

Recording requested by and when recorded mail to:

United States of America
Commanding Officer
Naval Facilities Engineering Command SW
1220 Pacific Highway, Real Estate Department
San Diego, CA 92132-5190

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Exempt from Documentary Transfer Tax (Rev. & Taxation Code A.R.S. § 11-1134 A3)

Naval Facilities Engineering Command Southwest
Contract Number: N6247319RP00107

GRANT DEED OF RESTRICTIVE USE EASEMENT

THIS GRANT DEED OF RESTRICTIVE USE EASEMENT (the “Restrictive Use Easement”), is made by and between Coconino County, a Political Subdivision of the State of Arizona (hereinafter referred to as the “Grantor or Owner”) and the United States of America, acting by and through the Department of the Navy (hereinafter referred to as the “Grantee”), in accordance with the terms and conditions set forth herein, and is effective as of the date of execution of that certain Grant Deed by which Grantor acquires fee simple title in the Property (hereinafter defined). The nature and purpose of the Restrictive Use Easement and the extent of the restrictions on the Property (as defined below) are as described in the following provisions:

WITNESSETH:

WHEREAS, Grantor is the sole owner in fee simple interest on a total of approximately eighty (80) acres of real property, specifically Assessor Parcel Number 116-05-021F, located in the City of Flagstaff, Coconino County, Arizona, (“Property”). The Property is described in Exhibit “A,” attached hereto and incorporated by this reference;

WHEREAS, the Property is in the vicinity of Naval Observatory Flagstaff Station (the “Installation”) which is operated and used by the United States for military and other purposes;

WHEREAS, it is in the public interest to protect open space in the vicinity of the Installation and to prohibit residential, commercial, and industrial development and to restrict uses of land in said vicinity that may otherwise be incompatible with protecting the Installation from future development that may impact training, operations, and readiness;

WHEREAS, Grantor and Grantee have entered into an agreement pursuant to Title 10 U.S.C. Section 2684a to acquire an interest in the Property to pursue mutually compatible goals of restricting development and conservation of ecologically significant lands; and

WHEREAS, to effectuate the intentions of the parties, Grantor is granting to Grantee a perpetual and irrevocable Restrictive Use Easement over the Property, which, in addition to the other rights conveyed, will extinguish irrevocably and perpetually the right of Grantor and Grantor’s heirs,

successors, and assigns to develop the Property except as expressly permitted in this Restrictive Use Easement.

NOW THEREFORE, in consideration of Five Hundred Thousand Dollars (**\$500,000.00**) and the mutual covenants, terms, conditions, and restrictions contained herein, Grantor hereby grants and conveys to the Grantee a Restrictive Use Easement in perpetuity over the Property, which is shown in Exhibit "A," of the nature and character and to the extent set forth herein.

1. Purpose. The purpose of this Restrictive Use Easement is to prohibit residential, commercial, and industrial development and/or uses of the Property that would be otherwise incompatible with the current or future military training, testing or operations at the Installation.

2. Rights of Grantee. To accomplish the purpose of this Restrictive Use Easement, the following rights are conveyed to Grantee by this Restrictive Use Easement:

a. Enforcement of Prohibitions. To prohibit development and/or use of the Property that would otherwise be incompatible with the mission of the Installation, as defined herein.

b. Right of Entry. To enter upon the Property at reasonable times and with reasonable notice to monitor compliance with and enforce the terms of this Restrictive Use Easement; provided that such entry shall be upon reasonable notice to Grantor (reasonable notice shall consist of written notice ten (10) calendar days prior to the desired inspection date), except when a threat of imminent harm of personal injury or property damage exists, and the Grantee shall not unreasonably interfere with Grantor's use and quiet enjoyment of the Property.

c. Prevention of Activities and Restoration of Property. To prevent any activity on or use of the Property that is not permitted by the Restrictive Use Easement and to require the restoration of such areas or features of the Property that may be damaged by any inconsistent condition, activity, or use that is not permitted.

d. Nothing in this Restrictive Use Easement shall be construed to infer that the Property may be used for military training purposes either now or in the future.

3. Baseline Report. Grantor and Grantee shall retain copies of the Baseline Report. The Baseline Report may be used to establish that a change in the use or condition of the Property has occurred, but its existence shall not preclude the use of other evidence to establish the condition of the Property as of the date of this Restrictive Use Easement. The Baseline Report is to identify the existing condition and current use of the Property. The Baseline Report, which consists of reports, maps, photographs and other documentation, provides an accurate representation of the Property as of the date of this Restrictive Use Easement. The purpose of the Baseline Report is to serve as a baseline for monitoring compliance with the terms of this Restrictive Use Easement. Grantor and Grantee acknowledge that it is accurate as of the date of this Restrictive Use Easement. Grantor and Grantee have acknowledged in a signed statement, a copy of which is attached hereto as Exhibit B, that the Baseline Report accurately represents the condition of the Property at the time of conveyance of this Restrictive Use Easement.

4. Prohibited Uses. Any activity or use of the Property inconsistent with the purpose of this Restrictive Use Easement is prohibited. Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited:

a. Human Habitation. Except as provided in Section 5.a. below, the Property may not be used for human habitation, including but not limited to, temporary accommodations such as cabins, trailers, RVs, tents, etc. Except as provided in Section 5.a. below, constructing or placing any temporary or permanent structure, facility, or improvement for the purpose of human habitation is prohibited.

b. Subdivision. The division, subdivision or *de facto* subdivision or partition of the Property is prohibited. The Property is currently comprised of one (1) legal parcel, identified by one (1) assessor parcel number with fee title held by Grantor. Any development rights held by Grantor, as Owner of the property, whether existing or arising out of future zone changes, are hereby surrendered by Grantor except as provided in this Restrictive Use Easement. Grantor will not apply for, or otherwise seek recognition of additional legal parcels, lots or structures within the Property.

c. Uses. Except as provided in Section 5 below, any and all commercial uses, any and all residential uses, and any and all industrial uses are prohibited. Commercial use is defined as any use of the Property involving the exchange of money, or consideration, for use thereof. Charging a fee for recreational or educational purposes shall not be considered commercial use.

d. Construction. Construction of any residential and/or commercial and/or agricultural and/or industrial-related structures, except for those permitted by Section 5 of this Restrictive Use Easement. New construction of any structure or edifice, including but not limited to buildings, antennas, towers, power or telephone wires and any other additions to, or alterations of the Property are prohibited, except for those improvements or alterations reasonably related to the allowed uses of the Property (including the rebuilding of structures after loss or damage by casualty) defined within Sections 4 and 5 herein.

e. Height Limits. No structure, building, antenna tower or other obstruction may exceed fifty (50) feet above ground level.

f. Lighting. No lighting shall be permitted that may be dangerous, distracting, or misleading to telescopes operating from the Installation or that may degrade the operational view-shed or otherwise increase sky-brightness.

g. Other Hazards. Except as provided in Section 5 below, no activities or operations of any type shall be permitted that produce excess light, particulate matter, or heat sources that have the potential to degrade operational view-shed from the Installation.

h. Waste Removal. Grantor shall not permit trash, refuse, vehicle bodies, rubbish, debris, junk, waste, garbage, sewage, hazardous or toxic substances, household garbage, or other

unsightly material to be placed on the Property. This provision does not prohibit burning or composting of excess brush or other plant material resulting from activities permitted herein; nor does this prohibit storage of waste incidental to allowable operations on the Property. Disposal of any waste materials generated by activities permitted under this Restrictive Use Easement shall be in accordance with any Federal, State, and local laws and regulations.

5. Permitted Uses. The following uses are permitted with the following restrictions:

a. Improvements. The Property may be improved by trails, trailheads, parking areas, limited roads and structure(s) necessary for recreational and educational programs or property maintenance, including without limitation, an outdoor classroom, subject to the restrictions of Section 4.

b. Passive Recreation. Non-commercial, public recreational activities including, but not limited to, hiking, horseback riding, bicycle riding, bird watching, fishing, hunting, transient camping, and recreational and environmental educational programming that require minimal or no improvements to the Property.

c. Fire Prevention. Thinning flammable vegetation on the Property is authorized as necessary to maintain defensible space to protect all structures and facilities to maintain the Property's safe environment and operating conditions.

d. Fences. Construction of fencing is permitted where reasonably necessary for the permitted uses hereunder.

e. Signs. Erection and maintenance of a sign or other appropriate marker at a location on the Property indicating property ownership or similar information.

f. Right to Transfer. Subject to Section 10, transfer of the Property to the State, a political subdivision of the State, or a private entity that has as its stated principal organizational purpose or goal the conservation, restoration, or preservation of land and natural resources, or a similar purpose or goal.

g. Conservation Activities. Uses of the Property for wildlife habitat preservation, restoration, management, education, control of predatory and problem animals by the use of selective control techniques which may include hunting, and research that are consistent with the military training mission and primary functions of the Installation in accomplishing its mission. The natural condition existing on the Property as of the date of this Restrictive Use Easement is deemed consistent with the military training mission and primary functions of the Installation in accomplishing its mission.

h. Silviculture and Grazing. Grantor is permitted to use the Property for silviculture, including but not limited to thinning (mechanical and non-mechanical), reforestation and controlled burns for the purpose of forest health and for the grazing of cattle and ranging livestock, including the temporary or supplemental feeding of livestock.

6. Notification Provisions.

a. Notice of Intent to Undertake New Uses and/or Construction. Grantor shall notify Grantee in writing not less than ninety (90) calendar days prior to the date that Grantor intends to undertake any actions that may have an adverse impact on the purpose of or rights granted to Grantee under this Restrictive Use Easement and applicable law. Whenever Grantor plans to undertake a new use or perform new construction on the Property, including any new improvement authorized in Section 5 above, Grantor will notify Grantee in writing by certified mail not less than ninety (90) calendar days prior to the date that Grantor intends to undertake the activity in question. The notice shall describe the nature, scope, design, location, timetable, and any other material aspects of the proposed activity in sufficient detail to permit Grantee to make an informed judgment as to its consistency with the purpose of or the rights granted to Grantee under the Restrictive Use Easement.

b. Grantee's Response. Within ninety (90) calendar days of receipt of the request, Grantee will grant or withhold approval in writing. Grantee's approval may be withheld only upon a reasonable determination by Grantee that the action proposed would have an adverse impact on the purposes of or rights granted to Grantee under this Restrictive Use Easement and applicable laws and regulations or would otherwise be inconsistent with this Restrictive Use Easement. If Grantee does not respond within said ninety day period, then the activity will be deemed approved.

7. Grantee's Discretion. Enforcement of the terms of this Restrictive Use Easement shall be at the discretion of Grantee. No failure on the part of Grantee to enforce any term hereof shall discharge or invalidate such term or any other term hereof or affect the right of Grantee to enforce the same in the event of a subsequent breach or default.

8. Enforcement and Remedies. Grantee is authorized to record or file any notices or instruments appropriate to assure the perpetual enforceability of this Restrictive Use Easement. Grantor or subsequent owner(s) of the Property, as applicable, agree to provide and execute any instruments appropriate or necessary to enforcing this Restrictive Use Easement. Grantee has the right to enforce the provisions of this Restrictive Use Easement by proceedings at law or in equity and to prevent or remedy violations through appropriate judicial action brought against Grantor or other responsible parties in a court of competent jurisdiction.

a. Violations: Notice and Injunctive Relief.

(1) Except as permitted in Subsection 8.a.(2) below, if Grantee determines that there is a violation of the terms, conditions, or obligations created by this Restrictive Use Easement or that a violation is threatened, Grantee shall give written notice to Grantor. The notice shall identify the violation or threatened violation. Where known to Grantee, the notice shall identify corrective action necessary to cure the violation. Where the violation involves injury to the Property resulting from any use or activity inconsistent with this Restrictive Use Easement, the notice may demand restoration of the portion of the Property so injured. Grantor shall be afforded

ninety (90) days from the receipt of Grantee's notice of non-compliance to cure the subject breach, except where irreparable harm may result from any delay in curing a breach. If Grantor fails to cure the violation within the ninety (90) day period after Grantee gives notice, or under circumstances where the violation cannot reasonably be cured within the ninety (90) day period as determined by Grantee, if Grantor fails to begin curing the violation during that period, or if Grantor does not continue diligently to cure the violation until finally cured, or as otherwise provided in this Restrictive Use Easement, Grantee may first attempt mediation or arbitration with Grantor and/or Grantee may bring an action at law or in equity to enforce the terms of this Restrictive Use Easement.

(2) If Grantee, in its sole discretion, determines that an ongoing or imminent violation could irreversibly diminish or impair the open space character of the Property, Grantee may pursue its remedies under this Section, including but not limited to, ex parte judicial relief, without prior notice to Grantor or without waiting for the period provided for cure to expire. Grantee shall have the right to seek injunctive relief pursuant to this Section if, in Grantee's reasonable discretion, an injunction is required to prevent the irreversible and material impairment of the purposes of or rights granted to Grantee under this Restrictive Use Easement and applicable law or otherwise to enforce this Restrictive Use Easement.

b. Damages. Grantee is entitled to recover damages from Grantor for violation of the terms of this Restrictive Use Easement.

c. Equitable Remedies. Grantee's rights under this Section apply equally in the event of either actual or threatened violations of the terms of this Restrictive Use Easement. Grantor and Grantee expressly agree that the Property is unique and that a violation of this Restrictive Use Easement, and the ensuing harm or alteration of the Property, may result in damages that are irremediable and not subject to quantification. Grantor agrees that Grantee's remedies at law for a violation of the terms of this Restrictive Use Easement may be inadequate and that Grantee is entitled to seek the injunctive relief described in this Section, both prohibitive and mandatory, in addition to such other relief to which Grantee may be entitled, including specific performance of the terms of this Restrictive Use Easement. Grantee's remedies described in this Section shall be cumulative and shall be in addition to all remedies now or hereinafter existing at law or in equity. Equitable relief may include restoration of the Property to the condition that existed prior to the injury.

d. Acts Beyond Grantor's Control. Grantee may not bring any action against Grantor for any change to the Property resulting from causes beyond Grantor's control, such as changes caused by fire, flood, storm, earth movement, or natural deterioration, or resulting from prudent action taken in good faith under emergency conditions to prevent or mitigate damage from such causes.

e. Right to Report. In addition to other remedies, Grantee has the right to report any environmental concerns or conditions or any actual or potential violations of any environmental laws to appropriate regulatory agencies.

f. Breach. Upon any breach of a term of this Restrictive Use Easement, Grantee may exercise any or all of the following remedies, including:

(1) Requiring that the Property be restored promptly to the condition required by this Restrictive Use Easement.

(2) Taking necessary actions to correct the non-compliance. Upon request by Grantee, Grantor shall reimburse Grantee for its reasonable costs incurred to correct the non-compliance.

(3) Instituting mediation or other alternative dispute resolution strategy that is agreed to by the parties.

(4) Instituting suits to enjoin any breach or enforce any term by injunction.

(5) Enforcing abatement procedures to return the Property into compliance as productive land.

Enforcement of the terms of this Restrictive Use Easement shall be at the discretion of Grantee. No failure on the part of Grantee to enforce any term hereof shall discharge or invalidate such term or any other term hereof or affect the right of Grantee to enforce the same in the event of a subsequent breach or default.

9. Costs and Liabilities. Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership and maintenance of the Property, except as such costs or liabilities shall have resulted from the acts of Grantee or Grantee's agents or contractors.

10. Subsequent Transfers. Grantor agrees to incorporate the terms of this Restrictive Use Easement by reference in any deed or other legal instrument by which Grantor divests itself of any interest in the Property, including but not limited to, a fee title or leasehold interest. Grantor further agrees to incorporate a requirement in any deed or legal instrument to give written notice to Grantee of the transfer of any interest at least sixty (60) days prior to the date of such transfer.

11. Notices. Any notice, approval or communication that either party is required to give in writing may be served personally or mailed to:

To Grantor:

Coconino County
Attn: Parks & Recreation Director
Fort Tuthill County Park
2446 Fort Tuthill Loop
Flagstaff, AZ 86005

To Grantee:

Commanding Officer
Naval Facilities Engineering Command Southwest
Real Estate Department
1220 Pacific Highway, Bldg 127
San Diego, CA 92132-5190

or to such other address as either party may designate by written notice to the others.

12. Recordation. Grantor shall record this Restrictive Use Easement in a timely manner in the official records for the county in which the Property is located. Grantee may re-record this Restrictive Use Easement or any other documents necessary to protect its rights under this Restrictive Use Easement or to assure the perpetual enforceability of this Restrictive Use Easement.

13. Severability. If any provision of this Restrictive Use Easement, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of this Restrictive Use 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.

14. Restrictive Use Easement Runs with the Land. The covenants, terms, conditions, and restrictions of this Restrictive Use Easement shall run with the land in perpetuity and shall be binding upon and inure to the benefit of the parties hereto and their respective personal representatives, heirs, successors and assigns and shall continue as a servitude running with the Property; without limiting the generality of the foregoing, subsequent owner(s) shall take title to the Property subject to the terms of this Restrictive Use Easement.

15. Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to the conveyance of a Restrictive Use Easement in the Property and supersedes all prior discussions, negotiations, understandings, or agreements relating to this Restrictive Use Easement, all of which are merged herein.

16. Controlling Law. The interpretation and performance of this Restrictive Use Easement shall be governed by applicable laws of the United States of America.

17. Liberal Construction. Any general rule of construction to the contrary notwithstanding, this Restrictive Use Easement shall be liberally construed in favor of the grant to effect the purpose of this Restrictive Use Easement and the policy and purpose of 10 U.S.C. Section 2684a, as amended. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purpose of this Restrictive Use Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

Exhibit "A" – Legal Description and Map of the Property

Exhibit "B" – Acknowledgement of Baseline Report

IN WITNESS WHEREOF, Grantor has executed this Restrictive Use Easement on the day and the year written above.

Dated: _____, 2019

COCONINO COUNTY,
a Political Subdivision of the State of Arizona

By: _____

Title: _____

STATE OF ARIZONA)

: ss.

(County of Coconino)

On this _____ day of _____, 2019, before me, _____, a notary public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Notary Public

Notarial Seal

IN WITNESS WHEREOF, Grantee hereby accepts this Restrictive Use Easement.

Dated: _____, 2019

Accepted:

UNITED STATES OF AMERICA
Department of the Navy

By: _____

DAVID B. BIXLER
Real Estate Contracting Officer

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)

: ss.

(County of San Diego)

On this _____ day of _____, 2019, before me, _____, a notary public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Notary Public

Notarial Seal

**Exhibit A
Legal Description and Map of the Property**

Southeast Quarter of the Southwest Quarter and the Southwest Quarter of the Southwest Quarter,
all in Section 33, Township 21 North, Range 6 East of the Gila and Salt River Base and
Meridian, Coconino County, Arizona

(Map attached)

Exhibit B
Acknowledgment of Baseline Documentation Report

The Parties acknowledge that each has read the Baseline Report dated _____, 2019, and that the report accurately reflects the condition of the Property subject to the Restrictive Use Easement as of the date of conveyance of the Restrictive Use Easement.

Grantor: COCONINO COUNTY, a Political Subdivision of the State of Arizona By: _____ Name: _____ Title: _____	Grantee: UNITED STATES OF AMERICA Department of the Navy By: _____ DAVID B. BIXLER Real Estate Contracting Officer
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