



BOARD OF SUPERVISORS AGENDA ITEM SUMMARY

Requested Board Meeting Date: July 1, 2014 Addendum

ITEM SUMMARY, JUSTIFICATION &/or SPECIAL CONSIDERATIONS:

On December 4, 2013, Pima County ("County") was the successful bidder at a public auction held by the Arizona State Land Department ("ASLD") whereby the County purchased approximately 800 fee acres of real property in the Tortolita Mountains (the "Property"). The purchase price for the Property was \$2,450,000.00. Half of the purchase price was paid from the Growing Smarter Fund which is administered by the Arizona State Parks Department ("State Parks"). In consideration for State Parks' contribution to the purchase price, the County has executed a Conservation Easement upon the Property in favor of State Parks. ASLD has executed and delivered to the County a State Land Patent (the "Patent") formally evidencing the conveyance of fee title to the Property from the ASLD to the County. The Patent will be recorded in the Office of the Pima County Recorder, along with the aforementioned Conservation Easement. The County purchased the Property for Open Space and conservation purposes and wishes to include the Property within the Pima County Parks system so that it may be managed and governed under the rules and regulations of Pima County Natural Resources Parks and Recreation Department. A Resolution has been prepared for Board of Supervisors approval and execution, accepting the State Land Patent, affirming the granting of the Conservation Easement over the Property in favor of State Parks, and establishing the Property as part of the County Parks system.

STAFF RECOMMENDATION(S):

Staff recommends that the Board approve and execute the Resolution.

A handwritten signature in black ink, appearing to be "R.B.", is located at the bottom right of the page.

Procure Dept 06/26/14 PM 04:38

PIMA COUNTY COST: \$ -0- and/or REVENUE TO PIMA COUNTY: \$ -0-

FUNDING SOURCE(S): N/A

(i.e. General Fund, State Grant Fund, Federal Fund, Stadium D. Fund, etc.)

Advertised Public Hearing:

YES NO

Board of Supervisors District:

1 2 3 4 5 All

IMPACT:

IF APPROVED:

County will approve and execute the Board Resolution accepting the State Land Patent, affirming the granting of the Conservation Easement over the Property in favor of State Parks, and establishing the Property as part of the County Parks system.

IF DENIED:

County will not approve and execute the Board Resolution accepting the State Land Patent, affirming the granting of the Conservation Easement over the Property in favor of State Parks, and establishing the Property as part of the County Parks system.

DEPARTMENT NAME:

John M. Byrd
Real Property Services

CONTACT PERSON: Michael D. Stofko

TELEPHONE NO.: 520-724-6667



MEMORANDUM

REAL PROPERTY SERVICES

201 N. Stone Avenue, Sixth Floor, Tucson, Arizona 85701-1215

(520) 740-6667 FAX (520) 740-6763

To: C.H. Huckelberry
Administrator, Pima County

From: Michael D. Stofko
Real Property Services

Subject: Board Resolution for Tortolita
Mountain Park Expansion Parcels
Phase Two Acquired from Arizona
State Land Department.

Date: June 24, 2014

Attached is the proposed Board Resolution for the Tortolita Mountain Park Expansion Parcels Phase Two Acquired from Arizona State Land Department.

We request your approval to place the subject Agreement on the July 1, 2014, Pima County Board of Supervisors Addendum. Thank you.

APPROVED:

A handwritten signature in black ink, appearing to read "C.H. Huckelberry", is written over a horizontal line.

C.H. Huckelberry, County Administrator

MDS:mds
Attachment

Cc: John Bernal, Deputy County Administrator, Public Works

RESOLUTION AND ORDER NO. 2014 - _____

RESOLUTION OF THE PIMA COUNTY BOARD OF
SUPERVISORS APPROVING AND AUTHORIZING
ACCEPTANCE AND RECORDATION OF THE ASLD LAND
PATENT FOR THE RECENTLY ACQUIRED SECOND
PHASE OF THE TORTOLITA MOUNTAIN PARK
EXPANSION PROPERTY AND AFFIRMING THE
GRANTING OF A CONSERVATION EASEMENT IN FAVOR
OF ARIZONA STATE PARKS OVER AND UPON SAID
PROPERTY

The Board of Supervisors of Pima County, Arizona finds:

1. Pima County ("County"), was the successful bidder at a public auction held by the Arizona State Land Department ("ASLD") on December 4, 2013, whereby the County purchased approximately eight-hundred (800) fee acres of real property in the Tortolita Mountains (the "Property"); and
2. The purchase price paid for the Property was \$2,450,000.00 (the "Purchase Price"); and
3. Half of the Purchase Price was paid on behalf of the County by Arizona State Parks pursuant to a Growing Smarter Grant awarded to the County for purposes of purchasing the Property; and
4. The ASLD has executed and delivered to the County a State Land Patent (the "Patent") formally evidencing the conveyance of fee title to the Property from the ASLD to the County (Exhibit A, attached hereto); and
5. The Patent will then be recorded in the Office of the Pima County Recorder; and
6. A condition of the referenced Growing Smarter Grant is that the County execute and deliver to Arizona State Parks a Conservation Easement in favor of Arizona State Parks over and upon the Property; and
7. The Pima County Board of Supervisors has expressly authorized the County Administrator to execute such Conservation Easement on behalf of the County pursuant to Board Resolution No. 2013-67, dated August 6, 2013; and
8. The County Administrator, pursuant to the authority granted him by the Board of Supervisors executed the Conservation Easement in favor of Arizona State Parks (Exhibit B, attached hereto) on December 11, 2013; and

9. The Pima County Board of Supervisors has the authority under A.R.S. Section 11-932 to acquire lands and dedicate the same as Parks; and

10. The Property is being acquired for open space and conservation values and will be administered by the Pima County Department of Natural Resources, Parks and Recreation;

NOW, THEREFORE, BE IT RESOLVED THAT:

1. The Pima County Board of Supervisors hereby accepts the Patent to the Property and authorizes its recordation in the office of the Pima County Recorder.
2. Affirms and ratifies the execution of the Conservation Easement in favor of Arizona State Parks over and upon the Property by the County Administrator Property and authorizes its recordation in the office of the Pima County Recorder.
3. Designates the Property, as and when the Patent is recorded by the County, and all its associated parcels, as part of the Pima County Parks System.
4. The various officers and employees of Pima County are hereby authorized and directed to perform all acts necessary and desirable to give effect to this Resolution.

PASSED, ADOPTED AND APPROVED this _____ day of _____, 2014.

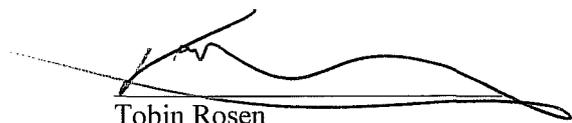
PIMA COUNTY BOARD OF SUPERVISORS:

Sharon Bronson
Chair, Board of Supervisors

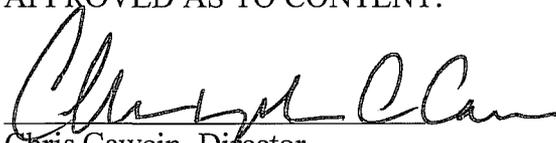
ATTEST:

Robin Brigode
Clerk, Board of Supervisors

APPROVED AS TO FORM:


Tobin Rosen
Deputy County Attorney

APPROVED AS TO CONTENT:


Chris Cawein, Director
Pima County Department of Natural
Resources, Parks and Recreation

(Issuance of following Patent recommended by Arizona State Land Commissioner to the Governor of Arizona on the 20th day of January 2014 James P. Hickman, Commissioner)

State of Arizona

PATENT NO. 53-116996-01
(Land Sold at Public Auction)



For 031 Lands
(School, Institutional or University)

COPY

In Accordance with the provisions of law, payment in full has been received by the State of Arizona through its State Land Department for the real property described below; and

The State of Arizona in consideration of the premises, and in conformity with law hereby does sell, grant and convey unto

PIMA COUNTY

of the County of Pima, State of **Arizona**, the following described real property situated in the County of Pima, State of Arizona, to-wit:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART OF PATENT 53-116996-01

Total containing 818.82 acres, more or less, subject to existing reservations, easements, or rights-of-way heretofore legally obtained and now in full force and effect, and subject to the following Additional Conditions:

SEE EXHIBIT "B" ATTACHED HERETO AND MADE A PART OF PATENT 53-116996-01

Exhibit "A"

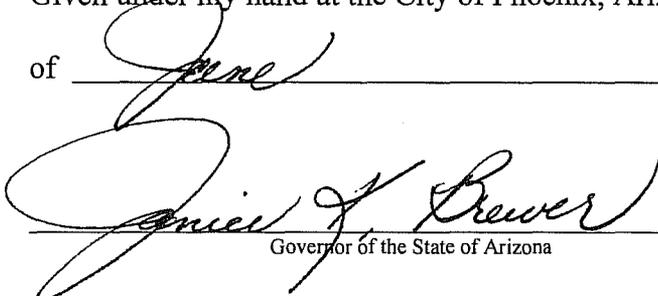
In The Matter Of Patent No. 53-116996-01 (Pima County in Pima County), pursuant to the provisions of Arizona Revised Statutes § 37-231, of the following substances not heretofore retained and reserved by a predecessor in title to the State of Arizona, all oil, gas, other hydrocarbon substances, helium or other substances of a gaseous nature, geothermal resources, coal, metals, minerals, fossils, fertilizers of every name and description, together with all uranium, thorium or any other material which is or may be determined by the laws of the United States, or of this state, or decisions of court, to be peculiarly essential to the production of fissionable materials, whether or not of commercial value, and the exclusive right thereto, on, in, or under the above described lands, shall be and remain and are hereby reserved in and retained by the State of Arizona, together with the right of the State of Arizona, its lessees or permittees to enter upon those lands for the purpose of exploration, development and removal of the above described substances as provided by the rules of the State Land Department and the laws of Arizona.

To Have And To Hold said property together with all the rights, privileges, immunities and appurtenances of whatsoever nature thereunto belonging unto said Patentee, its successors and assigns forever.

In Testimony Whereof, I, Janice K. Brewer, Governor of the State of Arizona,

have caused these letters to be made patent, and the Great Seal of the State of Arizona to be hereunto attached.

Given under my hand at the City of Phoenix, Arizona, this 17th day of June A.D., 2014



Governor of the State of Arizona

Attest: 

Secretary of State of the State of Arizona



EXHIBIT "A"
LEGAL DESCRIPTION
53-116996-01

Government Lots 3 and 4, the South half of the Northwest Quarter, and the Southwest Quarter of Section 3, Township 11 South, Range 13 East, Gila and Salt River Meridian, Pima County, Arizona.
Containing 329.61 acres, more or less.

ALSO

Government Lots 1 and 2, and the South half of the Northeast Quarter of Section 4, Township 11 South, Range 13 East, Gila and Salt River Meridian, Pima County, Arizona.
Containing 169.67 acres, more or less.

ALSO

The North half of Section 10, Township 11 South, Range 13 East, Gila and Salt River Meridian, Pima County, Arizona.
Containing 319.54 acres, more or less.

Containing a total of 818.82 acres, more or less.

EXHIBIT "B"
ADDITIONAL CONDITIONS
53-116996-01

(A) There are known Register Eligible Site or Sites located within the subject property. These sites are identified in a cultural resources inventory report dated May 2013, and titled *A Cultural Resources Survey for the Tortolita Mountain Park Expansion, Phase II, Pima County, Arizona*. Patentee shall cause no ground disturbance within 100 feet of the identified Register Eligible Site or Sites except as provided below. The Register Eligible Site or Sites include cultural properties, historic buildings and structures, and objects located on the property that are significant in this state's history, architecture, archaeology or culture and that meet eligibility criteria, which the Arizona State Parks Board has established for listing on the Arizona Register of Historic Places, or which meet eligibility criteria for listing on the National Register of Historic Places. If ground-disturbing activities will or may impact one or more Register Eligible Site or Sites, patentee shall consult with the State Historic Preservation Office and otherwise take such actions as are necessary to avoid, preserve, protect, or mitigate impacts on the Register Eligible Site or Sites. In the event that avoidance, preservation and protection of the Register Eligible Site or Sites cannot be accomplished, patentee shall ensure a Data Recovery Plan is developed in consultation with and acceptable to, the Arizona State Museum and the State Historic Preservation Office, or their successor agencies, and the Data Recovery is implemented and completed prior to the Register Eligible Site or Sites being affected. The artifacts and records recovered from the property shall be curated according to the Arizona State Museum (ASM) Conservation and Curation Standards as established in rules implementing the Arizona Antiquities Act. These conditions shall run with the land, and be binding on the patentee's heirs, successors and assigns.

(B) Patentee shall allow reasonable permanent access to private lands pursuant to A.R.S. §§ 41-511.23.G.2(a) and 37-312.01.

Attachment C

COPY

DEED OF CONSERVATION EASEMENT

THIS GRANT DEED OF CONSERVATION EASEMENT is made this 26th day of December, 2013 by **Pima County**, having an address at **130 West Congress, 10th Floor, Tucson, Arizona 85701** ("Grantor"), in favor of Arizona State Parks Board, having an address at 1300 W. Washington, Phoenix, Arizona, 85007 ("Grantee").

WITNESSETH:

WHEREAS, Grantor is the sole owner in fee simple of certain real property in Pima County, Arizona, more particularly described in Exhibit A attached hereto and incorporated by this reference (the "Property"); and

WHEREAS, the Property possesses ecological values (collectively, "conservation values") of great importance to Grantors and the people of the State of Arizona; and

WHEREAS, in particular, the Tortolita Mountain Park property is rural in nature, predominantly characterized by rugged, undeveloped open space located south of the Pinal and Pima county line and north of the Town of Oro Valley. The geography of the site contains extensive relief and consists of hills, ridges, and canyons; and

WHEREAS, the specific conservation values of the Property are further documented in an inventory of relevant features of the Property, submitted by Grantor as application for matching funds from the Land Conservation Fund through the Growing Smarter Trust Land Acquisition Grant Program (the "Grant") and incorporated by this reference ("Baseline Documentation"), which consists of reports, maps, photographs, and other documentation that provide, collectively, an accurate representation of the Property at the time of the Grant and which is intended to serve as an objective, though nonexclusive, information baseline for monitoring compliance with the terms of the Grant; and

WHEREAS, Grantor intends that the conservation values of the Property be preserved and maintained by permitting only those land uses on the Property that do not significantly impair or interfere with them, including, without limitation, those land uses existing at the time of the Grant; and

WHEREAS, Grantor further intends, as owner of the Property, to convey to Grantee the right to preserve and protect the conservation values of the Property in perpetuity as required by the terms of the Grant; and

WHEREAS, Grantee is an Arizona state agency whose primary purpose is to manage and conserve Arizona's natural, cultural and recreational resources for the benefit of the public;

NOW, THEREFORE, in consideration of a Grant Award in the amount not to exceed \$1,347,500 and in consideration of the above and the mutual covenants, terms, conditions and restrictions contained herein, and pursuant to the laws of Arizona and in particular A.R.S. § 33-271 through § A.R.S. 33-276 and A.R.S. §41-511.23, Grantor hereby voluntarily grants and conveys to Grantee a conservation easement in perpetuity over the Property of the nature and character and to the extent hereinafter set forth ("Easement").

1. **Purpose.** It is the purpose of this easement to assure that the Property will be retained forever in predominantly the condition reflected in the Baseline Documentation referenced in this document and to prevent any use of the Property that will significantly impair or interfere with the conservation values of the Property. Grantor intends that this Easement will confine the use of the Property to activities compatible with the maintenance of the Property's Conservation Values. This Easement is intended to assure that the goals of the Growing Smarter Act, as amended, to conserve open spaces in or near urban areas and other areas experiencing high growth pressures, will be met. This Easement seeks to conserve open space, defined as land that is generally free of uses that would jeopardize the conservation values of the land or development that would obstruct the scenic beauty of the land. Conserved land remains open space if the steward of the parcel protects both the natural and cultural assets of the land for the long-term benefit of the public and the unique resources that the area contains, such as scenic beauty, protected plants, wildlife, archaeology, passive recreation values and the absence of extensive development.
2. **Rights of Grantee.** To accomplish the purpose of this Easement the following rights are conveyed to Grantee by this easement:
 - (a) To preserve and protect the conservation values of the Property;
 - (b) To enter upon the Property at reasonable times in order to monitor Grantor's compliance with and otherwise enforce the terms of this Easement in accordance with paragraph 8; provided that, except in cases where Grantee determines that immediate entry is required to prevent, terminate, or mitigate a violation of this Easement, such entry shall be upon prior reasonable notice to Grantor; unless entry is open to the public, in which case notice to enter upon Property is assumed if it complies with the Grantor's enforced rules of public access, and Grantee shall not in any case unreasonably interfere with Grantor's use and quiet enjoyment of the Property; and

- (c) To prevent any activity on or use of the Property that is inconsistent with the purpose of this Easement and to require the restoration of such areas or features of the Property that may be damaged by any inconsistent activity or use, pursuant to the remedies set forth in paragraph 8.
3. **Restricted Uses.** Up to, but not in excess of 20 acres of the Property may be altered or developed, or used, in the following ways, provided that Grantor obtains Grantee's prior written approval for such use or alteration.
- (a) Construction of a trail, road, parking lot, ramada or staging area.
 - (b) Installation of appropriate and customary signs for interpretive and recreational purposes, such as "no trespassing" signs and trail markers.
 - (c) Periodic and temporary fundraising activities on the Property if the revenues earned from those activities will be used for stewardship of the Property.

Where Grantee's approval is required, as set forth above, Grantee shall grant or withhold its approval in writing within a reasonable period of time. Grantor's written request shall include a description of the nature, scope, design, location, timetable, and any other material aspect of the proposed activity in sufficient detail to permit Grantee to make an informed judgment as to its consistency with the purpose of this Easement. Grantee's approval may be withheld only upon a reasonable determination by Grantee that the action as proposed would be inconsistent with the purpose of this Easement. If Grantee does not respond to the request within 60 days, the request shall be deemed denied. In the event of approval, any deviation from the nature, scope, design, location, timetable or any other material aspect of the proposed activity as described in the request for approval requires that Grantor submit an additional request for approval.

4. **Prohibited Uses.** Any activity on or use of the Property inconsistent with the purpose of this Easement is prohibited. Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited:
- (a) Any division or subdivision of title to the Property, whether by physical or legal process, is prohibited.
 - (b) Any commercial or industrial uses.
 - (c) The mining or extraction of soil, sand, gravel, rock, oil, natural gas, fuel, or any other mineral substance.

- (d) Transfer, encumbrance, lease, sale, or other conveyance of water rights associated with the Property that are necessary to maintain and improve the Conservation Values of the Property.
- (e) The dumping or uncontained accumulation of any kind of trash or refuse on the Property.

5. Reserved Rights. Grantor reserves to itself, and to its successors and assigns, all rights accruing from its ownership of the Property, including the right to engage in, or permit or invite others to engage in, all uses of the Property that are not expressly prohibited herein and are not inconsistent with the purpose of this Easement. Without limiting the generality of the foregoing, and subject to the terms of section 3, the following rights are expressly reserved:

- (a) To engage in and permit others to engage in recreational uses of the Property, including, without limitation, hiking, horseback riding, and other forms of passive recreation that require no surface alteration or other development of the Property.
- (b) To engage in and permit others to engage in educational and scientific study activities, without limitation, provided that no unauthorized alteration of the Property will occur as a result of these activities.
- (c) To remove invasive plant species and to re-vegetate portions of the Property with indigenous plants if needed after flood, fire, or other disturbance.
- (d) To use the property for historic working landscape purposes, such as limited livestock grazing or harvesting of native plant crops, provided that such uses are compatible with the maintenance of the Conservation Values of the Property.
- (e) Release of rehabilitated or displaced wildlife.

Grantor is required to notify Grantee prior to undertaking or permitting new activities on the Property, if not specifically listed above, in order to afford Grantee an adequate opportunity to monitor the activities in question to ensure that they are not inconsistent with the purpose of the Easement. Grantor shall provide notice to Grantee in writing not less than sixty (60) days prior to the date Grantor intends to undertake or permit the new activity in question.

6. Historic Properties and Preservation of Resources.

(a) **Definition.** Historic Properties are defined as sites, buildings, structures and objects significant to this state's history, architecture, archaeology, engineering and

culture that meet eligibility criteria that the Arizona Parks Board establishes for listing on the Arizona Register of Historic Places or that are listed on the National Register of Historic Places.

(b) **General Preservation.** Grantor agrees to avoid any demolition, substantial alteration or significant deterioration of historic properties and objects on the Property.

(c) **Land Uses and Historic Preservation.** Grantor agrees that only those uses that are compatible with preservation of the cultural resources located on the Property will be allowed on the Property and Grantor will ensure that the pre-historical, historical, architectural or culturally significant values will be preserved or enhanced.

(d) **Unintentional Disturbance.** Grantor agrees to monitor the Property for the unintentional disturbance of human remains or funerary objects and historic properties on the Property and shall report any such disturbance to the Director of the Arizona State Museum, the State Historic Preservation Officer and the Grantee. Grantor agrees to take any and all measures recommended by either the Director of the Arizona State Museum, or other permitting authority as established by state law, or the Grantee, to see that no further disturbance of the remains or objects occurs.

(e) **Prohibition on Excavation.** Grantor agrees that it will not disturb or excavate or grant any other person permission to disturb or excavate in or upon any historic property, or any historic or prehistoric ruin, burial ground, archaeological or vertebrate paleontological specimen. For the purpose of this provision, archaeological specimen means any item resulting from past human life or activities that is at least fifty (50) years old including petroglyphs, pictographs, paintings, pottery, tools, ornaments, jewelry, textiles, ceremonial objects, weapons, armaments, vessels, vehicles and human skeletal remains. Archaeological specimen does not include arrowheads, coins or bottles. Notwithstanding the applicability of these prohibitions, Grantee, in consultation with the State Historic Preservation Officer, may consider and allow for the excavation in or upon a historic property, provided that the Conservation Values of the Property are not adversely affected. In addition, any excavation or disturbance that is allowed by Grantee is still subject to approval by and the permitting requirements of the Director of the Arizona State Museum, or other permitting authority established in law.

(f) **Prohibition on Defacing Property.** Grantor agrees not to deface or otherwise alter any site or object on the Property within the terms stated in subsections (a) through (e) of this section. The Grantor further agrees to make reasonable efforts prevent persons and entities entering upon the site from defacing or otherwise altering any site or object embraced within the terms stated in subsections (a) through (e) of this section.

(g) **Reporting Discoveries.** The Grantor agrees it will report promptly to the Director of the Arizona State Museum, or other permitting authority as established by state law, the State Historic Preservation Officer and the Grantee, the existence of any archaeological, paleontological or historical site or object that is at least fifty (50) years old and that is discovered by Grantor during activities undertaken by Grantor as steward

of the Property, especially during any work to prepare the Property for public access, such as survey, excavation, construction, or other like activity. All such discoveries are subject to the provisions of the Arizona Antiquities Act. Any discoveries may require treatment at Grantor's expense, such as remediation or restoration, if the site or object was adversely impacted by Grantor's activity.

7. Grantee's Remedies.

(a) **Notice of Violation; Corrective Action.** If Grantee determines that a violation of the terms of this Easement has occurred or is threatened, Grantee will give written notice to Grantor of such violation. Upon receipt of such notice, Grantor will cure the violation and, if the violation resulted in injury to the Property, also restore the portion of the Property so injured to its prior condition in accordance with a plan approved by Grantee.

(b) **Injunctive Relief.** If Grantor fails to cure the violation within twenty (20) days after receipt of notice thereof from Grantee, or under circumstances where the violation cannot reasonably be cured within a twenty (20) day period, fails to begin curing the violation within the twenty (20) day period, or fails to continue diligently to cure such violation until finally cured, Grantee may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Easement, enjoin the violation, and order the restoration of the Property to the condition that existed prior to any such injury.

(c) **Damages.** Grantee shall be entitled to recover damages up to, but not in excess of the grant amount, directly resulting from violation of the terms of this Easement or injury to any conservation values protected by this Easement, including, without limitation, damages for the loss of scenic, aesthetic, or environmental values. Without limiting the Grantor's liability therefor, Grantee, in its sole discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Property.

(d) **Emergency Enforcement.** If Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values of the Property, Grantee may pursue its remedies under this section 7 without prior notice to Grantor or without waiting for the period provided for cure to expire.

(e) **Scope of Relief.** Grantee's rights under this section 7 apply equally in the event of either actual or threatened violations of the terms of this Easement. Grantor agrees that Grantee's remedies at law for any violation of the terms of this Easement are inadequate and that Grantee shall be entitled to the injunctive relief described in paragraph (b) above, both prohibitive and mandatory, in addition to such other relief to which Grantee may be entitled, including specific performance of the terms of this Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Grantee's remedies described in this section 7 are cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

(f) **Costs of Enforcement.** All reasonable costs incurred by Grantee in enforcing the terms of this Easement against Grantor, including, without limitation, costs and expenses of suit and reasonable attorneys' fees, and any costs of restoration necessitated by Grantor's violation of the terms of this Easement shall be borne by Grantor.

(g) **Forbearance.** Forbearance by Grantee to exercise its rights under this Easement in the event of any breach of any term of this Easement by Grantor shall not be deemed or construed to be a waiver by Grantee of such term or of any subsequent breach of the same or any other term of this Easement or of any of Grantee's rights under this Easement. No delay or omission by Grantee in the exercise of any right or remedy upon any breach by Grantor shall impair such right or remedy or be construed as a waiver.

(h) **Waiver of Certain Defenses.** Grantor hereby waives any defense of laches, estoppel, or prescription.

(i) **Causes Beyond Grantor's Control.** Nothing contained in this Easement shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the Property resulting from causes beyond Grantor's control, including, without limitation, fire, flood, storm, earth movement, or from any prudent action taken by Grantor under emergency conditions to prevent, abate, mitigate significant injury to the Property resulting from such causes. Notwithstanding the foregoing, nothing herein shall preclude Grantor's and Grantee's rights to pursue any third party for damages to the Property from vandalism or trespass.

8. **Arbitration.** Notwithstanding the remedies available to the parties pursuant to Paragraph 7 above, the parties agree to resolve all disputes arising out of or relating to this Easement through arbitration, after exhausting applicable administrative review, to the extent required by A.R.S. §12-1518 except as may be required by other applicable statutes.

9. **Access.** Grantor agrees to provide reasonable public access to the Property and agrees to impose no restrictions that would limit reasonable public access.

10. **Records Retention.** Grantor agrees to retain all data, books and other records ("Records") relating to the grant for a period of five years. All records shall be open to inspection and audit by Grantee at reasonable times. Upon request, Grantor will provide a legible copy of any or all such records within a reasonable time.

11. **Annual Reports and Certification.** Grantor agrees to report annually on the condition of the Property and to report any change in the Property from the Baseline Documentation to the Grantee in a format of the Grantee's choosing. Grantor shall certify compliance with the terms of this Easement every year in perpetuity, on a form to be provided by the Grantee. In addition, Grantee may conduct on-site inspections periodically at its discretion.

12. **Costs, Liabilities, Taxes, and Environmental Compliance.**

(a) **Costs, Legal Requirements, and Liabilities.** Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Property, including the maintenance of adequate liability self-insurance coverage. Grantor remains solely responsible for obtaining any applicable governmental permits and approvals for any construction or other activity or use, which will be undertaken by the Grantor in accordance with all applicable federal, state, and local laws, regulations, and requirements. Grantor shall keep the Property free of any liens arising out of any work performed for, materials furnished to, or obligations incurred by the Grantor.

(b) **Taxes.** Grantor shall pay before delinquency all taxes, assessments, fees, and charges of whatever description levied on or assessed against the Property by competent authority (collectively "taxes"), including any taxes imposed upon, or incurred as a result of, this Easement, and shall furnish Grantee with satisfactory evidence of payment upon request.

(c) **Representations and Warranties.** Grantor represents and warrants that, to the best of Grantor's actual knowledge based solely on Grantor's review of the Baseline Documentation, and except as to such matters already known by Grantee:

- i. No substance defined, listed or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic, polluting, or otherwise contaminating to the air, water, soil, or in any way harmful or threatening to human health or the environment exists or has been released, generated, treated, stored, used disposed of, deposited, abandoned, or transported in, on, from or across the Property;
- ii. There are not now any underground storage tanks located on the Property, whether presently in service or closed, abandoned, or decommissioned, and no underground storage tanks have been removed from the Property in a manner not in compliance with applicable federal, state, and local laws, regulations, and requirements;
- iii. Grantor and the Property are in compliance with all federal, state, and local laws, regulations, and requirements applicable to the Property and its use;
- iv. There is no pending or threatened litigation in any way affecting, involving, or relating to the Property; and
- v. No civil or criminal proceedings or investigations have been instigated at any time or are now pending, and no notices, claims, demands, or orders have been received, arising out of any violation or alleged violation of, or failure to comply with, any federal, state, local law, regulation, or requirement applicable to the Property and its use, nor do there exist any facts or circumstances that the Grantor might reasonably expect to form the basis for any such proceedings, investigations, notices, claims, demands, or orders.

(d) **Remediation.** If, during Grantor's ownership of the Property, there occurs, a release in, on, or about the Property of any substance now or hereafter defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment, Grantor agree to take all steps reasonably necessary to assure its containment and remediation, including any cleanup that may be legally required, unless the releases were caused by Grantee, in which case Grantee shall be responsible therefor.

(e) **Control.** Nothing in this Easement shall be construed as giving rise, in the absence of a judicial decree, to any right or ability in Grantee to exercise physical or managerial control over the day-to-day operations of the Property, or any of Grantor's activities on the Property, or otherwise to become an operator with respect to the Property within the meaning of The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA").

13. **Extinguishment and Condemnation.**

(a) **Extinguishment.** If circumstances arise in the future that render the purpose of this Easement impossible to accomplish, this Easement may be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction or by mutual written agreement of the parties. Unless otherwise required by applicable law at the time, in the event of any sale of all or a portion of the Property (or any other property received in connection with an exchange or involuntary conversion of the Property) after such termination or extinguishment, and after the satisfaction of prior claims and net of any costs or expenses association with such sale, Grantor and Grantee shall divide the proceeds from such sale (minus any amount attributable to the value of improvements made by Grantor after the effective date of this Easement, which amount is reserved to Grantor) equally. Grantor shall use all proceeds received by Grantor in a manner consistent with Grantor's conservation purposes.

(b) **Condemnation.** If all or any part of the Property is taken by exercise of the power of eminent domain or acquired by purchase in lieu of condemnation, whether by public, corporate, or other authority, so as to terminate this Easement, in whole or in part, Grantor and Grantee shall act jointly to recover the full value of the Property and incidental damages which recovery Grantor and Grantee will divide equally. All expenses reasonably incurred shall be paid out of the amount recovered.

14. **Amendment.** Notwithstanding the provisions related to extinguishment of this Easement, if circumstances arise under which an amendment to or modification of this Easement would be appropriate, the Grantor and Grantee are free to jointly amend this Easement, provided that no amendment shall be allowed that will affect the qualifications of this document as an Easement under the laws of Arizona, and any amendment shall be consistent with the purpose of this Easement and shall not have a material negative affect on the Conservation Values. Such amendments shall be in writing and executed by both Grantor and Grantee.

15. Subsequent Transfers. Grantor agrees to incorporate the terms of this Easement by reference in any deed or other legal instrument by which it divests itself of any interest in all or a portion of the Property, including, without limitation, a leasehold interest. Grantor further agrees to give written notice to Grantee of the transfer of any interest at least thirty (30) days prior to the date of such transfer. The failure of Grantor to perform any act required by this paragraph shall not impair the validity of this Easement or limit its enforceability in any way.

16. Estoppel Certificates. Upon request by Grantor, Grantee shall within thirty (30) days of receiving the request, execute and deliver to Grantor, or to any party designated by Grantor, any document, including an estoppel certificate, which certifies, to the best of Grantee's knowledge, Grantor's compliance with any obligation of Grantor contained in this Easement or otherwise evidences the status of this Easement. Such certification shall be limited to the condition of the Property as of Grantee's most recent inspection. If Grantor requests more current documentation, Grantee shall conduct an inspection, at Grantor's expense, within thirty (30) days of receipt of Grantor's written request therefor.

17. Notices. Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing and either served personally or sent by first class mail, postage pre-paid, addressed as follows:

To Grantor:
Pima County
130 West Congress, 10th Floor
Tucson, Arizona 85701

To Grantee:
Arizona State Parks
1300 West Washington Street
Phoenix, Arizona 85007

or to such other address as either party from time to time shall designate by written notice to the other.

18. Recordation. Grantee shall record this instrument in timely fashion in the official records of Pima County, Arizona, and may re-record it at any time as may be required to preserve its rights in this Easement.

19. General Provisions.

(a) **Controlling Law.** The laws of the State of Arizona shall govern the interpretation and performance of this Easement. Proper venue for any dispute relating to the Easement shall be the Superior Court of Pima County.

(b) **Liberal Construction.** Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the grant to effect the purpose of this Easement and the policy and purpose of A.R.S. §33-271 through §33-276 and A.R.S. §41-511.23. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purpose of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

(c) **Severability.** If any provision of this Easement, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of this Easement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.

(d) **Entire Agreement.** This instrument sets forth the entire agreement of the parties with respect to the Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Easement, all of which are merged herein.

(e) **No Forfeiture.** Nothing contained herein will result in a forfeiture or reversion of Grantor's title in any respect.

(f) **Successors.** The covenants, terms, conditions, and restrictions of this Easement shall be binding upon, and inure to the benefit of, the parties, hereto and their respective successors and assigns and shall continue as a servitude running in perpetuity with the Property. The terms "Grantor" and "Grantee," wherever used herein, and any pronouns used in place thereof, shall include, respectively, the above-named Grantor and its successors, and assigns, and the above-named Grantee and its successors and assigns.

(g) **Termination of Rights and Obligations.** A party's rights and obligations under this Easement terminate upon transfer of the party's interest in the Easement or Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

(h) **Captions.** The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.

(i) **Non-discrimination.** The Parties hereby acknowledge that they are bound by Executive Order 99-4 concerning non-discrimination in employment.

(j) **Non-Availability of Funds.** Every payment obligation of the Grantee and Grantor under this Easement is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation.

(k) **Counterparts.** The parties may execute this instrument in two or more counterparts, which shall, in the aggregate, be signed by both parties. Each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

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

IN WITNESS WHEREOF, the Grantor and the Grantee have executed this Deed of Conservation Easement, which shall become effective immediately upon signature by both parties.

GRANTOR: PIMA COUNTY

ACKNOWLEDGMENT BY GRANTOR

C. Huckelberry
Signature

State of Arizona)
County of PIMA)

C. H. Huckelberry _____
Print Name

The foregoing instrument was acknowledged before me this 16th day of JANUARY, 2014

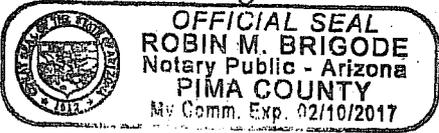
County Administrator _____
Title

By C. HUCKELBERRY
GRANTOR

12-11-13
Date

Robin M Brigode
Notary Public

APPROVED AS TO FORM:
TOBIN ROSEN
Deputy County Attorney

(Seal) 

GRANTEE: ARIZONA STATE PARKS BOARD

ACKNOWLEDGMENT BY GRANTEE

Bryan Martyn
Signature

State of Arizona)
County of Maricopa)

BRYAN MARTYN
Print Name

The foregoing instrument was acknowledged before me this 26th day of December 2013

Executive Director
Title

By BRYAN MARTYN
GRANTEE

12/26/13
Date

Vivia Strang
Notary Public

(Seal) 