

**STATE LAND DEPARTMENT  
STATE OF ARIZONA**

**Right of Way**

R/W No. 14-114856-00

**THIS RIGHT OF WAY** (“Right of Way”) is entered into by and between the State of Arizona (as “Grantor”) by and through the Arizona State Land Department and

**ROSEMONT COPPER COMPANY**

(“Grantee”). In consideration of payment and performance by the parties of each of the provisions set forth herein, the parties agree as follows:

**EXTENT OF DOCUMENT**

“Additional Conditions”, “Exhibits”, and “Appendixes” are an integral part of this document. In case of a conflict between the printed boiler document and the additional conditions, exhibits, or appendixes, the applicable additional condition, exhibit, or appendix shall be considered the governing document and supersede the printed boiler, but only to the extent necessary to implement the additional condition, exhibit, or appendix, and only if the additional condition, exhibit, or appendix does not conflict with governing state or federal law.

**ARTICLE 1  
SUBJECT LAND**

1.1 Grantor grants to Grantee a Right of Way on, over, through, and across the State lands described in Appendix A attached hereto (“Subject Land”).

1.2 Grantee makes use of the Subject Land “as is”, and Grantor makes no express or implied warranties as to the physical condition of the Subject Land.

**ARTICLE 2  
TERM**

2.1 The term of this Right of Way commences on March 7, 2017 (“Commencement Date”), and expires on March 6, 2067 (“Expiration Date”), unless sooner canceled or terminated as provided herein or as provided by law.

**ARTICLE 3**  
**RENT**

3.1 Base Rent shall be payable in advance every 10 years for the above-mentioned term in such amount as determined to be due on the basis of appraisals made by the Commissioner.

3.2 If the Grantee should fail to pay rental when due, or fail to keep the covenants and agreements herein set forth, the Commissioner, at his option, may cancel said Right of Way or declare the same forfeited in the manner provided by law.

3.3 There shall be added to the delinquent rental or other monies due, a penalty and delinquent interest. The delinquent interest rate shall be set by the State Treasurer according to law. The penalty shall be the greater of a minimum processing cost as determined by the Commissioner or five (5%) percent. The delinquent rent, penalty and interest shall be a lien on the improvements and property on the land.

**ARTICLE 4**  
**PURPOSE AND USE OF SUBJECT LAND**

4.1 The purpose of this Right of Way is the location, construction, operation, and maintenance of:

Non-exclusive access road.

4.2 No material may be removed by Grantee or its contractors without the written approval of the Grantor.

4.3 Grantee shall not exclude from use the State of Arizona, its lessees, or grantees, or the general public the right of ingress and egress over this Right of Way.

4.4 Grantee shall acquire required permits prior to construction, and adhere to all applicable rules, regulations, ordinances, and building codes as promulgated by the local jurisdiction and any applicable State or Federal agencies.

4.5 All use of State land outside the Right of Way must be applied for and authorized in accordance with applicable law.

4.6 Grantee shall not sublet or assign this Right of Way or any portion thereof without the written consent of the Grantor.

4.7 The Grantor retains ownership of the Subject Land. The use of this Right of Way is to be non-exclusive. This Right of Way is sold subject to existing reservations, easements, or rights of way heretofore legally obtained and now in full force and effect.

4.8 When necessary for Grantee's reasonable use of this Right of Way for the purposes for which the grant is made, it shall be deemed to include the rights in, upon,

over, and across the described Subject Land to erect, construct, reconstruct, replace, repair, and maintain the facilities authorized by this Right of Way.

4.9 Grantee shall have the right to erect, maintain, and use gates in all fences under the control of the Grantor which now cross or shall hereafter cross said Right of Way, and to trim, cut, and clear away trees or brush whenever in its judgment the same shall be necessary for the convenient and safe exercise of the right herein provided.

4.10 Grantee shall not fence any portion of this Right of Way unless specifically authorized in the attached additional conditions without prior written consent of Grantor, nor shall Grantee exclude from the use of the surface thereof the State of Arizona or its lessees or grantees as reserved in Paragraph 10.1.

#### **ARTICLE 5** **CONFORMITY TO LAW**

5.1 This Right of Way is subject to applicable laws and covenants relating to State lands.

#### **ARTICLE 6** **CANCELLATION, TERMINATION AND ABANDONMENT**

6.1 This Right of Way is subject to cancellation pursuant to A.R.S. § 38-511.

6.2 If at any time the Right of Way ceases to be used for the purpose for which it was granted, it shall become void, and the right to use the Subject Land and all the rights of Grantee hereunder shall revert to the Grantor.

6.3 Upon revocation or termination of the Right of Way, the Grantee shall remove all equipment or facilities, and so far as is reasonably possible, restore and/or rehabilitate the Subject Land to its original condition, and to the satisfaction of the Grantor.

#### **ARTICLE 7** **ENVIRONMENTAL INDEMNITY**

7.1 Grantee shall protect, defend, indemnify, and hold harmless the Grantor from and against all liabilities, costs, charges, and expenses, including attorneys' fees and court costs arising out of (or related to) the presence of (or existence of) any substance regulated under any applicable federal, state, or local environmental laws, regulations, ordinances, or amendments thereto because of: (a) any substance that came to be located on the Right of Way due to Grantee's use or occupancy of the lands by the Grantee before or after the issuance of the Right of Way; or (b) any release, threatened release, or escape of any substance in, on, under, or from the Right of Way that is caused, in whole or in part, by any conduct, actions, or negligence of the Grantee, regardless of when such substance came to be located on the Right of Way.

7.2 For the purposes of this Right of Way the term “regulated substances” shall include substances defined as “regulated substances”, “hazardous waste”, “hazardous substances”, “hazardous materials”, “toxic substances”, or “pesticides” in the Resource Conservation and Recovery Act, as amended by the Hazardous and Solid Waste Amendments of 1984; the Comprehensive Environmental Response, Compensation, and Liability Act; the Hazardous Materials Transportation Act; the Toxic Substance Control Act; the Federal Insecticide, Fungicide, and Rodenticide Act; the relevant local and state environmental laws, and the regulations, rules and ordinances adopted, and publications promulgated pursuant to the local, state, and federal laws. This indemnification shall include, without limitation, claims, or damages arising out of any violations of applicable environmental laws, regulations, ordinances, or subdivisions thereof, regardless of any real or alleged strict liability on the part of Grantor. This environmental indemnity shall survive the expiration or termination of this Right of Way and/or any transfer of all or any portion of the Subject Land and shall be governed by the laws of the State of Arizona.

7.3 In the event any such action or claim is brought or asserted against the Grantor, the Grantee shall have the right, subject to the right of the Grantor, to make all final decisions with respect to Grantor’s liability for claims or damages, (i) to participate with Grantor in the conduct of any further required cleanup, removal, or remedial actions and/or negotiation and defense of any claim indemnifiable under this environmental indemnity provision, having reasonable regard to the continuing conduct of the operation/business located on the Subject Land and (ii) to participate with the Grantor in negotiating and finalizing any agreement or settlement with respect to any such claim or cleanup.

## **ARTICLE 8**

### **INSURANCE REQUIREMENTS**

8.1 Grantee shall maintain in full force a commercial general liability insurance policy during the Right of Way term affording protection to the limit of not less than one million dollars. This policy shall contain a provision that Grantor, named as an additional insured, shall be entitled to recovery for any loss occasioned to it, its agents, and employees. Further, the policy shall provide that Grantee’s coverage is primary over any other insurance coverage available to the Grantor, its agents, and employees. Grantee shall send Grantor an advance 30 day written notice of any cancellation or reduction in insurance coverage. Such notice shall be sent directly to the Arizona State Land Department, 1616 W. Adams, Phoenix 85007, and shall be sent by certified mail, return receipt requested.

## **ARTICLE 9**

### **ENVIRONMENTAL MATTERS**

9.1 Grantee shall strictly comply with Environmental Laws relating but not limited to hazardous and toxic materials, wastes, and pollutants. Compliance means the Grantee shall act in accordance with the necessary reporting obligations, obtain and maintain all permits required, and provide copies of all documents as required by

Environmental Laws. For purposes of this Right of Way the term "Environmental Law" shall include but not be limited to any relevant federal, state, or local laws, and applicable regulations, rules and ordinances, and publications promulgated pursuant thereto, including any future modifications or amendments relating to environmental matters.

**ARTICLE 10**  
**RESERVATIONS; RELINQUISHMENTS**

10.1 Grantor reserves the right to grant other rights in, upon, over, and across the described Subject Land for any purpose whatsoever not inconsistent or incompatible with the use allowed by this indenture, and the Grantee agrees not to exclude the Grantor or its lessees or grantees from the use of the Subject Land herein described.

10.2 Grantor reserves all natural resources, timber, and minerals (including oil or gas) in or upon the described Subject Land, and the right to grant leases, permits, easements, and/or rights of way to extract such resources as provided by law and in a manner not inconsistent or incompatible with Grantee rights hereunder. Where inconsistent or incompatible uses exist, the Grantor will require the applicant therefor to indemnify Grantee for loss it might suffer by reason of such use.

10.3 Grantor reserves the right to relinquish to the United States pursuant to the U.S. Act of August 30, 1890, land needed for irrigation works in connection with a government reclamation project.

**ARTICLE 11**  
**LOCATION, CONSTRUCTION AND MAINTENANCE**

11.1 Grantee shall ensure full compliance with the terms and conditions of this Right of Way by its agents, employees, and contractors (including sub-contractors of any tier), and the employees of each of them and shall include the terms and conditions in all contracts and sub-contracts which are entered into by any of them.

11.2 Failure or refusal of Grantee's agents, employees, contractors, sub-contractors, or their employees to comply with these terms and conditions shall be deemed to be the failure or refusal of Grantee.

**ARTICLE 12**  
**NATIVE PLANTS AND CULTURAL RESOURCES**

12.1 (a) Pursuant to A.R.S. §§ 41-841 and 41-842, Grantee, Grantee's employees, and Grantee's guests shall not excavate or collect any prehistoric or historic archaeological specimens on the Subject Land without a permit from the Director of the Arizona State Museum and written approval of Grantor pursuant to the terms of this Right of Way. Grantee shall immediately report any unpermitted excavation or collection of archaeological specimens on the Subject Land to the Arizona State Museum and Grantor.

(b) Pursuant to A.R.S. § 41-844, Grantee shall report to the Director of the Arizona State Museum and Grantor any prehistoric or historic archaeological site, or paleontological site, that is discovered on the Subject Land by Grantee, Grantee's employees, or Grantee's guests, and shall, in consultation with the Director of the Arizona State Museum and Grantor, immediately take all reasonable steps to secure the preservation of the discovery.

12.2 (a) Grantee shall not move, use, destroy, cut or remove or permit to be moved, used, destroyed, cut or removed any timber, cactus, native plants, standing trees or products of the land except that which is necessary for the use of the Subject Land, and then only with the prior written approval of Grantor. For undeveloped land, the Grantee must submit a plant survey prior to the removal of any native plant. If the removal or destruction of plants protected under the Arizona Native Plant Law (A.R.S. § 3-901 et seq., or any successor statutes) is necessary to the use of the Subject Land, Grantee shall also obtain the prior written approval of the Arizona Department of Agriculture. In the event the Grantee removes the native plants, the Grantee must pay a vegetation fee to the Grantor and this fee is not a reimbursable improvement.

(b) Grantee is responsible for treatment of all regulated and restricted noxious weeds listed by the Arizona Department of Agriculture.

### ARTICLE 13 GRANTEE SHALL PROTECT AND RESTORE THE SUBJECT LAND

13.1 Grantee shall be required, upon completion of Right of Way construction, to make such rehabilitation measures on the State lands, including but not limited to restoration of the surface, revegetation, and fencing as determined necessary by the Grantor.

13.2 Grantee shall conduct all construction and maintenance activities in a manner that will minimize disturbance to all land values including but not limited to vegetation, drainage channels, and streambanks. Construction methods shall be designed to prevent degradation of soil conditions in areas where such degradation would result in detrimental erosion or subsidence. Grantee shall take such other soil and resource conservation and protection measures on the Subject Land under grant as determined necessary by the Grantor.

13.3 Costs incurred by the Grantee in complying with restoration and rehabilitation requirements, as determined by the Department, on State lands shall be borne by the Grantee.

13.4 Grantee shall conduct its operations on the Subject Land in such a manner as is consistent with good environmental practices. Grantee shall exert reasonable efforts to avoid damage of protected flora, and restore the surface to its condition prior to the occupancy thereof by Grantee.

**ARTICLE 14**  
**MISCELLANEOUS**

14.1 The described Subject Land shall be used only for the purpose stated in Paragraph 4.1, and as may be further detailed elsewhere.

14.2 This Document is submitted for examination and shall have no binding effect on the parties unless and until executed by the Grantor (after execution by the Grantee), and until a fully executed copy is delivered to the Grantee.

14.3 In the event of a dispute between the parties to this Right of Way, it is agreed to use arbitration to resolve the dispute, but only to the extent required by A.R.S. § 12-1518. In no event shall arbitration be employed to resolve a dispute which is otherwise subject to administrative review by the Department.

14.4 The Grantor does not represent or warrant that access exists over other State lands which intervene respectively between the above Right of Way and the nearest public roadway.

14.5 Grantee agrees to indemnify, hold, and save Grantor harmless against all loss, damage, liability, expense, costs, and charges incident to or resulting in any way from any injuries to person or damage to property caused by or resulting from the use, condition, or occupation of the Subject Land.

14.6 If for any reason the State of Arizona does not have title to any of the Subject Land described herein, this Right of Way shall be null and void insofar as it relates to the land to which the State has failed to receive title.

14.7 Every obligation of the State under this Right of Way is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this Right of Way, this Right of Way may be terminated by the State at the end of the period for which funds are available. No liability shall accrue to the State in the event this provision is exercised, and the State shall not be obligated or liable for any future payments or any damages as a result of termination under this paragraph.

14.8 The parties agree to be bound by applicable State and Federal rules governing Equal Employment Opportunity, Non-discrimination and Disabilities, including Executive Order No. 2009-09.

14.9 Within 30 days of project completion, Grantee shall submit a completed certificate of construction (copy attached).

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These Additional Conditions are attached to and made a part of the Right of Way boiler plate form (the "Boiler Plate"). The term "Section" when used in these Additional Conditions shall be deemed to refer to the Section numbers of the text in the Boiler Plate. The term "Paragraph" when used in these Additional Conditions shall be deemed to refer to the Paragraph numbers of the text in these Additional Conditions. The term "Right of Way" shall mean the Boiler Plate as supplemented by these Additional Conditions.

### **1. LEGAL DESCRIPTION, RENT AND PURPOSE**

1.1 A legal description and/or a visual depiction of this Right of Way is/are detailed in EXHIBIT A attached hereto. Subject to Grantor's rules and policies then in place, and as a result of construction-related restrictions, Grantor and Grantee may agree to modify the legal description by the Grantee submitting "as built" or "proposed realignment" legal descriptions, depending on the situation, to Grantor for Grantor's review. If approved by Grantor, and additional acreage is impacted, Grantee agrees to pay an appraised or pro-rated charge as Grantor determines is appropriate. No refund will be made for a reduction in acreage.

1.2 Grantor reserves the right to grant additional access rights, or any other rights not in conflict with the rights granted herein, to other parties at the Grantor's sole discretion.

1.3 A fee shall be payable in advance every 10 years in such amount as is determined to be due on the basis of appraisal(s) made from time to time by the State Land Commissioner.

1.4 The purpose of this Right of Way is for a Non-Exclusive Access Road and is for the benefit of the Grantee and/or its authorized users to access Grantee's land. Grantee may not grant authorization for use of this non-exclusive Access Road to any person or persons not associated with Grantee, assignee or its successors.

1.5 This Right of Way prohibits the erection of any type advertising sign(s) or monument structure(s) without proper rights authorized or issued by Grantor, assignees or its successors.



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### **2. CONSTRUCTION, MAINTENANCE AND OPERATION**

**2.1 Grantee is responsible for complying with all federal, state and local guidelines in regards to the construction, maintenance and operation of this Right of Way grant and its associated appurtenances.**

**2.2 Prior to construction, and at the request of the Grantor, Grantee shall provide construction plans (no larger than 11" x 17" format) and applicable drainage report(s), engineering infrastructure report(s) or studies, and any Clean Water Act (CWA) Section 401 or 404 documents to the Grantor for the Grantor's review.**

**2.3 Grantee shall conduct all construction and maintenance activities in a manner that will minimize disturbance to surface features affecting adjacent land values, including, but not limited to, vegetation, drainage channels and stream banks.**

**2.4 Grantee shall be responsible for controlling noxious weeds as listed by the Arizona Department of Agriculture for the term of this Right of Way. Grantor recommends Grantee review Arizona Department of Agriculture website for prohibited and restricted noxious weed rules and regulations.**

**2.5 Grantee agrees that any rubbish or debris from construction and maintenance work shall be removed and properly disposed of at its expense. Disposal of construction-related and maintenance-related materials on State Trust land is strictly prohibited.**

**2.6 If there are specific sites where construction and maintenance equipment and vehicles shall not be allowed as specifically identified by Grantor, such sites shall be clearly marked onsite by the Grantee prior to the beginning of any construction, maintenance or other ground disturbing activities. Grantee shall take any and all steps necessary to ensure that these sites are not disturbed.**

**2.7 All construction equipment shall be removed from the site within seven (7) days of project completion.**

**2.8 Grantee shall be responsible for weed control on disturbed areas within the limits of this Right of Way, and shall be responsible for consultation with the Grantor and/or local authorities for acceptable weed control methods.**

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2.9 For construction after Commencement Date of this Right of Way: Prior to commencement of construction Grantee shall submit and receive Grantor approval for a plan to restore and rehabilitate disturbed areas remaining once construction has been completed. The plan shall include, but not be limited to, reseeding, reforestation, erosion control, and watershed protection measures.

2.10 For ground disturbance after Commencement Date of this Right of Way: All rock brought to the surface along with topsoil and overburden from the affected State Trust lands shall be salvaged and stockpiled separately in a manner that replacement shall endeavor to utilize one hundred (100%) percent of the materials upon completion of construction. Excess rock unsuitable for scattering shall be disposed of in a manner and location that is authorized by the Grantor.

2.11 Grantee shall maintain the Right of Way grant area in the manner described above during the term of this easement. Grantee agrees to complete any necessary restoration and rehabilitation to the satisfaction of the Grantor within ninety (90) days of written notification of non-compliance, or such longer period of time as mutually determined to be necessary to restore and/or rehabilitate subject land.

### 3. ENVIRONMENTAL MATTERS AND INDEMNITY

The following conditions shall supplement the terms and provisions governing environmental matters as set forth in the Right of Way boiler to which these Conditions are stated below.

3.1 For purposes of this Right of Way, the term "Environmental Laws" shall include but not be limited to any relevant federal, state or local environmental laws, and the regulations, rules and ordinances, relating to environmental matters, and publications promulgated pursuant to the local, state, and federal laws and any rules or regulations relating to environmental matters. For the purpose of this Right of Way, the term "Regulated Substances" shall include but not be limited to substances defined as "regulated substance", "solid waste", "hazardous waste", "hazardous materials", "hazardous substances", "toxic materials", "toxic substances", "inert materials", "pollutants", "toxic pollutants", "herbicides", "fungicides", "rodenticides", "insecticides", "contaminants", "pesticides", "asbestos", "environmental nuisance", "criminal littering", or "petroleum products" as defined in Environmental Laws.

3.2 Grantee shall strictly comply with all Environmental Laws, including, without limitation, water quality, air quality; and handling, transportation, storage, treatment, or

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disposal of any Regulated Substance on, under, or from the Subject Land. Without limiting the foregoing, compliance includes that Grantee shall: (1) comply with all reporting obligations imposed under Environmental Laws; (2) obtain and maintain all permits required by Environmental Laws and provide Grantor copies of all permits existing as of the Effective Date; (3) promptly provide Grantor a copy of any permit received after the Effective Date; (4) during the term of Right of Way, provide copies of all information it receives or obtains regarding any and all environmental matters relating to the Subject Land, including but not limited to environmental audits relating to the Subject Land regardless of the reason for which the information was obtained or whether or not the information was required by Environmental Laws; (5) prevent treatment, permanent storage and disposal of any Regulated Substances within the Subject Land without prior written authorization from Grantor.

**3.3** Grantee at all times shall employ or designate an existing employee (the "Designated Compliance Officer") who is responsible for knowing all Environmental Laws affecting Grantee and Grantee's business and monitoring Grantee's continued compliance with applicable Environmental Laws. Upon request by Grantor, Grantee shall make the Designated Compliance Officer available to discuss Grantee's compliance, answer any questions, and provide such reports and confirming information as Grantor may reasonably request.

**3.4** At any time, Grantor may request Grantee to provide an environmental audit of the Subject Land performed by an Arizona registered professional engineer or an Arizona registered geologist. Grantee shall pay the entire cost of the audit.

**3.5** Hazardous material generated (motor oil, paint, etc.) shall be disposed of properly or used in a way which will minimize impact on vegetation.

**3.6** At any time, during the term of the Right of Way, Grantor may require Grantee to obtain one Phase I environmental assessment of the Subject Land performed by an Arizona registered professional engineer or an Arizona registered geologist. If based upon the Phase I environmental assessment or its own independent investigation, Grantor identifies any possible violation of Environmental Laws or the terms of this Right of Way, Grantor may require Grantee to conduct additional environmental assessments as Grantor deems appropriate for the purpose of ensuring that the Subject Land are in compliance with Environmental Laws. The Phase I assessment, or any other assessment required by Grantor, shall be obtained for the benefit of both Grantee and Grantor. A copy of the Phase I report shall be provided both to Grantee and Grantor. Grantor, in its sole discretion, shall have

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**the right to require Grantee to perform additional assessments of any damage to the Subject Land arising out of any violations of Environmental Laws. If Grantee fails to obtain any assessments required by Grantor, Grantee shall pay the entire costs of any and all assessments required by Grantor, notwithstanding the expiration or termination of the Right of Way.**

**3.7 Prior to the termination of the Right of Way, Grantee shall restore the Subject Land by removing any and all Regulated Substances. In addition, the restoration shall include, but not be limited to, removal of all waste and debris deposited by Grantee. If the Subject Land or any portions thereof are damaged or destroyed from the existence or presence of any Regulated Substance or if the Subject Land or any portions thereof are damaged or destroyed in any way relating to or arising out of the removal, treatment, storage, disposition, mitigation, cleanup or remedying of any Regulated Substance, Grantee shall arrange, at its expense, for the repair, removal, remediation, restoration, and reconstruction to the Subject Land to the original condition existing on the date that Grantee first occupied the Subject Land, to the satisfaction of Grantor. In any event, any damage, destruction, or restoration by Grantee shall not relieve Grantee from its obligations and liabilities under this Right of Way. Grantee's restoration obligations under this Section shall survive the expiration or the termination of the Right of Way.**

**3.8 Grantee shall defend, indemnify and hold Grantor harmless from and against any and all liability, obligations, losses, damages, penalties, claims, environmental response and cleanup costs and fines, and actions, suits, costs, taxes, charges, expenses and disbursements, including legal fees and expenses of whatever kind or nature (collectively, "claims" or "damages") imposed on, incurred by, or reserved against Grantor in any way relating to or arising out of Grantee's occupancy and use of the Subject Land and (a) any non-compliance with any Environmental Laws, the existence or presence of any Regulated Substance, on, under, or from the Subject Land; or (b) any claims or damages in any way relating to or arising out of the removal, treatment, storage, disposition, mitigation, cleanup or remedying of any Regulated Substance on, under, or from the Subject Land by Grantee, its agents, contractors, or subcontractors.**

**3.9 This indemnity shall include, without limitation, claims or damages arising out of any and all violations of Environmental Laws regardless of any real or alleged fault, negligence, gross negligence, breach of warranty, or strict liability on the part of any of the indemnitees. This indemnity shall survive the expiration or termination of this Right of Way and/or transfer of all or any portion of the Subject Land and shall be governed by the laws of the State of Arizona.**

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**3.10 In the event any action or claim is brought or asserted against Grantor which is or may be covered by this indemnity, Grantee shall fully participate, at Grantee's expense, in the defense of the action or claim including but not limited to the following: (1) the conduct of any required cleanup, removal or remedial actions and/or negotiations, (2) the conduct of any proceedings, hearings, and/or litigation, and (3) the negotiation and finalization of any agreement or settlement. Grantor shall retain the right to make all final decisions concerning the defense. Grantee's obligations to participate in the defense under this Section shall survive the expiration or termination of the Right of Way.**

### **4. CULTURAL RESOURCES AND NATIVE PLANTS**

**4.1 If any ground disturbing activities associated with this Right of Way are to occur on Arizona State Trust land in areas not previously subjected to cultural resources survey and subsequently addressed in the Historic Properties Treatment Plan for Rosemont Copper Utilities, Pima County (EPG, Nov. 2015) (the "HPTP"), additional cultural resources inventory will be required PRIOR TO any such disturbance. Ground disturbing activities include, but are not limited to; blading, grading, or widening roads, pole replacement, pull-sites, temporary construction easements, or any other activity that will disturb the topsoil.**

**4.2 Should previously undocumented cultural resources be identified during any project-related construction or maintenance activities, the protocol set forth in HPTP shall be followed. Should human remains or funerary objects be identified, the Repatriation Coordinator of the Arizona State Museum shall be notified immediately; the Manager of the Cultural Resources Management Program at ASLD shall also be notified and the protocol set forth in the HPTP shall be followed.**

**4.3 In the event consultation with the State Historic Preservation Office is required, Grantee shall supply Grantor with any documentation required to consult with the State Historic Preservation Office, as required pursuant to the State Historic Preservation Act (A.R.S. § 41-861 et seq).**

**4.4 Prior to any ground disturbance, and at the request of Grantor, Grantee agrees to conduct and submit a plant inventory/plant salvage plan to the Grantor. Payment will be required prior to any ground disturbance for any flora cut, removed and/or destroyed.**

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4.5 If vegetation is authorized by Grantor to be removed and/or destroyed, and prior to any ground disturbance, Grantee agrees to file the appropriate Notice of Intent to Clear Land in accordance with A.R.S. § 3-905 Destruction of Native Plants by State.

4.6 Grantee shall use best efforts to preserve or relocate all protected plants, if viable and feasible, on or adjacent to the work site that will not interfere with the work required.

4.7 Grantee shall only remove protected plants when specifically authorized to do so, and avoid damaging vegetation that will remain in place. If the Grantee or its contractors are authorized to remove any protected plants from State Trust land for replanting off of State Trust land, a permit from the Department of Agriculture is required.

4.8 Grantee shall contact the Arizona Department of Agriculture for further information or permit requirements related to native protected plants.

4.8.1 A survey may be required to determine if protected plants are present and if plants must be salvaged. Grantee shall contact the Arizona Department of Agriculture at least sixty (60) days before commencement of any salvage work.

4.9 Grantee shall minimize the removal of existing vegetation within the project area to the greatest extent possible.

4.10 Grantee shall salvage or replant cactus and other protected plants.

4.11 Grantee is prohibited to blade, scrape or remove any existing vegetation without authorization from Grantor.

### **5. SERVICE / ACCESS ROADS**

5.1 Grantee shall acquire any permits necessary prior to the construction and maintenance of its service roads. Grantee shall construct new service roads with widths as narrow as possible.

5.2 Material for service road construction and maintenance (i.e. fill dirt, sand and gravel, etc.) may not be acquired from State Trust lands without the proper permits and authorization.

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**5.3 Service roads shall be maintained in substantially the same condition as they exist at the time the Right of Way is issued except, if not drivable, they may be made drivable.**

**5.4 Grantee shall not fence nor gate the service roads without the prior written permission of the Grantor.**

**5.5 The service roads shall only be used by the Grantee in conjunction with said Right of Way grant and associated appurtenances.**

**5.6 Grantee shall avoid using service roads during wet weather or when too soft to travel over whenever practicable. The soil shall be deemed too wet to adequately support equipment if such equipment creates ruts in excess of six (6) inches deep.**

**5.7 Maintenance of the service roads may include dust control measures for the term of this Right of Way.**

### **6. EXISTING LESSEES**

**6.1 Grantee shall keep all gates closed and ensure its contractors do the same. Grantor reserves the right to require cattle guards if Grantor determines gates are being left open or fencing has been removed or damaged by the Grantee, its employees or contractors.**

**6.2 Any grazing-related improvements removed or damaged due to construction, operation and maintenance of this Right of Way shall be replaced and/or reconstructed immediately. Cost of replacement and reconstruction shall be the responsibility of the Grantee.**

**6.3 Grantee shall be responsible for all costs associated with making alterations to existing third party grantee or lessee improvements and the scope and extent of the alternations shall be mutually agreed upon prior to modification. Grantee shall provide Grantor with written documentation of all mutually agreed upon modifications prior to making any alterations to such improvements.**

**6.4 If construction or maintenance occurs during periods of livestock grazing, Grantee will take necessary measures to insure livestock protection and containment.**

**6.4.1 Grantee agrees to notify Grazing Lessee(s) 30 days prior to beginning construction or maintenance, and inquire as to the presence/absence of livestock.**

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### **7. ADDITIONAL SPECIFIC COMPLIANCE REQUIREMENTS**

7.1 Current records show that the species listed under Threatened/Endangered Species within EXHIBIT B of these Additional Conditions have been documented as occurring in the project vicinity.

7.2 Current records show that additional specific compliance requirements exist within the project vicinity and are identified on EXHIBIT B of these Additional Conditions.

### **8. MISCELLANEOUS**

8.1 Grantee shall relocate that portion(s) of the non-exclusive access road and any associated appurtenances or portion(s) thereof constructed pursuant to this Right of Way (the "Affected Facilities"), if Grantor determines, in its reasonable discretion, that the relocation of the Affected Facilities during the Term of this Right of Way is in the best interests of the Trust and facilitates the use and/or development of the balance of the surrounding State Trust Lands.

8.2 Prior to relocation of the Affected Facilities, Grantor, Grantee, and any third party applicant, lessee, grantee, or permittee whose use of the surrounding State Trust Lands shall be facilitated by the relocation, shall agree to the new alignment of this Right of Way and location of the Affected Facilities. The realignment and relocation shall not, without the approval of Grantee, change the locations at which the Affected Facilities currently enter and exit State Trust lands. Realignment of the Right of Way may require an amendment to the Subject Land and may require additional rent to Grantor, but in no case a diminution in rent, if necessary to compensate for any greater value of the amended Subject Land.

8.3 The proposed relocation shall not cause an interruption in Grantee's use of the non-exclusive access road. The proposed relocation may only proceed if Grantee can obtain all clearances, permits, approvals, and acceptable title insurance necessary to operate and relocate the Affected Facilities within the new right of way alignment.

8.4 The third party applicant, lessee, grantee, or permittee seeking the relocation of the Affected Facilities or this Right of Way to facilitate its use and development of the surrounding State Trust Land shall reimburse Grantee, in a manner to be agreed prior to relocation, for (a) Grantee's costs to apply for, process, and obtain all clearances, permits, and approvals necessary to relocate the Affected Facilities or this Right of Way to the new



## ADDITIONAL CONDITIONS

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right of way alignment, (b) Grantee's cost to relocate and reconstruct the Affected Facilities in the new right of way alignment, (c) Grantee's cost to remove the Affected Facilities from this Right of Way, and (d) any increase in the Base Rent charged by Grantor for any amendment to the acreage and location of the Subject Land.

8.5 Grantee shall not alter nor cause ponding, nor any damage up or down stream of any water crossing.

8.6 No altering of existing drainages or drainage structures is authorized under this instrument except as otherwise authorized by appropriate state and federal permits.

8.7 If any provision or agreement of this Right of Way is found invalid by any tribunal, such invalidity shall not affect the validity of the remaining provisions hereof.

8.8 The following provision shall be deemed added at the end of Section 6.2 of Article 6 of the Right of Way to which these Additional Conditions are attached as if set forth therein verbatim:

"Any violation by Grantee of any of the terms of this Right of Way constitutes a breach. Upon a breach by Grantee which is not in the process of being cured within sixty (60) days after the date a notice of breach is sent by certified mail to Grantee to the most recent address for Grantee as shown in the files of Grantor, this Right of Way shall become void and the right to use the Subject Land and all of the rights of Grantee hereunder shall revert to Grantor at the expiration of the aforesaid sixty (60) day period."

8.6 Attached hereto as EXHIBIT C is an insurance rider which shall supplement the terms and provisions governing insurance as set forth in the Right of Way form to which these Additional Conditions are attached. Grantor reserves the right to amend EXHIBIT C as and when the Arizona Department of Administration requires revisions to the insurance requirements applicable to Arizona State Trust Land.

**ADDITIONAL CONDITIONS**

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9. **EXHIBITS**

9.1 The following exhibits are attached to these Additional Conditions and made a part hereof:

**EXHIBIT A** Legal Description and/or Visual Depiction of Right of Way

**EXHIBIT B** Additional Specific Compliance Requirements

**EXHIBIT C** Insurance Rider

**BY SIGNATURE BELOW, ALL TERMS ARE  
AGREED TO AND ACCEPTED BY GRANTEE**

By: Matt Benjamin

Title: Director and Secretary

Date: Nov. 21, 2017

*[Remainder of this page left blank intentionally]*

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## EXHIBIT A - LEGAL DESCRIPTION AND/OR VISUAL DEPICTION OF RIGHT OF WAY

EXHIBIT A  
# 14-114856  
(40-Foot Access Road)  
Page 1 of 2

Arizona State  
Land Department  
Township 17S  
Range 14E  
Section 29  
Page 1 of 2

### LEGAL DESCRIPTION

Description of a strip of land being forty (40) feet in width across the East Half of Section 29, Township 17 South, Range 14 East, Gila and Salt River Meridian, Pima County, Arizona. The centerline of said strip of land being more particularly described as follows:

Commencing at a point on the East line of said Section 29, from which a GLO brass cap marking the East Quarter corner of said section bears South 00°39'33" East, a distance of 1287.94 feet;

Thence South 89°20'27" West, a distance of 178.00 feet to a point on the South right-of-way line of Santa Rita Road (said right-of-way being assumed to lie 30 feet on each side of Santa Rita Road as currently evident, although the legality of said right-of-way is in question), said point being the point of beginning of said described centerline;

Thence along said centerline, on a line 178.00 feet West of and parallel with the East line of said section, South 00°39'33" East, a distance of 1287.65 feet;

Thence continuing along said parallel line, South 00°39'57" East, a distance of 2625.28 feet;

Thence along a line 50.00 feet North of and parallel with the South line of said section, South 89°47'57" West, a distance of 1145.27 feet to a point on the East line of Pima County Parcel No. 303-54-005B, said point being the point of termination of the herein described centerline. Said point of termination bears South 00°12'03" East a distance of 50.00 feet to a point on the South line of said Section from which the Southeast corner bears North 89°47'57" East, a distance of 1323.67 feet;

Said strip of land contains 4.65 acres of land, more or less.

W:\active\181950032\survey\legals\c\_S29\_access\_40ft.docx

# ADDITIONAL CONDITIONS

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## EXHIBIT A - LEGAL DESCRIPTION AND/OR VISUAL DEPICTION OF RIGHT OF WAY

Exhibit A

# 14-114856

(40-foot Access Road)

Page 2 of 2



Arizona State  
Land Department

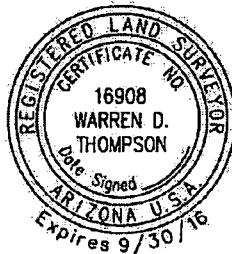
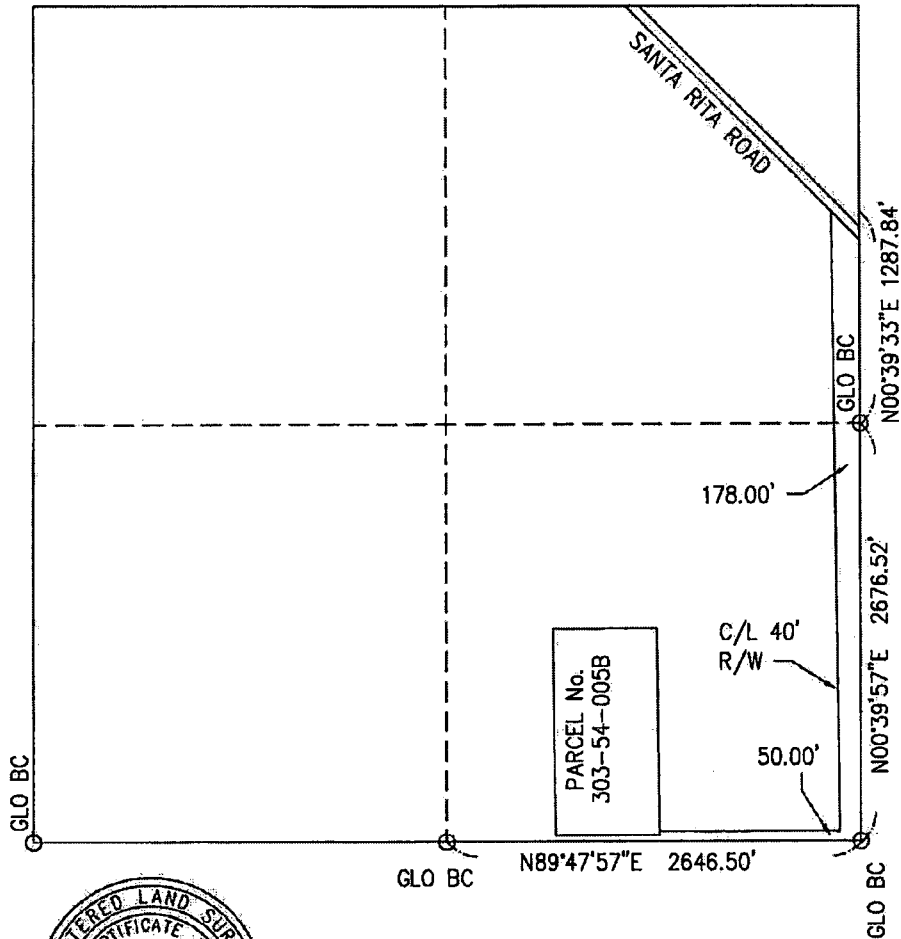
Township 17S

Range 14E

Section 29

Page 2 of 2

Section Map



Stantec Consulting Services

## ADDITIONAL CONDITIONS

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### EXHIBIT B

#### ADDITIONAL SPECIFIC COMPLIANCE REQUIREMENTS

##### 1. THREATENED / ENDANGERED SPECIES

The Arizona Game of Fish Department's Heritage Date Management System has been accessed and current records show that one or more listed, proposed, or candidate species or Critical Habitat (Designated or Proposed) have been documented in the vicinity of this Right of Way.

##### 1.1 Threatened / Endangered Species of Concern:

Common Name	Scientific Name	Status
<i>Pima Pineapple Cactus</i>	<i>Coryphantha scheeri var, robustispina</i>	<i>[Ex. Listed Endangered]</i>

1.2 Grantee shall contact U.S. Fish & Wildlife Service to determine if further coordination is necessary as appropriate under the National Environmental Policy Act (NEPA) and/or Endangered Species Act (ESA).

## ADDITIONAL CONDITIONS

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### EXHIBIT C

#### INSURANCE RIDER TO STATE LAND DEPARTMENT

This Rider is attached to and made a part of the above-referenced Right of Way as if set forth therein verbatim.

**R-1 Indemnity.** To the fullest extent permitted by law, Grantee shall defend, indemnify, and hold harmless the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees (hereinafter referred to as "Indemnitee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and costs of claim processing, investigation and litigation) (hereinafter referred to as "Claims") for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Grantee or any of its owners, officers, directors, agents, employees, contractors or sub-contractors, arising out of or related to Grantee's occupancy and use of the Subject Land. This indemnity includes any claim or amount arising out of, or recovered under, the Workers' Compensation Law or arising out of the failure of such contractor or sub-contractors to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by contractor or sub-contractor from and against any and all claims. It is agreed that Grantee will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable.

**R-2 Insurance Requirements.** Grantee shall procure and maintain for the duration of the Right of Way insurance against claims for injury to persons or damage to property which may arise from or in connection with this Right of Way. The insurance requirements herein are minimum requirements for this Right of Way and in no way limit the indemnity covenants contained in this Right of Way. The State of Arizona in no way warrants that the minimum limits contained herein is sufficient to protect the Grantee from liabilities that might arise out of this Right of Way. Grantee is free to purchase such additional insurance as Grantee determines necessary.

**A. Minimum Scope and Limits of Insurance.** Grantee shall provide coverage with limits of liability not less than those stated below:

1. **Commercial General Liability-Occurrence Form.** The Policy shall include bodily injury, property damage, personal injury and, products and completed operations.

## ADDITIONAL CONDITIONS

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<b>General Aggregate:</b>	<b>\$2,000,000.00</b>
<b>Products-Completed Operations Aggregate:</b>	<b>\$1,000,000.00</b>
<b>Personal and Advertising Injury:</b>	<b>\$1,000,000.00</b>
<b>Each Occurrence:</b>	<b>\$1,000,000.00</b>
<b>Damage to Rented Premises:</b>	<b>\$50,000.00</b>

The policy shall be endorsed as required by written agreement to include the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees as additional insureds with respect to liability arising out of the use and/or occupancy of the property subject to this Right of Way.

The policy shall contain a waiver of subrogation endorsement as required by this written agreement in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents and employees for losses arising from the Grantee.

2. **Business Automobile Liability.** The Policy shall include Bodily Injury and Property Damage for any owned, hired, and/or non-owned vehicles used in the performance of this Right of Way.

Combined Single Limit (CSL)

\$1,000,000

The policy shall be endorsed as required by written agreement the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Grantee, involving automobiles owned, Right of Way, hired or borrowed by the Grantee.

a. Policy shall contain a waiver of subrogation endorsement as required by this written agreement in favor of the State of Arizona, and its departments, agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Grantee.

3. **Worker's Compensation and Employers' Liability.**

Workers' Compensation Employers' Liability	Statutory
Each Accident	\$ 1,000,000
Disease – Each Employee	\$ 1,000,000
Disease – Policy Limit	\$ 1,000,000

a. Policy shall contain a waiver of subrogation endorsement, as required by this written agreement, in favor of the State of Arizona, and its departments,

## ADDITIONAL CONDITIONS

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agencies, boards, commissions, universities, officers, officials, agents, and employees for losses arising from Grantee activities.

4. **Property Insurance.** Property insurance on the building(s), if any, is only required if the Grantee is the sole occupant of the building(s).

Coverage on Grantee's contents	\$	Replacement Value
Coverage on building (if Grantee is sole occupant)	\$	Replacement Value

a. Property insurance shall be written on an "all risk, replacement cost coverage", including coverage for flood and earth movement.

b. If property coverage on the building is required, "the State of Arizona (and the respective agency or university) shall be named as a loss payee".

c. Policy shall contain a waiver of subrogation endorsement in favor of the State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees for losses arising from the Right of Way.

B. **Additional Insurance Requirements.** The policies shall include, or be endorsed as required by written agreement to include, the following provisions:

1. The Grantee's policies shall stipulate that the insurance afforded the Grantee shall be primary insurance and that any insurance carried by the Department, its agents, officials, employees or the State of Arizona shall be excess and not contributory insurance, as provided by Arizona Revised Statutes Section 41-621 (E).

2. Insurance provided by the Grantee shall not limit the liability assumed under the indemnification provisions of this Right of Way.

C. **Notice of Cancellation.** For each insurance policy required by the insurance provisions of this Contract, the Contractor must provide to the State, within 2 business days of receipt, a notice if a policy is suspended, voided or cancelled for any reason. Such notice shall be mailed, emailed, hand delivered or sent by facsimile transmission to (State's Representative Name and Address & Fax Number).

D. **Acceptability of Insurers.** Grantee's insurance shall be with companies licensed in the State of Arizona or hold approved non-admitted status on the Arizona Department of Insurance List of Qualified Unauthorized Insurers. Insurers shall have an "A.M. Best" rating of not less than A-VII. The State of Arizona in no way warrants that the above-required minimum insurer rating is sufficient to protect the Grantee from potential insurer insolvency.



## ADDITIONAL CONDITIONS

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**E. Verification of Coverage.** Grantee shall furnish the State of Arizona with certificates of insurance valid (ACORD form or equivalent approved by the State of Arizona) as required by this Right of Way. The certificates for each insurance policy are to be signed by an authorized representative.

All certificates and endorsements, as required by this written agreement are to be received and approved by the State of Arizona before the Right of Way Term commences. Each insurance policy required by this Right of Way must be in effect at or prior to the commencement of the Right of Way. Failure to maintain the insurance policies as required by this Right of Way or to provide timely evidence of renewal will be considered a material breach of the Right of Way.

All certificates required by this Right of Way shall be sent directly to The Arizona State Land Department, 1616 W. Adams, Phoenix, Arizona 85007. Right of Way number and location description are to be noted on the certificate of insurance. The State of Arizona reserves the right to require complete, certified copies of all insurance policies and endorsements required by this Right of Way at any time.

**F. Approval and Modifications.** The contracting agency in consultation with the Department of Administration, Risk Management Division reserves the right to review, or make modifications to the insurance limits, required coverages or endorsements throughout the life of this contract as deemed necessary. In such event, the contracting agency shall provide the contractor with written notice of such and contractor shall comply within thirty (30) days of receipt thereof. Such action will not require a formal Contract amendment, but may be made by administrative action.

**G. Exceptions.** In the event the Grantee or sub-Grantee(s) is/are a public entity, then the Insurance Requirements shall not apply. Such public entity shall provide Certificate of Self Insurance. If the Grantee or sub-Grantee(s) is/are a State of Arizona agency, board, commission, or university, none of the above shall apply.

**H. Contractors/Subcontractors.** Contractors' certificate(s) shall include all subcontractors as insureds under its policies or Contractor shall be responsible for ensuring and/or verifying that all Subcontractors have collectable insurance as evidenced by the certificates of insurance and endorsements for each Subcontractor. All coverages for Subcontractors shall be subject to the minimum insurance requirements identified above. The Department reserves the right to require, at any time, proof from the Contractor that its subcontractors have the required coverage.

APPENDIX A

STATE OF ARIZONA LAND DEPARTMENT  
1616 W. ADAMS  
PHOENIX, AZ 85007

RUN DATE: 15 November 2017  
RUN TIME: 14:31 PM  
PAGE: 1

KE-LEASE# 014-114856-00-000 APPTYPE: NEW  
AMENDMENT#: 0

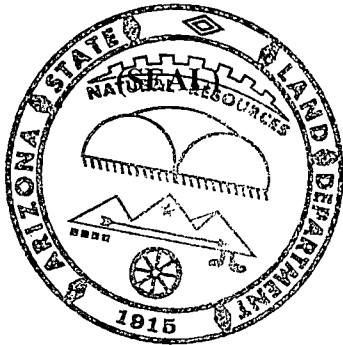
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LAND#	LEGAL DESCRIPTION	AUS	ACREAGE
17.0-S-14.0-E-29-10-049-9006	M&B THRU E2E2	0.00	4.650
	TOTALS	0.00	4.650

IN WITNESS HEREOF, the parties hereto have signed this Right of Way effective the day and year set forth previously herein.

STATE OF ARIZONA, GRANTOR  
Arizona State Land Commissioner

By:  11/28/17  
Date



ROSEMONT COPPER COMPANY  
GRANTEE

Matt Bergman 11-21-17  
Authorized Signature Date

Director and Secretary  
Title

5255 E. Williams Circle, Ste. 1065  
Address

Tucson AZ 85711  
City State Zip

**GRANTEE'S CERTIFICATE OF CONSTRUCTION**

**RIGHT OF WAY NUMBER:** \_\_\_\_\_

**NAME OF GRANTEE:** \_\_\_\_\_

**DATE ISSUED:** \_\_\_\_\_

**PERMITTED USE:** \_\_\_\_\_

**LAND DEPARTMENT ADMINISTRATOR:** \_\_\_\_\_

**DATE CONSTRUCTION STARTED:** \_\_\_\_\_

**DATE CONSTRUCTION COMPLETED:** \_\_\_\_\_

**I hereby certify that the facilities authorized by the State Land Commissioner, were actually constructed and tested in accordance with the terms of the grant, in compliance with any required plans and specifications, and applicable Federal and State laws and regulations.**

\_\_\_\_\_  
**Grantee's Signature**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Title**

**Return To: Arizona State Land Department  
R/W Section  
1616 W. Adams Street  
Phoenix, AZ 85007**