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GABRIELLA CÁZARES-KELLY, RECORDER
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SETTLEMENT AGREEMENT

This Settlement Agreement (the "Agreement") is dated as of the date last signed below and is between the Town of Oro Valley, an Arizona municipal corporation (the "Town"), The Conservation Fund, a Maryland non-profit corporation ("TCF"), Ross Rulney, and/or assigns ("Rulney"), and Romspen Vistoso LLC, a Delaware limited liability company ("Romspen"). Town, TCF, Rulney, and Romspen are collectively referred to herein as the "Parties" and each of them is referred to herein as a "Party."

RECITALS

A. Romspen owns approximately 208.3 acres of real property on which sits the former Rancho Vistoso golf course, located in the Town's municipal boundaries, described on **Exhibit A** (the "Golf Course Property").

B. The Golf Course Property consists of five separate assessor parcels: APNs 219-19-1910, 219-19-1950, 219-19-1990, 219-19-2000, and 219-22-410A.

C. APNs 219-19-1950, 219-19-1990, 219-19-2000, and 219-22-410A constitute the "Golf Course Parcels."

D. APN 219-19-1910 consists of approximately 6.3 acres of land and is referred to as the "Clubhouse Parcel."

E. The Town desires for the Golf Course Parcels to be used consistent with their current zoning for *Golf / Recreation*.

F. Romspen desires to utilize the Golf Course Parcels for their highest and best use, which Romspen believes is residential housing and related facilities.

G. The Town and Romspen disagree as to the highest and best use for which the Golf Course Parcels are adaptable.

H. The Town has the right of eminent domain to condemn private property for a public purpose in accordance with Arizona Revised Statutes, Title 12, Chapter 8, Article 2.

I. The Town is considering invoking its right of eminent domain to condemn the Golf Course Parcels for the purpose of maintaining most or all of the Golf Course Parcels as open space for public use.

J. The Town and Romspen have noticed each other of possible legal remedies one has against the other. Romspen is prepared to file a claim of inverse condemnation against the Town of Oro Valley related to the Golf Course Property (the "Romspen Claim").

K. The Town and Romspen mutually desire to avoid the risk, uncertainty, and significant costs of any potential condemnation action with respect to the Golf Course Parcels by settling in accordance with this Agreement.

L. In order to achieve such a settlement, the Town and Romspen have agreed: (i) Romspen will sell the Clubhouse Parcel to Rulney for the agreed upon fair market value of this parcel; (ii) Romspen will sell the Golf Course Parcels to TCF for a price that Romspen asserts is below its fair market value; and (iii) in consideration of an agreement it has reached with TCF regarding the Golf Course Parcels and in settlement of the dispute between the Town and Romspen regarding the Town's ultimate control/acquisition of the Golf Course Parcels through TCF in lieu of condemnation, the Town has agreed to pay Romspen the settlement amount set forth in Section 5 below (the "Town Settlement"), simultaneously with Romspen's sale of the Golf Course Parcels to TCF and the Clubhouse Parcel to Rulney.

M. Romspen and the Town have agreed to the Town Settlement in order to settle their dispute regarding the fair market value of the Golf Course Parcels and to facilitate the Town's acquisition of the Golf Course Parcels in lieu of condemnation.

Therefore, the parties agree as follows:

AGREEMENT

1. Incorporation of Recitals. The parties acknowledge the accuracy of the foregoing Recitals and hereby incorporate them by this reference.

2. Transfer of Golf Course. Romspen agrees to sell the Golf Course Property in accordance with the terms and conditions of this Agreement only if it receives an aggregate payment of at least \$4,250,000.00, as more fully set forth in this Agreement. The parties acknowledge and agree that satisfaction of this condition is a fundamental inducement to Romspen entering into this Agreement.

3. Purchase and Sale of Golf Course Parcels. Romspen agrees to sell, and TCF agrees to purchase, all right, title, and interest in and to the Golf Course Parcels on the terms and conditions set forth in Exhibit B (the "Golf Course Parcels Contract"), which Exhibit B may be redacted in its entirety in any public forum for confidentiality purposes. TCF requires the property to be held for conservation purposes in perpetuity and intends to work with the Town to eventually transfer the Golf Course Parcels to the Town while holding a conservation easement negotiated with the Town. TCF further agrees that said conservation easement shall allow for the use of the Golf Course Parcels for parking, drainage and other infrastructure uses adjacent to or near the Clubhouse Parcel at the discretion of the Town upon a final transfer. More specifically, TCF and the Town agree that Rulney may use approximately 1.5 acres of developable land within the Golf Course Parcels, without limitation, for any use related to retention, detention, drainage, parking, open space/passive recreation, utilities, and any other uses allowed within the Conservation Easement in connection with the development of 132 two-story apartment units on the Clubhouse

Parcel. Prior to recording the conservation easement, TCF and the Town shall execute and deliver a separate easement or other document evidencing such use rights to be recorded appurtenant to and for the benefit of the Clubhouse Parcel.

4. Purchase and Sale of Clubhouse Parcel. Romspen agrees to sell, and Rulney agrees to purchase (subject to Rulney's right to terminate the Clubhouse Contract as set forth therein), all right, title, and interest in and to the Clubhouse Parcel on the terms and conditions set forth in **Exhibit C** (the "Clubhouse Contract"), which **Exhibit C** may be redacted in its entirety in any public forum for confidentiality purposes. Since the Clubhouse Parcel is adjacent to permanently protected conservation space, Town agrees to allow Rulney setback, landscaping, parking, open space, and other reasonable site zoning relief necessary for Rulney to construct up to 132 two-story apartment units on the Clubhouse Parcel. Rulney agrees that even if height allowances for the Clubhouse Parcel allow three stories, there will be no three-story buildings.

5. Consideration Paid by the Town. In consideration for the settlement of the Romspen Claim as provide for in this Agreement, The Town will pay Romspen \$885,000.00 simultaneously with the closing of the sales of the Golf Course Parcels to TCF and the Clubhouse Parcel to Rulney. These simultaneous sales and their terms are more fully set forth in this Agreement and the Exhibits attached hereto.

6. Concurrent Closings. The closings of the Golf Course Parcels Contract and the Clubhouse Contract must occur simultaneously and no later than by December 30, 2021. Additionally, the Town Settlement must be paid to Romspen simultaneously with the closings of the Golf Course Parcels Contract and the Clubhouse Contract. The parties acknowledge and agree that satisfaction of this condition is a fundamental inducement to Romspen entering into this Agreement. If the Golf Course Parcels Contract and the Clubhouse Contract do not close simultaneously or by December 30, 2021 and/or the Town fails to pay the Town Settlement simultaneously with these closings, then Romspen (in addition to pursuing any remedy provided for in this Agreement, the Golf Course Parcels Contract, or the Clubhouse Contract) may refuse to transfer any of the Golf Course Property pursuant to the Golf Course Parcels Contract or the Clubhouse Contract, and Romspen will have no obligations or liability under this Agreement, the Golf Course Parcels Contract, or the Clubhouse Contract if it refuses to perform under this Agreement, the Golf Course Parcels Contract, or the Clubhouse Contract due to the failure of any condition set forth in this section. TCF's obligation to perform hereunder is specifically contingent upon TCF being satisfied, in its sole discretion, as to the following items pertaining to the Golf Course Parcels Contract: (a) that sufficient funds have been raised by TCF for the purchase; (b) that the Condition of Property (as defined in the Golf Course Parcels Contract) is acceptable; and (c) that all contingencies for the benefit of TCF therein have been met. If any such contingency it not met, then TCF shall have no obligations or liability under this Agreement or the Golf Course Parcels Contract. Notwithstanding anything contained herein to the contrary, the sole remedies of Romspen against TCF, and of TCF against Romspen, are the remedies described in the Golf Course Contract. Notwithstanding anything contained herein to the contrary, the sole remedy of Rulney against TCF and the Town shall be specific performance. Notwithstanding anything contained herein to the contrary, the sole remedy of the Town against TCF shall be specific performance. In the event of

conflict between this Agreement and the Golf Course Parcels Contract, the terms of the Golf Course Contract shall control.

7. **Declaration; Limitation of Liability to Romspen.** The parties acknowledge that Romspen's predecessor in interest to the Golf Course Property recorded in the Office of the County Recorder, Pima County, Arizona on September 3, 1997, at Sequence No. 97142211, that certain Declaration of Restrictions for Golf Course Use (the "**Declaration**"). Upon the transfer of title of the Golf Course Parcels and the Clubhouse Parcel, the Town agrees, in accordance with the Golf Course Parcels Contract, and Rulney, in accordance with the Clubhouse Contract, agree to indemnify and hold Romspen harmless of and from any and all liabilities, claims, demands, and expenses of any kind or nature in any way related to the Declaration, and all expenses related thereto, including, but not limited to, taxes, court costs, and attorneys' fees. The foregoing notwithstanding, the Town, TFC and Rulney, may cancel this Agreement, the Golf Course Parcels Contract, and the Clubhouse Contract if any one of them, for any reason, is not satisfied with the letter the Pima County assessor has said she would provide confirming that there are no additional real property taxes due with respect to the Golf Course Parcels or the Clubhouse Parcel because of the termination of the Declaration or the fact that the Golf Course Parcels and the Clubhouse Parcel stopped being used as a golf course in approximately 2019. Cancellation must be accomplished by providing written notice to all Parties on or before December 30, 2021. Upon the delivery of written notice by any Party, no party will have any further obligation under this Agreement, the Golf Course Parcels Contract, or the Clubhouse Contract, except that any amounts then held in escrow under the Golf Course Parcels Contract or the Clubhouse Contract must be returned to the Party who deposited such funds in the escrow.

8. **No Admission of Liability.** This Agreement is not and must not be construed as an admission of liability or wrongdoing on the part of any of the parties, liability being expressly denied, but is the compromise and settlement of all disputes between the parties regarding the transfer of the Golf Course Property as provided for herein.

9. **Release.** In consideration of the terms and conditions of this Agreement (i) the Town agrees not to pursue any condemnation action with respect to the Golf Course Parcels, (ii) Romspen agrees that the Town, TCF, and Rulney may rezone, sell, or otherwise utilize the Golf Course Parcels and the Clubhouse Parcel in any lawful way they deem appropriate, and (iii) Romspen waives any right to legally challenge such future uses or changes to the Golf Course Parcels or the Clubhouse Parcel.

10. **Full and Final Agreement.** Each Party declares that the terms of this Agreement have been completely read and are fully understood and voluntarily accepted for the purpose of making, respectively as the context may be, a full and final compromise, adjustment, and settlement for all claims relating to this Agreement, disputed or otherwise, between and among the parties to this Agreement. This Agreement, along with those agreements governing the Golf Course Parcels Contract and the Clubhouse Contract, constitute the full, complete, final, and

exclusive expression of all of the representations, warranties, covenants, promises, and agreements of the parties to this Agreement relative to the subject matter contemplated in this Agreement.

11. Representations and Warranties. Each Party represents and warrants to each other Party that such Party has the entire right and exclusive authority to execute this Agreement and has not sold, assigned, transferred, conveyed, encumbered, hypothecated, or otherwise disposed of any of the property, claims, demands, obligations, or causes of action referred to in this Agreement.

12. Remedies for Breach. If any Party to this Agreement materially breaches the terms of this Agreement, any non-breaching Party(ies) may exercise any and all remedies available to them under Arizona law, including, without limitation, if applicable, bringing a lawsuit for monetary damages or specific performance. If an action is brought against a Party to enforce any of the terms or provisions of this Agreement, the prevailing Party(ies) will be entitled to recover from the non-prevailing Party(ies) all reasonable expenses, including but not limited to all costs, litigation related expenses, and reasonable attorneys' fees. The amount of costs and reasonable attorneys' fees will be determined by a court of competent jurisdiction and not by a jury, and will be included in any judgment obtained by the prevailing Party(ies). All rights and remedies of any Party under this Agreement are cumulative and non-exclusive and may be exercised singularly or concurrently.

13. Notices. Any notice to be given or served upon any Party in connection with this Agreement must be in writing properly addressed to the Town, TCF, Rulney, and Romspen as follows and will be deemed to have been given, received, and served personally on the Party to whom notice was given (i) on the second day after mailing if mailed by first-class mail, certified or registered, postage prepaid, return receipt requested, (ii) on the date of receipt by courier delivery, or (iii) on the date on which the email transmission is sent provided it is no later than 5:00pm local time of the recipient:

To the Town: Town of Oro Valley
Attn: Town Manager
11000 N. La Canada Drive
Oro Valley, Arizona 85737

With a copy to: Town of Oro Valley
Attn: Town Clerk
11000 N. La Canada Drive
Oro Valley, Arizona 85737
Phone: (520) 229-4700
Email: TownClerk@OroValleyAZ.gov

With a copy to: Mesch Clark Rothschild
Attn: Jonathan Rothschild
259 N. Meyer Avenue
Tucson, Arizona 85701
Email: jrothschild@mcrazlaw.com

To TCF: The Conservation Fund
Attn: Scott Tison, Real Estate Legal Manager
1655 N. Fort Myer Drive, Suite 1300
Arlington, Virginia 22209

With a copy to: The Conservation Fund
Nevada & Southwest Regional Office
Attention: Mr. Mike Ford
5055 W. Patrick Lane, Suite 101-A
Las Vegas, NV 89110
Phone: (702) 499-1535
Email: mford@conservationfund.org

To Rulney: Ross Rulney
c/o Scotia Group Management
6340 North Campbell Avenue, #170
Tucson, Arizona 85718

With a copy to: Traci Riccitello
Riccitello Law Firm, PLLC
3849 E. Broadway Blvd., #239
Tucson, Arizona 85716
Phone: (520) 250-5877
Email: traci@riccitellolaw.com

To Romspen: Romspen Vistoso LLC
Attn: Peter Oelbaum
162 Cumberland Street, Suite 30
Toronto, Ontario

With a copy to: Pat Lopez
Rusing Lopez & Lizardi
6363 N. Swan Road, Suite 151
Tucson, Arizona 85718
Phone: (520) 529-4278
Email: plopez@rllaz.com

14. **Governing Law; Venue.** This Agreement will be construed and interpreted in accordance with the laws of the State of Arizona, without giving effect to its conflict of laws principles. Venue for the action will be Pima County, Arizona.

15. **Amendment.** This Agreement may not be modified or amended, except by an agreement in writing signed by all parties. The parties may waive any of the conditions contained in this Agreement or any of the obligations of the other parties under this Agreement, but any such waiver will be effective only if in writing and signed by the Party(ies) waiving such conditions or obligations.

16. **Entire Agreement.** This Agreement, the Golf Course Parcels Contract, and the Clubhouse Contract constitute the entire agreement between the parties pertaining to the subject matter of such agreements and supersedes all prior and contemporaneous agreements and understandings of the parties in connection therewith. No representations, warranties, covenants, agreements, or conditions not expressed in this Agreement, the Golf Course Parcels Contract, and the Clubhouse Contract will be binding upon the parties or will affect or be effective to interpret, change or restrict the provisions of this Agreement.

17. **Assignment.** Except as provided for in the Golf Course Parcels Contract and the Clubhouse Contract, no Party may assign or otherwise transfer any of its rights under this Agreement without the prior written consent of the other parties, which consent must not be unreasonably withheld, conditioned, or delayed. For the avoidance of doubt, Rulney may assign or otherwise transfer any of its rights under this Agreement without any Party's consent to an entity in which Ross Rulney has a direct or indirect ownership interest and over which Ross Rulney exerts direct or indirect management control, upon providing written notice to the Parties.

18. **Time.** Time is of the essence in the performance of each of the provisions of this Agreement.

19. **Invalidity.** If any provision or part of this Agreement is deemed invalid, illegal, or unenforceable prior to the concurrent closing under the Golf Course Parcels Contract and the

Clubhouse Contract, such invalidity, illegality, or unenforceability will not affect the remaining provisions of this Agreement; provided that if the change materially affects the terms of this Agreement, then any Party may elect to terminate this Agreement.

20. Exhibits. All exhibits to this Agreement are fully incorporated in this Agreement.

21. No Third Parties. Nothing in this Agreement will confer upon any person, firm, or corporation not a Party to this Agreement, or the legal representatives of such person, firm, or corporation, any rights or remedies, of any nature or kind whatsoever under or by reason of this Agreement, except as expressly set forth in this Agreement.

22. Further Assurances. Each Party shall execute and deliver such additional documents, instruments, conveyances, and assurances and take such further actions as may be reasonably required to carry out the provisions hereof and give effect to the transactions contemplated hereby.

23. Anti-Merger. The Parties agree and acknowledge that delivery and recording of the deeds contemplated in this Agreement shall not merge the provisions or obligations of this Agreement. All other obligations contained herein shall remain in full force and effect.

24. Counterparts. This Agreement may be executed by the parties in counterparts. Each such executed copy will have the full force and effect of any original executed instrument. Signatures sent via email PDF or other electronic method will be as effective as original signatures.

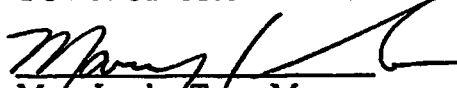
25. Confidentiality and Nondisclosure Agreement. Other than with or to each Party's Representatives (defined below), the Parties agree that none of them will discuss or disclose any of the terms of this Agreement, the Golf Course Parcels Contract, or the Clubhouse Contract with any third party, unless they first obtain the prior written approval of all the Parties hereto, and then they will only provide the written statement agreed to in advance by the Parties. Each Party acknowledges that (1) each of the Parties is regularly engaged in transactions and negotiations regarding real property and any disclosure of the terms provided for herein will disadvantage the other Parties in connection with future transactions and negotiations; (2) this Agreement is the product of compromise and that these compromises reflect complex considerations and varying perspectives regarding present and past events and the likely outcome of future events-therefore, discussion or disclosure of information based on one Party's perspective will injure the reputation and future business prospects of the other Parties; and (3) this Agreement, the Golf Course Parcels Contract and the Clubhouse Contract contain proprietary and confidential information the disclosure of which would be detrimental to one or more of the Parties. The Parties agree that, in addition to monetary damages for breach of this section, any aggrieved Party will also be entitled to specific performance of this section, because monetary damages would not be sufficient to fully compensate an aggrieved Party due to the breach of this section by another Party. As used herein, "Representatives" means each Party's respective managers, members, employees, agents,

potential funding sources, partners, accountants, brokers, consultants and financial, legal, and other advisors.


[Signature Page Follows]

The Parties are signing this Agreement on the dates indicated below.

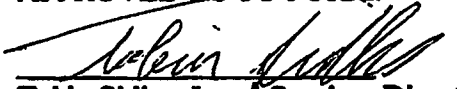
TOWN OF ORO VALLEY


Mary Jacobs, Town Manager
Date: 12-3-2021

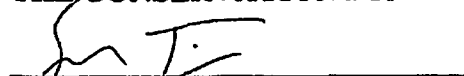
ATTEST:


Michael Standish, Town Clerk
Date: 12/3/2021


APPROVED AS TO FORM:


Tobin Sidles, Legal Services Director
Date: 12/3/2021

THE CONSERVATION FUND


By: Scott M. Tison
Its: Assistant Secretary
Date: 11/29/2021

ROSS RULNEY

DocuSigned by

DocuSigned by
Date: Nov 30, 2021 | 12:16 PM PST

ROMSPEN VISTOSO LLC *By its sole member*
Romspen Club Holdings LLC.


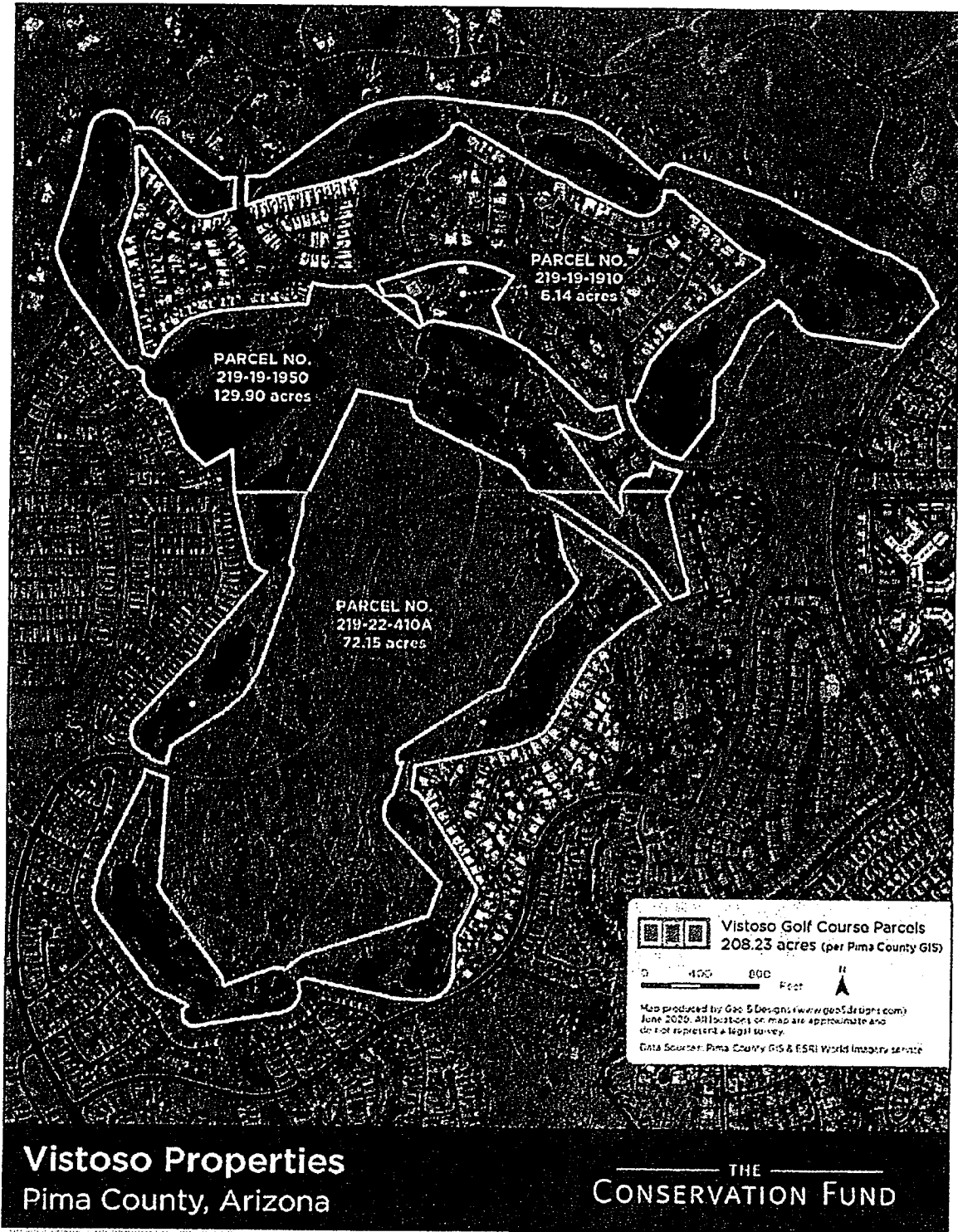

Peter Oelbaum
Its: V.P.
Date: Nov. 24, 2021

EXHIBIT A
GOLF COURSE PROPERTY

EXHIBIT B
GOLF COURSE PARCELS CONTRACT

Exhibit "B"
Map of Property



CONTRACT FOR SALE OF REAL ESTATE

(Romspen Vistoso LLC Property, Pima County, Arizona)

Seller understands that Seller should not rely on any information (written or oral) received from Purchaser as to tax and legal matters associated with this transaction. Purchaser strongly advises that Seller consult with competent, independent professional tax and legal advisors of Seller's own choosing regarding this transaction.

THIS CONTRACT FOR SALE OF REAL ESTATE (the "Agreement") is entered into this 29 day of November, 2021, by and between **ROMSPEN VISTOSO LLC**, a Delaware limited liability company, the address of which is 162 Cumberland Street, Suite 300, Toronto, Ontario (the "Seller") and **THE CONSERVATION FUND**, a non-profit corporation with an office at 1655 N. Fort Myer Drive, Suite 1300, Arlington, Virginia 22209 (the "Purchaser"). The "Effective Date" of this Agreement shall be the last date signed by either party. The Seller and the Purchaser are collectively referred to as the "Parties". The following exhibits are attached hereto and are incorporated by reference:

- | | | |
|-----------|---|---------------------------------|
| Exhibit A | - | Description of Property |
| Exhibit B | - | Map of Property |
| Exhibit C | - | Affidavit of Non-Foreign Status |

RECITALS:

- A. Seller is the owner of 202.5 acres of land, more or less, located in Pima County, Arizona, which is described in the attached Exhibit A and shown on the attached Exhibit B (the "Land").
- B. Seller is also the owner of 6.3 acres of land, more or less, located in Pima County, Arizona (the "Clubhouse Parcel"), which is located immediately adjacent to the Land.
- C. The Property (described below) together with the Clubhouse Parcel comprise the "Golf Course Property."
- D. Seller wishes to sell and Purchaser wishes to purchase the Property (described below) on the terms and conditions described herein.

AGREEMENT:

The parties agree as follows:

1. **PROPERTY.** Seller agrees to sell and Purchaser agrees to buy, on the terms and conditions set forth in this Agreement, the Land, including, without limitation, (i) any and all buildings, improvements, personalty and fixtures situated thereon, (ii) any and all crops and timber growing thereon, (iii) any and all surface or subsurface sand, gravel, oil, gas, mineral geothermal, or mineral rights and any stockpiled sand, gravel or minerals, (iv) any and all appurtenant or associated water rights, including any and all well, spring,

reservoir, storage, domestic, irrigation, irrigation equipment and facilities, subirrigation, livestock water or ditch rights of any type, including all shares or certificates of any type in ditch or water delivery companies or associations, and (v) all other surface and subsurface rights, any and all other permits, hereditaments, easements, recorded rights of access, historic rights of access, incidents and appurtenances belong thereto (collectively, with the "Land", referred to as the "Property").

2. **EARNEST MONEY DEPOSIT.** Within seven (7) business days of the execution of this Agreement, Purchaser shall deliver the sum of Fifty Thousand Dollars (\$50,000.00) (the "Deposit") in escrow with First American Title Insurance Company, 2425 E. Camelback Road, Suite 300, Phoenix, Arizona 85016, telephone 602-954-3644 (the "Title Company") as escrow agent to be held in an interest bearing account. The earnest money deposit and the interest earned on the deposit are referred to as the "Deposit". The Deposit shall become non-refundable upon the expiration of the Inspection Period unless (i) Purchaser cancels this Agreement before the expiration of the Inspection Period as provided in Section 6 and Section 17(2), (ii) Purchaser cancels this Agreement as permitted in Section 17 (3) – (5), or (iii) Seller cancels this Agreement as permitted in Sections 18(2) – (4). If and when Closing occurs, the Deposit shall be applied to the Purchase Price of the Property.
3. **PURCHASE PRICE.** The purchase price ("Purchase Price") for the Property shall be One Million Six Hundred Fifteen Thousand (\$1,615,000.00). At Closing, the balance of the Purchase Price (less the amount of the Deposit) shall be paid to Seller by Purchaser by wire transfer of federal or other immediately available funds.
4. **CLOSING DATE.** The closing of the transaction contemplated hereunder (the "Closing") shall be held at the office of the Title Company on or before **December 30, 2021** (the "Closing Date"). The Closing must occur no later than December 30, 2021 (the "Outside Closing Date"). The Parties acknowledge and agree that the condition to close this transaction by no later than the Outside Closing Date is a fundamental inducement to Seller signing this Agreement. Possession shall be delivered to Purchaser as of the date of Closing.
5. **SATISFACTORY INSPECTION AND REVIEW.** The Seller and Purchaser expressly covenant and agree that Purchaser's satisfaction upon the review and inspection provided for herein is a specific condition precedent to the obligation of Purchaser to purchase the Property. Purchaser shall have a period in which to review the documents and to make the inspections described below. The period of inspection (the "Inspection Period") shall terminate on the earlier of: (i) Receipt by Seller of notice from Purchaser that the Property is suitable for purchase; or (ii) the Closing Date.
 - 5.1. **Documents; Evidence of Title.** Not later than ten (10) days after the Effective Date, Seller shall provide, at Seller's expense, to Purchaser: (a) a title commitment issued by the Title Company, together with legible copies of the deed or deeds by which Seller holds title to the Property, legible copies of any instruments listed in the legal description for the Property, and legible copies of all exceptions to title, pursuant to which the Title Company shall issue to Purchaser a standard coverage owner's policy of title insurance, including "gap" and mechanic's lien coverage, insuring title to the Property, including legal

access, as of the Closing Date in the amount of the Purchase Price, (b) a Certificate of Taxes Due evidencing that the current installment of all taxes owing on the Property have been paid in full; and (c) a copy of the current and previous year's Notice of Assessment, or other satisfactory evidence of the current and previous year's assessed value and assessment category for the Property. To the extent in Seller's possession, Seller shall, at Seller's expense, provide to Purchaser copies of any surveys or maps of the Land, plans relating to the building improvements, and studies and reports regarding the soils, water, or environmental condition on or under the Land.

- 5.2. **Due Diligence, Inspection; Right of Entry.** Purchaser shall have the right to enter upon the Property at reasonable times for mapping, surveying, physical and environmental inspection, conducting an appraisal and other reasonable purposes related to the transaction contemplated by this Agreement. Purchaser hereby indemnifies and holds the Seller harmless from and against any and all claims, liens, damages, losses, and causes of action which may be asserted by Purchaser or Purchaser's employees, agents, or any third party who enters upon the Property or conducts tests related to the Property at the request of or on behalf of Purchaser or its agents, provided that such indemnification and hold harmless shall not apply to claims arising out of the negligent, willful or wanton conduct of Seller.

6. **ELECTION AT THE END OF THE INSPECTION PERIOD.** During the Inspection Period and prior to Closing, Purchaser may review all documents or information described herein or pertaining to the Property, and make the above-described physical and environmental inspections, applications, reviews, studies, appraisals, evaluations or surveys required to satisfy itself as to the acceptability and suitability of the Property for purchase and the availability of funding (collectively, the "Condition of Property") for purchase. Should, for any reason or no reason and in its sole discretion, Purchaser not be satisfied with the Condition of Property or that the Property is acceptable or suitable, Purchaser shall notify Seller in writing on or before the expiration of the Inspection Period of its dissatisfaction, at which time this Agreement shall be considered null and void and of no further force and effect and the Deposit shall be promptly returned to Purchaser; provided, however, if the objections of Purchaser are to title or other defects that Seller can reasonably cure within a twenty (20) day period following the receipt of notice from Purchaser, Seller shall have such period to cure such defects to the reasonable satisfaction of Purchaser. Purchaser shall, at any time, have the right to waive the conditions precedent to its performance under this Agreement before the end of the Inspection Period and if Purchaser elects to waive the conditions precedent to its performance and to terminate the Inspection Period, this Agreement will remain in full force and effect and the Deposit shall become non-refundable except as otherwise provided herein. Failure of Purchaser to notify Seller of its dissatisfaction prior to the expiration of the Inspection Period shall be deemed a waiver of this condition precedent and acceptance of the Property as suitable for purchase.
7. **CLOSING DOCUMENTS.** At Closing, Seller shall execute and deliver to Purchaser or its assigns a good and sufficient special warranty deed in a form acceptable to Title Company, conveying good marketable and insurable title to the Property, free and clear of all liens, encumbrances and other exceptions, except such easements, restrictions and

other exceptions as are of record and/or disclosed to Purchaser during the Inspection Period. As provided in Section 6, Purchaser has the right to cancel this Agreement, for any reason, before the expiration of the Inspection Period. At Closing, Seller shall execute and deliver to Purchaser a quit claim bill of sale, conveying all personal property that used in connection with the Property, located on the Property, and owned Seller. Seller's interest in all commercial and residential leases on the Property shall be transferred to Purchaser upon the Closing.

8. **CONDITION OF THE PROPERTY, REPRESENTATIONS.** Seller makes all of the following representations and warranties based solely on Seller's current knowledge, without investigation or inquiry:

- 8.1. Seller is the record owner of the Property to be conveyed hereunder.
- 8.2. There are no actions, suits, proceedings or investigations pending or threatened against or affecting the Property, or arising out of Seller's conduct on the Property or which would affect the ability of Seller to fulfill its obligations under this Agreement, except for the threatened condemnation of the Property by the Town of Oro Valley, the prior settlement of which is a Seller's contingency set forth in Section 18.
- 8.3. Seller is in substantial compliance with the laws, orders, and regulations of each governmental department, commission, board, or agency having jurisdiction over the Property in those cases where noncompliance would have a material adverse effect on the Property.
- 8.4. Seller is not party to nor subject to or bound by any agreement, contract, or lease of any kind relating to the Property, other than the Declaration defined in Section 9 and an existing lease with the Vistoso Home Owners Association, a copy of which will be provided to Purchaser within ten days after this Agreement is fully executed and delivered by both parties..
- 8.5. The Property is not in violation of any federal, state, or local law, ordinance, or regulation relating to environmental conditions on, under, or about the Property, including, but not limited to, soil and groundwater conditions. Neither Seller, nor any third party, has used, generated, manufactured, refined, produced, processed, stored or disposed of on, or under the Property or transported to or from the Property any Hazardous Materials nor does Seller intend to use the Property prior to closing date for the purpose of generating manufacturing, refining, producing, storing, handling, transferring, processing or transporting Hazardous Materials. For the purposes hereof, "Hazardous Materials" shall mean any flammable explosives, radioactive materials, asbestos, petroleum, organic compounds known as polychlorinated biphenyls, chemicals known to cause cancer or reproductive toxicity, pollutants, contaminants, hazardous wastes, toxic substances or related materials, including, without limitation, any substances defined as or included in the definition of "hazardous substances", "hazardous material" or "toxic substances" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 9601, et seq., the Hazardous Materials Transportation Act, 49 U.S.C. § 1801, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq., or any other federal,

state or local statute, law, ordinance, code, rule, regulation, order, decree or other requirement of governmental authority regulating, relating to or imposing liability or standard of conduct concerning any hazardous, toxic or dangerous substance or material, as now or at any time hereafter in effect, and in the regulations adopted, published and/or promulgated pursuant to said laws. To Seller's knowledge, there are no underground storage tanks situated in the Property nor have such tanks been previously situated thereon.

- 8.6. No representation, warranty, or statement made herein by Seller contains any untrue statement of any material fact or omits to state any material fact necessary in order to make such representation, warranty, or statement not misleading.
9. **INDEMNIFICATION.** Seller agrees to indemnify and hold harmless Purchaser, Purchaser's successors by operation of law or assigns, against and in respect of, any and all damages, claims, losses, liabilities and expenses, including without limitation, reasonable legal, accounting, consulting, engineering and other expenses, which may be imposed upon or incurred by the Purchaser, but not Purchaser's successors by operation of law or assigns, by any other party or parties (including, without limitation, a governmental entity), arising out of or in connection with the Seller's use, ownership, and operation of the Property through the Closing Date. This indemnity shall survive the closing of this transaction, and shall be in addition to Seller's obligation for breach of any representation or warranty.
10. **TAXES.** Seller shall pay any sales, excise, conveyance or transfer tax, assessment or fee of any type and any recapture, roll-back or deferred tax, assessment or fee due as a result of the sale or due prior to Closing. Seller shall pay all general and special taxes, assessments, fees and charges of any type (including without limitation, any for water, sewer, irrigation and special districts), for the Property due prior to Closing. At Closing real property taxes and assessments and other taxes and assessment shall be prorated as of the date of Closing based on the most recent ascertainable tax or other bill or the current assessment of the Property. Purchaser understands that the Property was previously used as a golf course and Purchaser has represented that the Property will be used in the future as natural undisturbed open space. Purchaser has been advised that using the Property for any purpose other than a golf course may have real property tax consequences with regard to both future and past real property tax liability. Purchaser will be responsible for any real property taxes, whether for prior or future periods, due in connection with any change in use. This change in use and any potential property tax consequences may be investigated by Purchaser during the Inspection Period. If Purchaser is dissatisfied with the results of such investigation, for any reason, prior to Closing, Purchaser may cancel this Agreement, as provided in Section 17(4).
11. **PRESERVATION OF PROPERTY; RISK OF LOSS.** Except as otherwise set forth herein, Seller agrees that the Property shall remain as it now is until Closing, that no timber, crops (except in the normal course of agricultural or ranching operations), sand, gravel, minerals, improvements or any other part of the Property shall be sold or removed from the Property, and that that Seller shall neither use nor consent to any use of the Property for any purpose or in any manner which would adversely affect Purchaser's intended use of the Property as a conservation area or similar use. This covenant expressly precludes any timber cutting on the Property. In the event Seller shall use or

consent to such use of the Property, Purchaser may, without liability, refuse to accept the conveyance of title, in which event the Deposit shall be refunded; or it alternatively may elect to accept the conveyance of title to the Property or any portion thereof, in which case there shall be an equitable adjustment of the Purchase Price based on the change in circumstances and/or maintain an action against Seller for damages.

12. **COSTS AND FEES.** Closing fees shall be shared between the Parties. The Property transfer tax(es) shall be paid by the Seller. The premium for the title insurance policy and endorsements described herein shall be paid by the Seller. Recording fees shall be paid by the Purchaser. All other Closing costs shall be borne by the parties in accordance with local custom. Each party shall be responsible for its own attorneys' fees.

13. **LIQUIDATED DAMAGES; DEFAULT.**

13.1. Seller's Remedies. In the event that: (i) all of the conditions to this Agreement for the benefit of Purchaser shall have been satisfied, or waived by Purchaser, (ii) Seller shall have fully performed or tendered performance of its obligations under this Agreement, and (iii) Purchaser shall be unable or shall fail to perform its obligations under this Agreement, then the entire amount of the Deposit (including any increases to the Deposit) shall be retained by Seller as liquidated damages under this Agreement, and Purchaser shall have no further liability to Seller. Purchaser and Seller hereby acknowledge and agree that Seller's damages would be difficult or impossible to determine and that the amount of the Deposit is the parties' best and most accurate estimate of the damages Seller would suffer in the event the transaction provided for in this Agreement fails to close, and is reasonable under the circumstances existing as of the date of this Agreement. The Parties intend that the liquidated damages in this Agreement constitute compensation and not a penalty. Purchaser and Seller agree that Seller's right to retain the Deposit shall be the sole remedy of Seller in the event of a breach of this Agreement by Purchaser.

13.2. Purchaser's Remedies. If Seller shall fail to consummate the transaction contemplated hereunder for any reason, or if such transaction shall fail to close for any reason other than default by Purchaser, Purchaser may elect, at Purchaser's sole option, (i) to terminate this Agreement and be released from its obligations hereunder, in which event the Deposit shall be returned to Purchaser; or (ii) to proceed against Seller for specific performance of this Agreement. In the event Purchaser is awarded specific performance by the court, the court shall also award Purchaser its reasonable attorney fees and costs in connection with such action.

14. **NOTICES.** All notices required or permitted hereunder will be deemed to have been delivered upon sending of such notice. All notices required or permitted hereunder shall be given by hand delivery, sent by email followed by US Mail, or sent by Federal Express or other courier, directed as follows, or to such other address as either party may designate by giving notice to the other party as provided herein:

If to Seller:

Mr. Pat Lopez
Rusing Lopez & Lizardi, P.L.L.C.
6363 N Swan Road, Suite 151
Tucson, Arizona 85718
Tel: (520) 792-4800
Email: plopez@rlaz.com

If to Purchaser:

The Conservation Fund
1655 N. Fort Myer Drive, Suite 1300
Arlington, Virginia 22209
Attn: Scott Tison, Real Estate Legal Manager
Phone: (703) 525-6300/Fax: 4610
Email: stison@conservationfund.org

With a copy to:

The Conservation Fund
Nevada & Southwest Regional Office
Attention: Mr. Mike Ford
5055 W. Patrick Lane, Suite 101-A
Las Vegas, NV 89110
Email: mford@conservationfund.org

15. **MISCELLANEOUS.**

- 15.1. Authority. Seller is duly authorized to enter into this Agreement and has taken all necessary actions to execute and perform this Agreement and this Agreement is enforceable against Seller in accordance with its terms.
- 15.2. Broker's Commission. Seller and Purchaser each represents to the other that they have not contracted with any broker or finder with regard to this transaction. Each agrees to indemnify, defend and hold harmless the other from and against any and all liability, claims, demands, damages and costs of any kind arising out of or in connection with any broker's or finder's fee, commission or charges claimed to be due any person in connection with such person's conduct respecting this transaction.
- 15.3. Affidavit. At or prior to Closing, Seller shall furnish to Purchaser a duly executed Affidavit of Non-Foreign Status (the "Affidavit") in the form attached to this Agreement as **Exhibit "C"**. Seller hereby declares and represents to Purchaser that Seller is not a "foreign person" for purposes of withholding of federal tax as described in such Affidavit.
- 15.4. Assigns. Purchaser may assign its rights and obligations as Purchaser under this Agreement by entering into a duly executed Assignment of Contract, wherein the

assignee assumes all of the obligations of Purchaser hereunder. Upon entry into such Assignment of Contract, Purchaser shall be relieved of all liability and obligations of Purchaser under this Agreement, arising from and after the date of the Assignment of the Contract. In addition, Purchaser may require that the Property be directly deeded by the Seller to the Town of Oro Valley, an Arizona Municipal corporation.

- 15.5. Binding Effect. The terms and conditions of this Agreement shall be binding upon and shall inure to the benefit of Seller's and Purchaser's heirs, executors, administrators, successors, and assigns.
- 15.6. Exhibits. The exhibit(s) hereto constitute an integral part of this Agreement and are incorporated herein by reference.
- 15.7. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument. All facsimile or electronic transmissions of this Agreement shall be deemed original signatures for all purposes.
- 15.8. Severability. If any provision of this Agreement shall be held invalid, the other provisions hereof shall not be affected thereby and shall remain in full force and effect.
- 15.9. Entire Agreement. This Agreement represents the entire agreement of the parties and may not be amended except by a writing signed by each party thereto.
- 15.10. Authority. Each party to this Agreement warrants to the other that the respective signatories have full right and authority to enter into and consummate this Agreement and all related documents.
- 15.11. Merger. The obligations, covenants, representations, warranties, and remedies set forth in this Agreement shall not merge with transfer of title but shall remain in effect during the period of the ownership of the Property by Purchaser.
- 15.12. Further Actions. Each party shall execute and deliver or cause to be executed and delivered any and all instruments reasonably required to convey the Property to Purchaser and to vest in each party all rights, interests, and benefits intended to be conferred by this Agreement.
- 15.13. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the state or commonwealth in which the Property is situated.
- 15.14. Offer. When signed and delivered to the Seller by Purchaser, this Agreement will constitute an offer to the Seller that can be accepted only by the Seller signing and delivering to Purchaser an executed original of this Agreement on or before (but not after) November __, 2021. Purchaser may withdraw such offer in writing at any time prior to its acceptance.
- 15.15. Labor and Material; Existing Leases. Seller will execute and deliver to the Title Company at Closing a Mechanic's Lien Affidavit and Indemnity and such other documents and information as may be required by the Title Company to obtain

deletion of the standard preprinted exception pertaining to mechanic's liens and leases from Purchaser's policy of title insurance.

- 15.16. 1099 Reporting. The Title Company is designated as the party responsible for filing a Form 1099 with the Internal Revenue Service promptly after Closing, to the extent required by the Internal Revenue Code and Treasury Regulations.
- 15.17. Recitals. The Recitals, above, are incorporated into and made a part of this Agreement.
16. **SATURDAYS, SUNDAYS, HOLIDAYS.** If the final date of any time period of limitation set out in any provision of this Agreement falls on a Saturday, Sunday or a legal holiday under the laws of the state in which the Property is situated, then the time of such period shall be extended to the next day which is not a Saturday, Sunday or legal holiday.
17. **PURCHASER'S CONTINGENCIES.** Specific contingencies to Purchaser's obligation to perform hereunder are (1) the approval, in its sole discretion, by the Purchaser's Board of Directors, of the transaction contemplated on or before the expiration of the Inspection Period; (2) the Purchaser being satisfied with the Condition of the Property (including specifically the availability of funding for the purchase), as determined by Purchaser in its sole and absolute discretion, prior to the End of the Inspection Period; (3) Seller's performance of all its obligations under this Agreement in accordance with their terms; (4) Purchaser being satisfied, in its sole and absolute discretion prior to Closing that there will be no liabilities, claims, demands or expenses of any kind or nature, including taxes under or based upon the Declaration of Restrictions for Golf Course Use recorded in the Office of the County Recorder, Pima County, Arizona by Seller's predecessor in interest to the Golf Course Property on September 3, 1997, at Sequence No. 97142211 (the "Declaration") and previous use of the Golf Course Property, and/or change of use of the Golf Course Property; and (5) there being no material change in the Condition of the Property after the end of the Inspection Period and prior to Closing, as determined by Purchaser in its reasonable discretion. If any such contingency is not met or waived by the Purchaser, without regard to whether the Purchaser has otherwise accepted the condition of the Property, then this Contract shall be null and void, and the Deposit shall be returned to the Purchaser. The Parties acknowledge and agree that Purchaser's contingencies described in Sections 17(1), 17(2), 17(4) and 17(5) are a fundamental inducement to Purchaser signing this Agreement.
18. **SELLER'S CONTINGENCIES.** Specific contingencies to Seller's obligation to perform hereunder are (1) Purchaser's performance of all its obligations under this Agreement in accordance with their terms; (2) Seller obtaining a written settlement agreement with the Purchaser, the Town of Oro Valley, and Ross Rulney ("Rulney") for the sale by Seller of the Golf Course Property and release of any condemnation claims against Seller relating to the Golf Course Property; (3) Seller obtaining a written agreement with Rulney for the purchase of the Clubhouse Parcel by Rulney, acceptable to Seller in its sole and absolute discretion; (4) Seller being satisfied, in its sole and absolute discretion prior to Closing that there will be no liabilities, claims, demands or expenses of any kind or nature, including taxes under or based upon the Declaration of Restrictions for Golf Course Use recorded in the Office of the County Recorder, Pima County, Arizona by Seller's

predecessor in interest to the Golf Course Property on September 3, 1997, at Sequence No. 97142211 (the "Declaration") and previous use of the Golf Course Property, and/or change of use of the Golf Course Property; and (5) closing the sale of the Clubhouse Parcel concurrently with the Closing under this Agreement and in no event later than the Outside Closing Date. If any such contingency is not met or waived by Seller, then this Agreement shall be null and void, and, except for the Purchaser failing to satisfy all its obligations under this Agreement as contemplated in Section 18(1), the Deposit shall be returned to the Purchaser. The Parties acknowledge and agree that Seller's contingencies described in Sections 18(2) – (5) are a fundamental inducement to Seller signing this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

SELLER: Romspen Vistoso LLC, a Delaware limited liability company

By its sole member Romspen Club Holdings Inc.

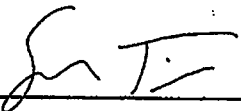
By: 
PETER DEGRAUM

Date: Nov. 24, 2021

Its: V.P.

PURCHASER

THE CONSERVATION FUND,
a non-profit corporation

By: 

Date: 11/29/2021

Its: Assistant Secretary

**EXHIBIT A
DESCRIPTION OF PROPERTY**

The description below of the Property is an abbreviation. The complete description of the Property by which the Seller shall convey the Property to the Purchaser shall be consistent with the ALTA/ASTM Land Title Survey of Rancho Vistoso Golf Course, Job No. 185050-A030-1016X, updated Jun 12, 2001, prepared by The WLB Group and the insurable description in the Title Commitment to be issued to the Purchaser as provided herein.

Fee Title as to the following parcels:

Pima County, Arizona

Township 11 South, Range 13 East
Portions of S1/2, Sec. 23
Portions of SW1/4, Sec. 23
129.90 acres
APN #219-19-1950

Township 11 South, Range 13 East
Irregular Portions of Sec. 26
72.15 acres
APN # 219-22-410A

And Easements as to Parcels 3, 4, 5, 6, 7, 8 and 9 as reflected in First American Title Insurance Company Commitment File No. NCS-919804-PHX1 dated October 17, 2018

(90) Notwithstanding anything to the contrary in this Exhibit A or in the purchase contract to which it is attached, the Property to be sold by the Seller to Purchaser shall not include parcel # 219-19-1910 (approx. 6.14 acres) which is depicted on the map attached to the purchase contract as Exhibit B.

Exhibit "C"

AFFIDAVIT OF NON-FOREIGN STATUS

Section 1445 and Section 6045 of the Internal Revenue Code provide that the Transferee of a real property interest must withhold tax if the Transferor is a foreign person and must provide certain sales related information to the Internal Revenue Service. To inform **THE CONSERVATION FUND** (the "Transferee") that withholding of tax is not required upon its disposition of a U.S. real property interest, more particularly described in the Agreement annexed hereto Romspen Vistoso LLC, a Delaware limited liability company (the "Transferor"), hereby certifies that:

1. Transferor is not a non-resident alien for purposes of U.S. income taxation as defined in the Internal Revenue Code and Income Tax Regulations.
2. Transferors tax identification number is: _____.
3. Transferor's principal address is: _____.
4. The gross sales price of this transfer is: \$ _____.

Transferor understands that this affidavit and information contained herein will be disclosed to the Internal Revenue Service by the Transferee and, that any false statement made herein by Transferor could be punished by fine, imprisonment, or both.

Under penalties of perjury, Transferor declares that Transferor has examined this affidavit and, to the best of Transferor's knowledge and belief, it is true, correct, and complete and further declares that he/she is duly authorized to execute this affidavit or has the authority to execute on behalf of Transferor.

TRANSFEROR: Romspen Vistoso LLC, a Delaware limited liability company

By: _____

Date: _____

Its: _____

EXHIBIT C
CLUBHOUSE CONTRACT

PURCHASE AND SALE AGREEMENT AND ESCROW INSTRUCTIONS

This Purchase and Sale Agreement and Escrow Instructions (the "Agreement") is entered into between Romspen Vistoso LLC, a Delaware limited liability company ("Seller"), and Ross Rulney and/or assigns ("Buyer"), dated effective as of the date of its execution by the Escrow Agent (as defined below) (the "Effective Date").

RECITALS

A. Seller owns approximately 208.3 acres of real property on which sits the former Rancho Vistoso golf course, located in the Town of Oro Valley, Arizona (the "Town"), depicted on **Exhibit A** attached hereto and legally described on **Exhibit A-1** attached hereto (the "Golf Course Property").

B. The Golf Course Property consists of five separate legal parcels of land: APNs 219-19-1910, 219-19-1950, 219-19-1990, 219-19-2000, and 219-22-410A. APN 219-19-1910 consists of approximately 6.3 acres of land, depicted on **Exhibit A** attached hereto and legally described on **Exhibit B** attached hereto (the "Land"). APNs 219-19-1950, 219-19-1990, 219-19-2000, and 219-22-410A constitute the remainder of the Golf Course Property, depicted on **Exhibit A** attached hereto (the "Remaining Parcels").

C. Seller desires to sell, transfer and convey the Land, including all improvements located on the Land, if any, and all rights, privileges, easements, tenements, hereditaments, rights of way and appurtenances that belong or pertain to the Land, together with: (i) any right, title, and interest, if any, of Seller in and to any and all roads, easements, streets and ways bounding the Land and rights of ingress and egress thereto; and (ii) any right, title, and interest, if any, of Seller in and to any mineral, water and irrigation rights running with or pertaining to the Land (together with the Land, the "Property") to Buyer, and Buyer desires to purchase and acquire the Property from Seller, upon and subject to the terms and conditions set forth in this Agreement.

AGREEMENT

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Buyer agree as follows:

1. AGREEMENT: ESCROW

Seller agrees to sell and Buyer agrees to buy the Property on the terms and conditions set forth in this Agreement. An escrow for this transaction shall be established with Fidelity National Title Agency, 800 E. Wetmore Road, Suite 110, Tucson, Arizona 85719 (Attn: Rebecca Sauers) (the "Escrow Agent"), and Escrow Agent is engaged to administer the escrow. This Agreement constitutes escrow instructions to Escrow Agent. By accepting this escrow, Escrow Agent agrees to be bound by the terms of this Agreement as they relate to the duties of Escrow Agent. Escrow Agent agrees to be the designated "reporting person" under §6045(e) of the U.S. Internal Revenue Code of 1986 as amended (the "Code") with respect to the real estate transaction described in this

Agreement and to prepare, file, and deliver such information, returns, and statements as the U.S. Treasury Department may require by regulations or forms in connection with such requirements, including Form 1099-B.

2. PURCHASE PRICE

The purchase price for the Property (the "Purchase Price") shall be ONE MILLION SEVEN HUNDRED FIFTY THOUSAND AND 00/100 DOLLARS (\$1,750,000.00), which shall be payable in cash or by certified check, wire transfer or other immediately available funds at Closing (as defined in Paragraph 3.1 below) as follows:

(a) Within three (3) Business Days (as defined in Paragraph 8.9 below) after the Effective Date, Buyer shall deliver to Escrow Agent the amount of ONE HUNDRED THOUSAND AND 00/100 DOLLARS (\$100,000.00) (the "Earnest Money"), which Escrow Agent shall promptly deposit in a federally-insured, interest bearing account. ONE HUNDRED AND 00/100 DOLLARS (\$100.00) of the Earnest Money shall be released by Escrow Agent to Seller and retained by Seller as the total consideration for providing Buyer the right in its sole discretion to terminate this Agreement as provided herein (the "Termination Consideration"). Upon Closing, the Earnest Money (as defined below) and all interest earned thereon shall apply toward the Purchase Price. If Buyer does not terminate this Agreement prior to the Closing, the Earnest Money shall become non-refundable to Buyer except: (i) if this Agreement terminates pursuant to any provision of this Agreement specifically allowing a refund of the Earnest Money; (ii) in the event Seller fails to perform when due any act required by this Agreement to be performed by Seller prior to the Closing; (iii) if any condition to Buyer's obligation to close escrow hereunder has not been satisfied; or (iv) as otherwise specifically set forth in this Agreement.

(b) Subject to the prorations and credits as set forth in Paragraph 6.3 below, at Closing, Buyer shall deliver the balance of the Purchase Price in immediately available funds.

3. CLOSING; AND PRE-CLOSING OBLIGATIONS AND CONDITIONS

3.1 Closing. The closing of this transaction (the "Closing" or "Closing Date") shall occur on or before December 30, 2021, at the office of the Escrow Agent.

3.2 Property Information. Within three (3) days after the Effective Date, Seller shall electronically deliver to Buyer, at Seller's sole cost and expense, copies of all information and documentation pertaining to the Property in possession of Seller, including without limitation, each of the following items (the "Property Information"):

(a) Physical reports and studies such as surveys, engineering tests, inspection reports, market analyses, soils, geotechnical or hydrological tests, environmental assessments, and reports;

- (b) Information and materials pertaining to the Golf Course Property prepared or used by the Planning Center (excluding correspondence to or from the Planning Center);
- (c) Correspondence with and submittals to the Town pertaining to proposed general plan amendment and rezoning of the Golf Course Property;
- (d) Seller's Lender's title policy for the Golf Course Property;
- (e) Information and documentation pertaining to the Rancho Vistoso Homeowner's Association lease; and
- (f) Complaints and demands regarding the condition of the Property from Rancho Vistoso Homeowner's Association.

Notwithstanding Paragraph 3.2(b), Seller acknowledges and agrees that the correspondence to and from the Planning Center pertaining to the Golf Course Property is not confidential, and Buyer may obtain any such correspondence directly from the Planning Center. Seller hereby consents to the Planning Center's release of the same.

3.3 Feasibility Period. After the Effective Date until the Closing or earlier termination of this Agreement, Buyer and its duly authorized agents and representatives shall be entitled to enter upon the Property at all reasonable times to inspect the Property, conduct feasibility studies of the Property and the viability of its proposed use thereof, conduct tests and studies of the Property that Buyer's deems appropriate, review the Property Information, and conduct meetings and have communication with the Town and any other applicable governing or quasi-governmental authority(ies), as Buyer deems necessary to properly investigate the Property. The costs and expenses of all such inspections, tests, and studies shall be borne solely by Buyer.

Buyer shall indemnify and hold Seller, and its members, managers, employees, successor and assigns, harmless from any loss, liabilities, cost, claims, damages or liens resulting from Buyer's or Buyer's agent's entry upon the Property. If Buyer terminates this Agreement, Buyer shall cause the Property to be returned to Seller in substantially the same condition as existed prior to Buyer's inspection of the Property, reasonable wear and tear excepted.

Buyer, in its sole discretion, may terminate this Agreement by written notice to Seller and Escrow Agent given at any time prior to December 23, 2021 (the "Feasibility Period") and receive a refund of the Earnest Money (exclusive of the Termination Consideration) and any interest earned thereon, and thereafter neither Seller nor Buyer shall have any continuing obligation unto the other, except for any obligations that expressly survive the termination of this Agreement as specifically provided herein. If Buyer does not provide written notice of its intent to terminate this Agreement prior to the expiration of the Feasibility Period, Buyer shall be deemed to have elected not to terminate this Agreement pursuant to this Paragraph.

3.4 Entitlements. Promptly after the Effective Date, Buyer shall diligently and in good faith initiate efforts to obtain from the Town approval of a concept plan for Buyer's development of the Property and a written agreement to allow for a multi-family development on the Property, together with such other necessary or desired accommodations and entitlement approvals (such as, without limitation, satisfactory density, setback, parking, and drainage accommodations), subject only to stipulations and conditions acceptable to Buyer in its sole and absolute discretion (collectively, the "Entitlements"). It is anticipated that a conservation easement limiting the use of the Remaining Parcels will be recorded against the Remaining Parcels at or soon after the Closing (the "Conservation Easement"). Without limiting the generality of the first sentence in this paragraph, as used herein, Entitlements shall include provisions in the Conservation Easement that expressly allow for accommodations necessary or desired for Buyer's development of the Property (such as, without limitation, parking and drainage accommodations). At no cost to Seller, Seller shall cooperate in a timely and commercially reasonable manner with Buyer in obtaining the Entitlements. Buyer's obligation to close escrow under this Agreement is contingent upon Buyer obtaining Entitlements acceptable to Buyer in its sole and absolute discretion. Notwithstanding anything in this Agreement to the contrary, if Buyer does not obtain Entitlements acceptable to Buyer in its sole and absolute discretion prior to the Closing, Buyer may terminate this Agreement by written notice to Seller and Escrow Agent and receive a refund of the Earnest Money (exclusive of the Termination Consideration) and any interest earned thereon, and thereafter neither Seller nor Buyer shall have any continuing obligation unto the other, except for any obligations that expressly survive the termination of this Agreement as specifically provided herein; provided, however, that in the event of such termination any action regarding these surviving obligations must be brought within two years after termination or they will be deemed to have been waived or lapsed.

3.5 Remaining Parcels. Promptly after the Effective Date, Seller shall diligently and in good faith initiate efforts to enter into a written agreement with the Town or The Conservation Fund, or both, for the purchase of the Remaining Parcels by the Town, The Conservation Fund, or both, or by a third party designated by the Town or The Conservation Fund, or a combination thereof (collectively, the "Other Buyers"), with the closing of such purchase to occur concurrently with the Closing hereunder. Seller acknowledges and agrees that the purchase price of the Remaining Parcels shall be acceptable to Seller so long as such purchase price, together with any consideration received by Seller in connection with the settlement of Seller's claims against the Town, totals at least \$2,500,000. Seller's obligation to close escrow under this Agreement is contingent upon Seller obtaining a written agreement or written agreements with the Other Buyers for the purchase and sale of the Remaining Parcels acceptable to Seller in its sole and absolute discretion and the closing of the sale of the Remaining Parcels to the Other Buyers concurrently with the Closing hereunder. Notwithstanding anything in this Agreement to the contrary, if Seller does not obtain a fully-executed written agreement or written agreements with the Other Buyers for the purchase and sale of the Remaining Parcels acceptable to Seller in its sole and absolute discretion or the closing of the sale of the Remaining Parcels does not occur concurrently with the Closing hereunder for any reason other than a default by Seller under its agreement with the Other Buyers or under this Agreement, Seller may terminate this Agreement by written notice to Buyer and Escrow Agent. In such event, Seller shall return the Earnest Money (exclusive of the Termination Consideration) and any interest earned thereon to Buyer, and thereafter neither Seller nor Buyer shall have any continuing obligation unto the other, except for any obligations that

expressly survive the termination of this Agreement as specifically provided herein. If the closing of the Remaining Parcels does not occur concurrently with the Closing hereunder because of a default by Seller under its agreement with the Other Buyers or under this Agreement, such event shall constitute a default by Seller hereunder, entitling Buyer to the remedies set forth in Paragraph 7.1.

3.6 Declaration. At the Closing, Seller shall record a termination of that certain Declaration of Restrictions for Golf Course Use recorded in the Office of the County Recorder, Pima County, Arizona by Seller's predecessor in interest to the Golf Course Property on September 3, 1997, at Sequence No 97142211 (the "Declaration").

4. TITLE AND TITLE INSURANCE

4.1 Title Review. Buyer shall have until December 23, 2021 to review a current commitment (the "Title Commitment") to issue an ALTA extended owner's policy of title insurance to Buyer issued by Fidelity National Title Agency as agent for Fidelity National Title Insurance Company ("Title Company"), together with legible copies of all documents referenced as exceptions therein, and provide written approval or objection to Escrow Agent and Seller ("Buyer's Notice") to the condition of title to the Property. If Buyer fails to notify Seller and Escrow Agent in writing of Buyer's approval or disapproval of any matters shown on the Title Commitment (the "Title Matters") within the Title Review Period and/or the Supplemental Title Review Period (as defined below), as the case may be, the condition of title shown in the Title Commitment or Amended Title Commitment (as defined below), as applicable, and shall be deemed approved by Buyer.

(a) Within five (5) Business Days after Buyer's Notice, Seller shall give Buyer and the Escrow Agent written notice ("Seller's Notice") of those disapproved Title Matters that Seller is able and willing to eliminate (or to secure title insurance endorsements against if such are acceptable to Buyer). If Seller fails to timely send Seller's Notice, Seller shall be deemed to have elected not to cure any of the Title Matters disapproved by Buyer. Seller shall have until the Closing to eliminate or to secure title insurance endorsements against (if such are approved by Buyer and in form acceptable to Buyer) any disapproved Title Matters that Seller agrees in Seller's Notice to attempt to cure.

(b) If Seller fails to timely transmit Seller's Notice or advises Buyer in the Seller's Notice that it is unwilling or unable to eliminate (or to secure title insurance endorsements against in such form as may be approved by Buyer in its sole discretion) any disapproved Title Matters, or if after attempting to do so in compliance herewith, Seller is unable to so eliminate (or to secure title insurance endorsements against in such form as may be approved by Buyer) any disapproved Title Matters, Buyer may elect, by giving written notice to Seller and Escrow Agent within five (5) Business Days of the date Seller was to have given Seller's Notice or of the date Seller gives notice to Buyer that it is unwilling or unable to cure the disapproved Title Matters, as applicable, to: (i) terminate this Agreement; or (ii) waive Buyer's objection to any such Title Matters, in which case Buyer shall accept

title to the Property subject to such previously disapproved Title Matters. Notwithstanding anything set forth herein to the contrary, title to the Property shall be delivered to Buyer at the Closing free and clear of all mechanics', materialman's, professional service and other liens, and all monetary liens and monetary encumbrances (other than the lien for current real property taxes not yet due and payable) and all such monetary liens and encumbrances shall be released from the Property by Seller at Seller's sole expense on or before the Closing. All such liens and encumbrances are disapproved for the purposes of this Paragraph 4.1, and Buyer need not give any further notice of disapproval as to those items. Except as set forth in the preceding sentences, Seller shall have no obligation to remove or cure any Title Matters.

(c) If Buyer fails to give Seller and Escrow Agent timely notice of its election of alternative 4.1(b)(i) above, Buyer shall be deemed to have elected alternative 4.1(b)(ii) above. In the event this Agreement is terminated in accordance with the provisions hereof due to Seller's failure or inability to eliminate or to secure any approved title insurance endorsements against any disapproved exception(s) after having attempted to do so in compliance with Seller's obligations hereunder, then the Earnest Money (exclusive of the Termination Consideration) and all interest earned thereon shall be promptly refunded to Buyer without further instruction of any party.

(d) If the Title Commitment is amended to provide for exceptions in addition to those approved or deemed approved by Buyer (an "Amended Title Commitment"), Buyer shall give notice to the Escrow Agent and Seller prior to the Closing (the "Supplemental Title Review Period") whether it shall accept the additional exceptions or elect to terminate this Agreement, unless such are cured to its reasonable satisfaction by Seller in the manner hereinbefore provided with respect to the original exceptions to title, except that Seller shall have until Closing, rather than until the expiration of the Feasibility Period, to effect its performance.

4.2 Title Policy. The Title Insurer shall issue to Buyer at Closing or as soon thereafter as reasonably possible a 2006 ALTA extended coverage owner's policy of title insurance (the "Title Policy"). The Title Policy shall be issued in the full amount of the Purchase Price, be effective as of the Closing and shall insure Buyer that fee simple title to the Property is vested in Buyer subject only to the exceptions approved or deemed approved by Buyer (the "Permitted Exceptions"). Buyer shall be responsible for obtaining and paying for any necessary survey or updated survey if desired by Buyer or if required by the Title Insurer in order to issue an extended coverage owner's policy of title insurance.

5. REPRESENTATIONS AND WARRANTIES

5.1 Seller's Representations and Warranties. Seller represents and warrants to Buyer that each of the following representations and warranties is true and accurate as of the Effective Date, will be true and accurate as of the Closing and will survive the Closing for the Survival Period (as defined in Paragraph 5.3 below):

(a) Seller is in good standing under the laws of the State of Delaware, is qualified to do business in the State of Arizona, and has full power and authority to enter into and to perform its obligations under this Agreement. The person signing this Agreement and all Closing documents in connection with the sale of the Property has full power and authority to do so, with all necessary approvals to bind Seller and convey the Property to Buyer at Closing.

(b) This Agreement and each of the documents and agreements to be delivered by Seller at the Closing, constitute legal, valid and binding obligations of Seller, enforceable against Seller in accordance with their respective terms, except to the extent that enforceability may be limited by applicable bankruptcy, insolvency, fraudulent conveyance, or similar laws affecting the enforcement of creditors' rights generally, and subject, as to enforceability, to general principles of equity, regardless of whether enforcement is sought in a court of law or equity.

(c) No litigation, administrative or other proceeding (except the threatened condemnation proceeding by the Town of Oro Valley), or order or judgment is pending, outstanding, or to Seller's knowledge threatened against or relating to any portion of the Property or that could affect the performance by Seller of any of its obligations under this Agreement.

(d) Seller has not received any written notice of any violation of any ordinance, regulation, law, or statute of any governmental authorities pertaining to the Property, or any portion thereof, that has not been complied with in full or that has not been disclosed to Buyer in writing.

(e) To Seller's knowledge based solely on and except as set forth in the Property Information, the Property is not now in violation of any Environmental Law. To Seller's knowledge, Seller has not knowingly caused or allowed the use, generation, manufacture, production, treatment, storage, release, discharge, or disposal of any Hazardous Substances on, under, or about the Property in violation of any Environmental Law, and has not caused or allowed the transportation to or from the Property of any Hazardous Substance in violation of any Environmental Law. As used in this Agreement: (1) "Environmental Law" means any federal, state or local law, statute, ordinance, or regulation pertaining to environmental conditions, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. Sections 9601, *et seq.*; the Resource Conservation and Recovery Act of 1976, 42 U.S.C. Sections 6901, *et seq.*; the Toxic Substances Control Act of 1976, 15 U.S.C. Sections 2601, *et seq.*; the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. Sections 11001, *et seq.*; the Hazardous Materials Transportation Act, 49 U.S.C. Sections 5101, *et seq.*; the Clean Air Act, 42 U.S.C. Sections 7401, *et seq.*; the Federal Water Pollution Control Act, 33 U.S.C. Sections 1251, *et seq.*; the Safe Drinking Water Act, 42 U.S.C. Sections 300f, *et seq.*; and the National Environmental Policy Act of 1969, 42 U.S.C. Sections 4321, *et seq.*; and (2) "Hazardous Substance" means those substances included within the definitions of

“hazardous substance”, “hazardous waste”, “hazardous material”, “toxic substance”, “solid waste”, or “pollutant or contaminant” in, or otherwise regulated by any Environmental Law.

(f) Seller: (i) is not acting, directly or indirectly, for or on behalf of any person, group, entity, or nation named by an Executive Order or the United States Treasury Department as a terrorist, “Specially Designated National and Blocked Person,” or any other banned or blocked person, group, entity, nation or transaction pursuant to any law, order, rule or regulation that is enforced or administered by the Office of Foreign Assets Control; and (ii) is not engaged in this transaction, directly or indirectly, on behalf of, or instigating or facilitating this transaction, directly or indirectly, on behalf of, any such person, group, entity or nation. Seller hereby agrees to provide Buyer, upon request, identifying information and other information reasonably requested by Buyer in its efforts to comply with such laws, orders, rules or regulations.

5.2 Buyer's Representations and Warranties. Buyer represents and warrants to Seller that each of the following representations and warranties is true and accurate as of the Effective Date, will be true and accurate as of the Closing and will survive the Closing for the Survival Period:

(a) Buyer has full power and authority to enter into and to perform its obligations under this Agreement. The person signing this Agreement and all Closing documents in connection with the purchase of the Property has full power and authority to do so, with all necessary corporate approvals to bind Buyer.

(b) This Agreement and each of the documents and agreements to be delivered by Buyer at the Closing, constitute legal, valid and binding obligations of Buyer, enforceable against Buyer in accordance with their respective terms, except to the extent that enforceability may be limited by applicable bankruptcy, insolvency, fraudulent conveyance, moratorium, or similar laws affecting the enforcement of creditors' rights generally, and subject, as to enforceability, to general principles of equity, regardless of whether enforcement is sought in a court of law or equity.

(c) Buyer: (i) is not acting, directly or indirectly, for or on behalf of any person, group, entity, or nation named by an Executive Order or the United States Treasury Department as a terrorist, “Specially Designated National and Blocked Person,” or any other banned or blocked person, group, entity, nation or transaction pursuant to any law, order, rule or regulation that is enforced or administered by the Office of Foreign Assets Control; and (ii) is not engaged in this transaction, directly or indirectly, on behalf of, or instigating or facilitating this transaction, directly or indirectly, on behalf of, any such person, group, entity or nation. Buyer hereby agrees to provide Seller, upon request, identifying information and other information reasonably requested by Seller in its efforts to comply with such laws, orders, rules or regulations.

5.3 Survival of Representations and Warranties after Closing. The parties acknowledge that each and every representation and warranty contained in Paragraphs 5.1 and 5.2 above shall be true and accurate as of the Effective Date and also as of the Closing Date and shall constitute a material part of the consideration hereunder and shall survive the Closing for six (6) months (the "Survival Period").

5.4 As Is; Release. Buyer acknowledges, represents, warrants and agrees that, except as expressly set forth herein and the exhibits attached hereto and any closing documents delivered by Seller at the Closing, (i) Seller makes no warranty, guaranty, representation or covenant, express or implied, to or with Buyer with respect to the Property including, without limitation, the condition, suitability, nature, stability, attributes, structural or environmental condition or integrity of the Property, (ii) Buyer is purchasing the Property strictly in "AS IS, WHERE IS" condition with all faults based upon its own inspection and investigation, including, without limitation, environmental investigation and not in reliance on any statement, representation, inducement or agreement of Seller or any information provided by or on behalf of Seller, except as may be expressly set forth herein; (iii) Buyer has made, or will make prior to Closing, its own independent inspection and investigation of the Property and all matters in connection therewith; (iv) Buyer waives, releases and discharges Seller, its beneficiary, subsidiaries and affiliates, and their respective members, managers, employees and agents, on behalf of itself and its successors and assigns from any claim whether arising in contract or tort, known or unknown, that it has or may acquire arising out of or related to the condition of the Property, whether latent or otherwise; (v) Buyer is aware that the Property is currently leased to the Rancho Vistoso Homeowner's Association on a month to month basis; (vi) Buyer is aware that the Rancho Vistoso Homeowner's Association has made certain complaints and demands regarding the condition of the Property; and (vii) Buyer is aware that the Property is a portion of the former Vistoso Golf Course subject to a 10 year restriction for golf course use and that now that the property is no longer used as a golf course, ARS 42-13154 allows the Pima County assessor to impose additional property taxes. The foregoing provisions of this Agreement shall survive the Closing.

6. CLOSING

6.1 Seller's Deliveries. At Closing, Seller shall deliver or cause the following items to be delivered to Escrow Agent:

- (a) A "Deed" in the form of **Exhibit C** attached hereto executed and acknowledged on behalf of Seller, in recordable form;
- (b) An affidavit of property value, as required by law;
- (c) A certificate of non-foreign status stating that Seller is not a "foreign person" as defined in Code or other appropriate evidence that Buyer is not required to withhold taxes under Section 1445(a) of the Code;
- (d) A "Bill of Sale" in the form of **Exhibit D** attached hereto executed on behalf of Seller to convey the personal property of Seller, if any, related to the Property to Buyer;

- (e) An owner's affidavit as required by Escrow Agent and Title Company for issuance of an extended coverage Title Policy; and
- (f) A termination of the Declaration, executed and acknowledged on behalf of Seller, in recordable form; and
- (g) All additional documents and instruments as may be required by applicable law, necessary or appropriate to consummate this transaction and the Closing in accordance with the terms of this Agreement.

6.2 **Buyer's Deliveries.** At Closing, Buyer shall deliver or cause to be delivered the following items to Escrow Agent:

- (a) The Purchase Price as provided in Paragraph 2 above;
- (b) An affidavit of property value, as required by law; and
- (c) All additional documents and instruments as may be required by applicable law, necessary or appropriate to consummate this transaction and the Closing in accordance with the terms of this Agreement.

6.3 **Prorations.** At Closing, the following items shall be adjusted or prorated between Seller and Buyer:

- (a) All real estate taxes and assessments ("Taxes") of the Property for the current calendar year shall be prorated as of the date of Closing on the basis of the latest available tax bill such that Seller shall be responsible for all such taxes levied in arrears against the Property to and including the day prior to the Closing, and Buyer shall be responsible for all such taxes levied against the Property for the date of Closing and all periods thereafter.
- (b) Expenses related to the maintenance and operation of the Property prior to the date of Closing shall be paid by Seller. Amounts payable under any covenants, conditions, and restrictions or like documentation constituting a Permitted Exception shall be prorated as of the date of Closing.
- (c) If any of the items described in this Paragraph 6.3 cannot be apportioned at the Closing because of the unavailability of information as to the amounts thereof or if an error is discovered with respect to any proration, such items shall be apportioned or reapportioned, as the case may be, as soon as practicable after the Closing or the date such error is discovered, as applicable; provided that neither party shall have the right to request apportionment or reapportionment of any such item at any time following three (3) months after the Closing;

6.4 Closing Costs. At Closing, the following items shall be paid by Seller and/or Buyer:

(a) Seller shall pay for the cost of the ALTA standard owner's portion of the Title Policy and Buyer shall pay for the incremental increased cost of an ALTA extended owner's portion of the Title Policy, if Buyer elects to obtain the same, and for all endorsements to the Title Policy, except those endorsements Seller has agreed to provide and Buyer has agreed to accept, for which Seller shall be solely responsible.

(b) Seller shall pay current all assessments, general or special, which are Permitted Exceptions.

(c) Buyer shall pay for the cost of recording the Deed and any other documents to be recorded at Closing.

(d) Seller and Buyer shall equally pay the escrow fees.

(e) All other Closing costs (except as otherwise set forth in this Agreement and professional fees which shall be the responsibility of the party employing the professional), if any, shall be shared by the parties according to local custom of Escrow Agent in Pima County, Arizona or as otherwise set forth in this Agreement.

6.5 Escrow Agent's Obligations. Without limitation, it shall be the obligation of Escrow Agent at Closing to:

(a) Record the Deed;

(b) Deliver the affidavit of property value to the Pima County Recorder;

(c) Cause the issuance and delivery to Buyer of the Title Policy; and

(d) Effect the prorations as of the date of Closing as set forth in Paragraph 6.3 above.

6.6 Possession. Possession of the Property shall be delivered to Buyer by Seller at Closing.

6.7 Seller's Indemnity. During the Survival Period, Seller agrees to indemnify and hold Buyer harmless of and from any and all liabilities, claims, demands and expenses of any kind or nature (except those items which by the terms of this Agreement specifically become the obligation of Buyer) arising or accruing prior to and as of the date of Closing or from facts or circumstances existing prior to and as of the date of Closing and that are in any way related to the ownership, maintenance or operation of the Property, and all expenses related thereto, including, but not limited to, court costs and attorneys' fees; provided, however, the preceding indemnity specifically excludes any and all liabilities, claims, demands and expenses of any kind or nature relating to that

certain Declaration of Restrictions for Golf Course Use (the "Declaration") recorded in the Office of the County Recorder, Pima County, Arizona by Seller's predecessor in interest to the Golf Course Property on September 3, 1997, at Sequence No. 97142211.

6.8 Buyer's Indemnity. During the Survival Period, Buyer agrees to indemnify and hold Seller harmless of and from any and all liabilities, claims, demands and expenses of any kind or nature (except those items which by the terms of this Agreement specifically remain the obligation of Seller) arising or accruing subsequent to the date of Closing and which are in any way related to the ownership, maintenance or operation of the Property, including, but not limited to, court costs and attorneys' fees.

6.9 Notice of Claim. In the event either party hereto receives notice of a claim or demand which results or may result in indemnification pursuant to Paragraphs 6.7 or 6.8 above during the Survival Period, such party shall immediately give notice thereof to the other. The party receiving such notice shall immediately take such measures as may be reasonably required to properly and effectively defend such claim, and may defend same with counsel of its own choosing. In the event the party receiving such notice fails to properly and effectively defend such claim, and in the event such party is liable therefor, the party so giving such notice may defend such claim at the expense of the party receiving such notice.

7. REMEDIES UPON DEFAULT

7.1 Seller's Default. If Seller breaches this Agreement or fails to perform any of its covenants or obligations under this Agreement, and if Seller fails to cure such breach within five (5) days after receipt of written notice from Buyer specifying the breach, such failure shall be an event of default by Seller. Buyer's sole and exclusive remedy on account of any such event of default by Seller shall be to either:

(i) terminate this Agreement by delivering written notice of Buyer's election to terminate to Seller and Escrow Agent, in which event the Earnest Money (and all interest thereon) shall be returned immediately to Buyer and Seller shall reimburse Buyer for all actual out-of-pocket costs and expenses as evidenced by paid invoices in an amount not to exceed FIFTY THOUSAND AND 00/100 DOLLARS (\$50,000.00) (the "Damage Cap") incurred by Buyer in undertaking the transaction contemplated hereby and investigating the Property, and, upon Seller's full payment thereof, neither Seller nor Buyer shall have any further liability to the other except for any obligations that survive the termination of this Agreement as specifically provided herein; or

(ii) waive such default and complete the purchase of the Property in accordance with the terms hereof; or

(iii) file an action for specific performance of this Agreement within sixty (60) days of the scheduled Closing Date to compel Seller to close.

In no event shall Seller be liable for punitive, consequential or any other damages other than actual damages subject to the Damage Cap. If Seller is in default with respect to any of its obligations under this Agreement, other than the obligation to consummate the sale of the Property, including any breach of representation, warranty, or indemnity obligation, Buyer shall have all rights and remedies at law or in equity in connection with such default, except for the waiver of damages in the preceding sentence, and subject to the Damage Cap.

7.2 Buyer's Default. If Buyer breaches this Agreement or fails to perform any of its covenants or obligations under this Agreement, and if Buyer fails to cure the breach or failure within five (5) days after receipt of written notice from Seller specifying the default, then Seller's sole remedy for such default shall be to receive from the Escrow Agent upon demand liquidated damages in the amount of the Earnest Money, and all interest earned thereon. The parties acknowledge and agree that Seller's harm caused by Buyer's default would be impossible or very difficult to accurately estimate as of the Effective Date, and that such liquidated damages are a reasonable estimate of the anticipated or actual harm that might arise from Buyer's default. The parties intend that the liquidated damages in this Agreement constitute compensation and not a penalty. No other damages, rights, or remedies shall in any case be collectible, enforceable or available to Seller other than in this Paragraph 7.2.

In no event shall Buyer be liable for punitive, consequential or any other damages. If Buyer is in default with respect any of its obligations under this Agreement, other than the obligation to consummate the purchase of the Property, including breach of any representation, warranty, or indemnity obligation, Seller shall have all rights and remedies at law or in equity in connection with such default, except for the waiver of damages in the preceding sentence, and subject to the Damage Cap.

8. MISCELLANEOUS.

8.1 Notices. Any notice to be given or served upon any party hereto in connection with this Agreement must be in writing properly addressed to Buyer, Seller, and Escrow Agent as follows and shall be deemed to have been given, received and served personally on the party to whom notice was given (i) on the second day after mailing if mailed by first-class mail, certified or registered, postage prepaid, return receipt requested, (ii) on the date of receipt by courier delivery, or (iii) on the date on which the email transmission is sent provided it is no later than 5:00 p.m. local time of the recipient:

To Seller:

Romspen Vistoso LLC
Attn: Peter Oelbaum
162 Cumberland Street, Suite 30
Toronto, Ontario

with a copy to: Pat Lopez
Rusing Lopez & Lizardi
6363 N. Swan Road, Suite 151
Tucson, Arizona 85718
Phone No.: (520) 529-4278
Email: plopez@rllaz.com

To Buyer: Ross Rulney
c/o Scotia Group Management
6340 North Campbell Avenue, #170
Tucson, Arizona 85718
Phone: (520) 850-9300
Email: rossrulney@gmail.com

with a copy to: Traci Riccitello
Riccitello Law Firm, PLLC
3849 E. Broadway Blvd., #239
Tucson, Arizona 85716
Phone: (520) 250-5877
Email: traci@riccitellolaw.com

To Escrow Agent: Fidelity National Title Agency
Attn: Rebecca Sauers
800 E. Wetmore Road, Suite 110
Tucson, Arizona 85719
Phone No.: (520) 770-5378
Email: Rebecca.sauers@fnf.com

8.2 Construction: Venue. This Agreement shall be construed and interpreted in accordance with the laws of the State of Arizona, without giving effect to its conflict of laws principles. Venue for the action shall be Pima County, Arizona. Where required for proper interpretation, words in the singular shall include the plural; the masculine gender shall include the neuter and the feminine, and vice versa.

8.3 Amendment. This Agreement may not be modified or amended, except by an agreement in writing signed by Seller and Buyer. The parties may waive any of the conditions contained herein or any of the obligations of the other party hereunder, but any such waiver shall be effective only if in writing and signed by the party waiving such conditions or obligations.

8.4 Attorneys' Fees. In the event either party files a suit in connection with this Agreement, then the party that prevails in such action shall be entitled to recover, in addition to all other remedies or damages, reasonable attorneys' fees and costs of court incurred in such suit.

8.5 Headings. The headings of the articles, sections and paragraphs contained in this Agreement are inserted for convenience only and shall not control or affect the meaning or construction of any of the provisions hereof.

8.6 Entire Agreement. This Agreement (and the items to be furnished in accordance herewith) constitutes the entire agreement between the parties pertaining to the subject matter hereof and supersedes all prior and contemporaneous agreements and understandings of the parties in connection therewith. No representations, warranties, covenants, agreements or conditions not expressed in this Agreement shall be binding upon the parties hereto or shall affect or be effective to interpret, change or restrict the provisions of this Agreement; provided, however, that all certifications, representations and warranties of Seller contained in the statements and schedules to be furnished herewith, shall become a part of this Agreement as though set forth herein.

8.7 Counterparts. Numerous copies of this Agreement may be executed by the parties hereto. Each such executed copy shall have the full force and effect of any original executed instrument. Signatures sent via email PDF or other electronic method shall be as effective as original signatures.

8.8 Assignment. Buyer may assign or otherwise transfer any of its rights under this Agreement without Seller's consent to an entity in which Ross Rulney has a direct or indirect ownership interest and over which Ross Rulney exerts direct or indirect management control, upon providing written notice to Seller and the Escrow Agent of such assignment prior to the Closing Date. Except as set forth in the preceding sentence, Buyer may not assign its right under this Agreement without the prior written consent of Seller, which consent shall not be unreasonably withheld, conditioned, or delayed.

8.9 Time. Time is of the essence in the performance of each of the provisions of this Agreement, however, in the event the provisions of this Agreement require any act to be done or action to be taken hereunder on the date which is a Saturday, Sunday or legal holiday observed by Escrow Agent, such act or action shall be deemed to have been validly done or taken if done or taken on the next succeeding day that is not a Saturday, Sunday or legal holiday observed by Escrow Agent (a "Business Day").

8.10 Invalidity. In the event any provision or part of this Agreement is deemed invalid, illegal or unenforceable prior to Closing, such invalidity, illegality or unenforceability will not affect the remaining provisions of this Agreement; provided that if the change materially affects the terms of this Agreement, then either party may elect to terminate this Agreement, in which event the Earnest Money (exclusive of the Termination Consideration), and all interest earned thereon, will be returned to Buyer and thereupon this Agreement shall be null and void and of no further force and effect.

8.11 Exhibits. All exhibits and/or schedules to this Agreement are fully incorporated herein as though set forth at length.

8.12 No Third Parties. Nothing in this Agreement shall confer upon any person, firm or corporation not a party to this Agreement, or the legal representatives of such person, firm or corporation, any rights or remedies of any nature or kind whatsoever under or by reason of this Agreement, except as expressly set forth herein.

8.13 Broker. Each party represents and warrants that it has not dealt with any real estate salesperson or broker. If any person asserts a claim to a fee, commission or other compensation as a broker or finder in connection with this transaction, the party who has dealt with such broker shall indemnify and hold harmless the other against and from all costs, expenses and liabilities incurred in connection with such claim. Buyer or principals of Buyer are brokers or agents in the State of Arizona.

8.14 IRC Section 1031 Exchange. Either party hereto (the "Initiator") shall have the right to request that the other party (the "Accommodator") transact the purchase and sale of the Property as provided in this Agreement pursuant to a tax deferred plan of exchange (the "Exchange") in accordance with Section 1031 of the Code provided the Initiator provides written notice to the Accommodator and Escrow Agent at least ten (10) Business Days prior to Closing so that Closing shall not be delayed, impaired or complicated. Such Exchange shall not relieve the Initiator of its obligations under the Agreement, but the Accommodator party agrees to permit such assignment. The Accommodator shall execute any documents and take any acts reasonably required to effectuate the Exchange (whether on a concurrent or deferred basis including through a qualified third party intermediary), provided that in doing so: (a) the Accommodator shall not incur any cost, liability or expense; (b) the Accommodator shall not be required to hold or take title to any property other than the Property; (c) the Initiator shall indemnify and hold the Accommodator, its principals and agents, harmless for, from and against liability deriving from the Accommodator's participation in the Exchange (with the foregoing to survive closing and completion of the Exchange); (d) the Accommodator shall make no representation or warranty to the Initiator that the Exchange will qualify for tax deferred or other tax treatment; (e) the Initiator shall provide the Accommodator reasonable advance notice of the Exchange and all acts and documents to be undertaken or executed by the Accommodator; and (f) the Closing shall be not delayed or otherwise impacted by the Exchange. The provisions of this Paragraph 8.14 shall survive the Closing or termination of this Agreement.

[signatures on following pages]

This Agreement has been duly executed as of the dates below indicated.

SELLER:

ROMSPEN VISTOSO, LLC, a Delaware limited liability company *By its Sole Member Romspen Club Holdings UNC.*

By: *[Signature]*

Name: *Peter Cleburnum*

Title: *V.P.*

Date: *Nov. 24, 2021*

BUYER:

DocuSigned by:

Ross Rulney

ROSS RULNEY

Date: *Nov 23, 2021 | 11:05 AM PST*

RECEIVED AND ACCEPTED this ____ day of _____, 2021, (the "Effective Date"):

FIDELITY NATIONAL TITLE AGENCY

By: _____

Name: _____

Its: Escrow Agent

LIST OF EXHIBITS

Exhibit A	Depiction of the Golf Course Property, the Property, and the Remaining Parcels
Exhibit A-1	Legal Description of the Golf Course Property
Exhibit B	Legal Description of the Property
Exhibit C	Form of Deed
Exhibit D	Form of Bill of Sale

EXHIBIT A

**DEPICTION OF THE GOLF COURSE PROPERTY,
THE PROPERTY, AND THE REMAINING PARCELS**

EXHIBIT A-1

LEGAL DESCRIPTION OF THE GOLF COURSE PROPERTY

EXHIBIT B

LEGAL DESCRIPTION OF THE PROPERTY

EXHIBIT C

FORM OF DEED

When recorded mail to:

SPECIAL WARRANTY DEED

For the consideration of TEN AND NO/100 (\$10.00) DOLLARS, and other valuable consideration, Romspen Vistoso LLC, a Delaware limited liability company ("Grantor"), does hereby convey to _____ ("Grantee") the real property situated in Pima County, Arizona, legally described on Exhibit 1, attached hereto and by reference incorporated herein. Subject to non-delinquent taxes and other assessments, reservations in patents and all easements, rights-of-way, encumbrances, liens, covenants, conditions, restrictions, obligations, and liabilities as may appear of record. The Grantor hereby binds itself to warrant and defend the title as against all acts of the Grantor herein, and no other, subject to the matters set forth above.

DATED this ____ day of _____, 2021.

GRANTOR:

Romspen Vistoso LLC, a Delaware limited liability company

By: _____
Name: _____
Title: _____

STATE OF ARIZONA)
)ss.
COUNTY OF PIMA)

The foregoing instrument was acknowledged before me this ____ day of _____, 2021, by _____ of Romspen Vistoso LLC, a Delaware limited liability company, on behalf of such company.

[SEAL]

Notary Public

Exhibit 1 to Deed

EXHIBIT D

FORM OF BILL OF SALE

Romspen Vistoso LLC, a Delaware limited liability company ("Grantor"), in consideration of Ten Dollars (\$10.00) and other good and valuable consideration paid to it by _____, a _____ ("Grantee"), the receipt and sufficiency of which is hereby acknowledged, does hereby quit claim unto Grantee, its successors and assigns, all items of personal property, if any (collectively, the "Personal Property") presently located at the real property legally described on Exhibit 1 attached hereto and by reference incorporated herein.

Grantor has caused this Bill of Sale to be executed this ___ day of _____, 202__.

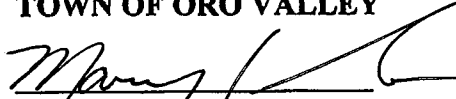
Romspen Vistoso LLC, a Delaware limited liability company

By: _____
Name: _____
Title: _____


Exhibit 1 to Bill of Sale

The Parties are signing this Agreement on the dates indicated below.

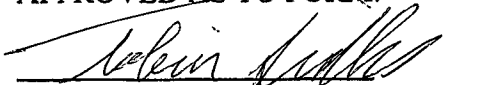
TOWN OF ORO VALLEY


Mary Jacobs, Town Manager
Date: 12-3-2021


ATTEST:


Michael Standish, Town Clerk
Date: 12/3/2021


APPROVED AS TO FORM:


Tobin Sidles, Legal Services Director
Date: 12/3/2021


THE CONSERVATION FUND


By: Scott M. Tison
Its: Assistant Secretary
Date: 11/29/2021

ROSS RULNEY

DocuSigned by:

DocuSigned by:
Date: Nov 30, 2021 | 12:16 PM PST

ROMSPEN VISTOSO LLC *By its sole member*
Romspen Club Holdings Inc.


Peter Oelbaum
Its: V.P.
Date: Nov. 24, 2021