

**TRANSFER OF DEVELOPMENT RIGHTS FORM
WORKING DRAFT**

When recorded, return to:

NAME OF GRANTOR
ADDRESS OF GRANTOR

Parcel Number:

**TRANSFER OF DEVELOPMENT RIGHTS
RESTRICTIVE COVENANT**

THIS TRANSFER OF DEVELOPMENT RIGHTS RESTRICTIVE COVENANT ("**Restrictive Covenant**") is made this _____ day of _____ 2007 ("**Effective Date**"), by _____, (marital status/business entity) ("**Grantor**") in favor of Pima County ("**County**"), a political subdivision of the state of Arizona.

RECITALS

A. Arizona Revised Statutes §11-821.03 enables a county to establish procedures, methods and standards for the transfer of development rights within its jurisdiction;

B. Pursuant to A.R.S. §11-821.03, and in furtherance of County Comprehensive Plan Regional Policy 1.A.7, County adopted Ordinance No. 2007-7 establishing a Transfer of Development Rights program on the 16th day of January, 2007 (the "**Ordinance**");

C. The Transfer of Development Rights program, which is codified in County Zoning Code ("**Zoning Code**") Chapter 18.92, allows property owners to sever development rights, as defined in Section 18.92.020(A)(3), on properties within designated sending areas for the purpose of selling or otherwise transferring those rights to properties within designated receiving areas where more intensive development is appropriate;

D. Grantor owns in fee simple _____ acres of real property in a designated sending area of the County as more particularly described in Exhibit 1 (the "**Sending Property**");

E. Grantor desires to voluntarily participate in the Transfer of Development Rights program in order to have the option of exercising an additional economic use of the Sending Property;

F. Grantor has applied for severance of _____ number of development rights (the "**Severed Development Rights**") on _____ acres of the Sending Property as more particularly described on Exhibit 2 (the "**Conservation Land**").

G. County has determined that:

1. The Sending Property is located in a mapped Sending Area, as defined in Zoning Code Section 18.92.020(A)(4);

2. The Sending Property has the Severed Development Rights available for transfer;

3. The Conservation Land meets the standards for contiguity with other protected lands and open spaces as required by the Ordinance; and

4. The transfer of the Severed Development Rights is in compliance with Section 18.92.050(B) of the Ordinance. A map depicting the bounds of the Conservation Land in relationship to the bounds of the Sending Property is attached as Exhibit 3.

H. The Sending Property possesses characteristics that make it eligible to be a Sending Property under A.R.S. §11-821.03(C)(6);

I. Grantor and County collectively agree that maintenance and preservation of the Conservation Land as undisturbed open space, in perpetuity, except as otherwise provided herein, will protect important , cultural and/or aesthetic values ("**Conservation Values**") for the benefit of Pima County residents;

J. Grantor desires and intends to record this Restrictive Covenant to:
(a) preserve and protect the Conservation Values of the Conservation Land; and
(b) grant to County the right to preserve and protect the Conservation Values of the Conservation Land, including the monitoring and enforcement thereof:

K. Grantor acknowledges that, as a result of participation in County's Transfer of Development Rights program, the potential development of the Sending Property has been reduced by an amount equal to the Severed Development Rights and any remaining development potential of the Sending Property will be calculated without regard to the Conservation Land pursuant to Zoning Code Section 18.92.060(C)(4).

NOW, THEREFORE, in consideration of the above recitals, and the mutual covenants, terms, conditions and restrictions contained herein, Grantor hereby voluntarily grants and conveys to County an interest in perpetuity in the Conservation Land according to the terms and conditions set forth below.

1. PURPOSE

A. It is the purpose of this Restrictive Covenant to ensure that the Conservation Land will be retained forever as undisturbed open space and to prevent any use of the Conservation Land that will impair or interfere with its Conservation Values.

B. The restrictions on development imposed by this Restrictive Covenant (the "**Restrictions**") are for the benefit of the citizens of Pima County.

2. NATURE OF RESTRICTIVE COVENANTS

A. This Restrictive Covenant shall apply in perpetuity and shall run with the Conservation Land.

B. The Restrictions imposed shall be non-revocable without the written consent of the Pima County Board of Supervisors.

C. The Restrictions shall remain in effect notwithstanding any future annexation of any portion of the land by a municipality.

D. After recording of this Restrictive Covenant, any remaining development potential of the Sending Property shall be calculated without regard to the Conservation Land. The Conservation Land may not be aggregated with any other land for purposes of calculating gross development density possible on any remaining unrestricted land.

3. GRANTOR'S COVENANTS

A. Grantor shall maintain and preserve the Conservation Land as undisturbed open space in perpetuity for the protection of its Conservation Values.

B. Without limiting the generality of paragraph 3A above, the following activities are expressly prohibited and shall be prevented by the Grantor with respect to the Conservation Land:

1) Development or construction of any kind, including erecting fences; provided, however, that the Grantor shall be permitted to install and maintain fencing around the perimeter of the Conservation Land so long as the fencing meets the wildlife-friendly fence standards of the Arizona Game and Fish

Department and the Grantor first obtains approval from the Pima County Development Services Department Environmental Planning Section.

2) Any clearing, grading or other alteration of the surface, including construction of roadways;

3) Removing, destroying, or cutting of native trees, shrubs, or other vegetation;

4) Altering, manipulating or impounding any natural watercourse;

5) Development of, or granting of rights-of-way or easements for new roads and utilities, including telecommunications facilities, except where necessary to enhance or protect the Conservation Values on the Conservation Land, provide access to adjacent public lands, or as otherwise permitted in this Restrictive Covenant.

6) Dumping of refuse, or other unsightly, offensive or toxic materials, including bio-solids such as plant cutting;

7) The intentional or negligent introduction of non-native species of a noxious or aggressive character;

8) Dredging, mining, drilling, exploration, or extraction of minerals, hydrocarbons, soils, sand, gravel, rock or other materials on or below the surface, or the transfer or conveyance of mineral rights, except that Grantor may transfer or convey mineral rights to County;

9) Storage and use of biocides and chemical fertilizers, except for control of non-native invasive species;

10) Any use by motorized or non-motorized vehicles, except as permitted elsewhere in this Restrictive Covenant.

11) The intentional lighting of a fire for any purpose;

12) Orientation of artificial outside lighting in such a manner that it directly illuminates the Conservation Land; and

13) Livestock grazing or agricultural uses, unless the County, Grantor, and lienholders of the Sending Property have executed and attached hereto an Addendum A titled "Special Terms and Restrictions That Apply To Current Grazing and Agricultural Operations on Conservation Land." If an addendum A has not been executed and attached hereto, then by executing this Restrictive Covenant, Grantor acknowledges that there is no grazing or agricultural use of the Sending Property as of the date hereof.

C. Grantor hereby grants and conveys to County an easement in perpetuity for ingress and egress across the portion of the Sending Property, if any, that is designated on Exhibit 3 for ingress and egress to the Conservation Land, so that County can monitor and enforce the terms and conditions of this Restrictive Covenant. It is the intent of Grantor and County to designate an easement on Exhibit 3 in the event that a public road is not contiguous to the Conservation Land, in order to insure that the County has permanent access to the Conservation Land.

4. RIGHTS AND RESPONSIBILITIES RETAINED BY GRANTOR

A. Nothing herein may be construed to convey to the public a right of access to the Conservation Land, and the Grantor, his heirs, successors, and assigns retain exclusive right to such access, except as otherwise provided by the provisions of this Restrictive Covenant.

B. Grantor shall have the right to use, maintain and repair those utilities and roads on the Conservation Land that pre-existed the effective date of this Restrictive Covenant, provided that: (i) Grantor does not increase or expand the use of such pre-existing utilities and roads; and (ii) Grantor's use of such pre-existing utilities and roads continues to be necessary for Grantor's reasonable enjoyment and use of the Sending Property. All pre-existing utilities and roads subject to this Paragraph 4(B) are mapped and described on Exhibit 3

C. Grantor shall have the right to maintain, repair, and in the event of destruction, reconstruct existing buildings on the Conservation Land as set forth on Exhibit 3 hereto (the "Permitted Structures"). Replacement of a Permitted Structure shall be with a structure of similar size, function, capacity, site location and building materials.

D. Grantor retains all responsibilities and shall bear all costs and liabilities of any kind arising out of ownership of the Conservation Land, including but not limited to maintenance, taxes and assessments. Grantor shall remain liable for, and shall indemnify and hold harmless County against, any damages arising out of tort actions for personal injury or property damages that occur on or about the Conservation Land, except that County shall be liable for any injuries to its employees or agents occurring on the Conservation Land in the course of its duties pursuant to this Restrictive Covenant which are not directly or indirectly the result of acts or omissions of Grantor, or Grantors employees or agents.

5. COUNTY RIGHT TO ENFORCE

A. County shall have the right to enter upon the Conservation Land at reasonable times in order to monitor Grantor's compliance with, and to enforce the terms of, this Restrictive Covenant, and to do all things necessary to identify, preserve, protect, and monitor the Conservation Values. County may require

Grantor to restore or otherwise remedy any damaged areas or features of the Conservation Land to the satisfaction of County.

B. County is a third party beneficiary with power to enforce or to intervene in the enforcement of the terms of this Restrictive Covenant. Grantor and every successor interest to the Conservation Land are bound to preserve the Conservation Land as undisturbed open space and to prevent any use of the Conservation Land that will impair or interfere with its Conservation Values.

C. This Restrictive Covenant may be enforced by the County against the Grantor and its heirs, successors, and assigns pursuant to the Ordinance, and all other applicable law.

D. County may enforce the terms of this Restrictive Covenant through any available legal or equitable remedy, including but not limited to damages, injunctive relief and/or specific performance requiring the Grantor to cease and desist all activity in violation of this Restrictive Covenant and to return the Conservation Land to its condition prior to any violation. The failure of County to insist upon the full and complete performance of any of the terms and conditions of this Restrictive Covenant, or to take any action permitted as a result thereof, shall not be construed as a waiver or relinquishment of the right to insist upon full and complete performance of the same, or any other covenant or condition, either in the past or in the future.

E. Nothing contained in this Restrictive Covenant shall be construed to entitle County to bring any action against Grantor for any injury to or change in the Conservation Land resulting from (i) causes beyond Grantor's control, including unforeseeable acts of trespassers, fire, flood, storm, drought, pests, earth movement, and major vegetative disease; (ii) any reasonable and necessary action taken by Grantor to address health, safety or emergency conditions on the Sending Property (iii) any reasonable and prudent action taken by the Grantor under emergency conditions to prevent, abate or mitigate significant injury to the Conservation Land resulting from such causes; and (iv) any reasonable and prudent action taken by the Grantor in an emergency situation to prevent bodily injury to any person or significant damage to property.

6. WARRANTIES, COVENANTS AND REPRESENTATIONS

Grantor makes the following representations to County:

A. Grantor is the owner in fee simple of the Sending Property and Conservation Land as of the date of execution of this Restrictive Covenant;

B. All representations made by Grantor in its application for severance of the Severed Development Rights were true and correct when made and remain true and correct as of the date hereof.

C. All owners and lienholders of the Sending Property have been identified pursuant to Zoning Code Section 18.92.060(C)(2) and (3) and are signatories to this Restrictive Covenant.

D. Grantor knows of no past, current, or potential future condition on the Sending Property or Conservation Land that would interfere with, or impair, the Conservation Values or frustrate the purposes of this Restrictive Covenant.

7. MISCELLANEOUS AND GENERAL PROVISIONS

A. Governing Law. The laws and regulations of the State of Arizona shall govern this Restrictive Covenant, and any disputes hereunder. Any action relating to this Restrictive Covenant shall be brought in a court of the State of Arizona in Pima County.

B. Recordation. This Restrictive Covenant shall be recorded in the office of the Pima County Recorder and County may re-record it at any time.

C. Severability. Each provision of this Restrictive Covenant stands alone, and any provision of this Restrictive Covenant found to be prohibited by law shall be ineffective to the extent of such prohibition without invalidating the remainder of this Restrictive Covenant.

D. Notice. Any notice required or permitted to be given under this Restrictive Covenant shall be in writing and shall be served by delivery or by certified mail upon the other party as follows:

If to County: Pima County Development
Services Department
Planning and Zoning
210 N. Stone Avenue, 1st Floor
Tucson, AZ 85701-1215

If to Grantor:

or such other address as any party from time to time shall designate by written notice to others.

E. Attorney's Fees. In the event the County uses the services of an attorney to enforce its rights under this Restrictive Covenant, including the Office of the Pima County Attorney, Grantor shall reimburse County for its attorney's fees and all costs incurred in the enforcement of the terms of this Restrictive Covenant.

June 1, 2007 Revision

IN WITNESS WHEREOF, the parties have executed this Restrictive Covenant as of the date set forth below.

GRANTOR(S)

_____ Dated the ___ day of _____, 20__

State of Arizona)
)
County of Pima)

The foregoing instrument was acknowledged before me this ____ day of _____, 20__ by (name of person acknowledged.)

(Signature and stamp of person taking acknowledgment)

ACCEPTANCE BY COUNTY

Pima County hereby accepts this Transfer of Development Rights Restrictive Covenant by its authority pursuant to A.R.S. §11-821.03.

By _____ Dated the ___ day of _____, 20__
Its:

State of Arizona)
)
County of Pima)

The foregoing instrument was acknowledged before me this ____ day of _____, 20__, by (name and title of position).

(Signature and stamp of person taking acknowledgment)
(Title or rank)
(Serial number, if any)

ACCEPTED AND APPROVED BY:

LIENHOLDER(S) (if applicable)

By _____ Dated the ____ day of _____, 20__
Its:

State of Arizona)
)
County of Pima)

The foregoing instrument was acknowledged before me this ____ day of _____, 20__, by (name of officer or agent, title or officer or agent) of (name of corporation acknowledging) a (state or place of incorporation) corporation, on behalf of the corporation.

(Signature and stamp of person taking acknowledgment)
(Title or rank)
(Serial number, if any)

ADDENDUM TO RESTRICTIVE COVENANT

This Addendum is attached to and hereby made a part of the Restrictive Covenant between _____ as Grantor and in favor of Pima County, a political subdivision of the state of Arizona, with respect to the Sending Property described on Exhibit 1 and the Conservation Land on Exhibit 2.

Grantor hereby represents that as of the date hereof, the Conservation Land is in use as grazing or agricultural land, and County acknowledges that the Conservation Land is in use as grazing or agricultural land. The Conservation Land is used as [description of *specific uses and structures*. *Implementation note: in the list of specific uses include a blanket provision that allows "other customary and reasonably-related ancillary uses and structures which support the existing grazing or agricultural use of the Conservation Land."*] (the "**Permitted Non-Conservation Uses**") and the following structures are present on the Sending Property and are related to the Permitted Non-Conservation Uses: (the "**Permitted Structures**")

Grantor and County hereby agree that notwithstanding anything in the Restrictive Covenant to the contrary, Grantor, and its successors and assigns, may (i) continue the Permitted Non-Conservation Uses on the Conservation Land, and the Permitted Structures may remain on the Conservation Land, and (ii) maintain, repair and/or replace the Permitted Structures with structures that are substantially similar to the existing Permitted Structures, in the reasonable discretion of County. No additional uses or structures, except those specifically permitted by this Addendum, shall be permitted on the Conservation Land, except as provided in the Restricted Covenant.

IN WITNESS WHEREOF, the parties have executed this Addendum to Restrictive Covenant as of the date set forth below.

GRANTOR(S)

_____ Dated the ___ day of _____, 20__

State of Arizona)
)
County of Pima)

The foregoing instrument was acknowledged before me this _____ day of _____, 20__ by (name of person acknowledged.)

(Signature and stamp of person taking acknowledgment)

(Signature and stamp of person taking acknowledgment)
(Title or rank)
(Serial number, if any)