemnation award representing an amount equal to the ratio of the appraised value of this easement to the unrestricted fair market value of the Property, as these values are determined on the date of this Deed. Grantee shall use the proceeds consistently with the conservation purposes of this Deed.

22. *Interpretation.* This Deed shall be interpreted under the laws of the State of Arizona, resolving any ambiguities and questions of the validity of specific provisions so as to preserve the Conservation Values and give maximum effect to its conservation purposes.

23. *Perpetual Duration.* The easement created by this Deed shall be a servitude running with the land in perpetuity. Every provision of this Deed that applies to Grantor or Grantee shall also apply to their respective agents, heirs, executors, administrators, assigns, and all other successors as their interests may appear. A party's rights and obligations under this Deed terminate upon transfer of the party's interest in this Deed or the Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

24. *Notices.* Any notices required by this Deed shall be in writing and shall be personally delivered or sent by certified mail, return receipt requested, to Grantor and Grantee respectively at the following addresses, unless a party has been notified by the other of a change of address:

To Grantor: \_\_\_\_\_

To Grantee: ARIZONA LAND AND WATER TRUST, INC.  
3127 North Cherry Ave.  
Tucson, Arizona 85719

25. *Grantor's Title Warranty.* Grantor warrants that Grantor has good and sufficient title to the Property and hereby promises to defend the same against all claims from persons claiming by, through or under Grantor.

26. *Grantor's Environmental Warranty and Indemnity.* Grantor warrants that Grantor has no actual knowledge of a release or threatened release of hazardous substances or wastes on the Property and hereby promises to defend and indemnify Grantee against all litigation, claims, demands, penalties, and damages, including reasonable attorneys' fees, arising from or connected with any release of hazardous waste or violation of federal, state, or local environmental laws. Without limiting the foregoing, nothing in this Deed shall be construed as giving rise to any right or ability in Grantee, nor shall Grantee have any right or ability, to exercise physical or managerial control over the day-to-day operations of 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.

27. *Subsequent Liens on the Property.* No provisions of this Deed of Conservation Easement should be construed as impairing the ability of Grantor to use this Property as collateral for subsequent borrowing, provided that any mortgage or lien arising from such a borrowing would be subordinated to this Deed of Conservation Easement.

28. *No Merger.* Unless the parties expressly state that they intend a merger of estates or interests to occur, then no merger shall be deemed to have occurred hereunder or under any document executed in the future affecting this Deed.

29. *Acceptance.* As attested by the signature of its President affixed hereto, Grantee hereby accepts, without reservation, the rights and responsibilities conveyed by this Deed.

TO HAVE AND TO HOLD, this Deed unto Grantee, its successors and assigns, forever.

IN WITNESS WHEREOF, Grantor and Grantee, intending to legally bind themselves, have set their hands on the date first written above.

**GRANTOR:**

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STATE OF \_\_\_\_\_ )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_,  
20\_\_\_\_, by \_\_\_\_\_.

WITNESS my hand and official seal.

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

DRAFT

**ACCEPTED:**

ARIZONA LAND AND WATER TRUST, INC., an  
Arizona nonprofit corporation

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF ARIZONA                    )  
  ) ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_,  
20\_\_\_\_, by \_\_\_\_\_, as \_\_\_\_\_ of ARIZONA LAND AND WATER TRUST, INC.,  
an Arizona nonprofit corporation.

WITNESS my hand and official seal.

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

- Exhibit A**    Legal Description of Property
- Exhibit B**    Building Envelope
- Exhibit C**    Retained Water Rights