



BOARD OF SUPERVISORS AGENDA ITEM REPORT

Requested Board Meeting Date: September 15, 2020

Title: Conservation Easement for Canoa Ranch In-Lieu Fee Project

Introduction/Background:

The Pima County Flood Control District (PCFCD) will be establishing an In-Lieu Fee (ILF) project at Canoa Ranch to provide compensatory mitigation for projects authorized under Section 404 of the Clean Water Act and a Conservation Easement.

Discussion:

The purpose of the Conservation Easement is to ensure that the project area will be retained in perpetuity in its natural, restored or enhanced condition as contemplated by the ILF Enabling Instrument as provided in Exhibit J and the project development plan. The easement is for 300 acres of PCFCD lands along and within the Santa Cruz floodplain and river channel. Canoa Ranch was acquired by Pima County and PCFCD to preserve and protect cultural, historical and natural resources including riparian habitat along the Santa Cruz River.

Conclusion:

The Conservation Easement will protect the existing cultural, historic and natural resources including riparian habitat along the Santa Cruz River as well as the environmental restoration improvements established to restore riparian habitat and aquatic resources along the Santa Cruz River.

Recommendation:

Approval of the Conservation Easement in substantially this form for the 300-acre Canoa Ranch property and authorization for the Real Property Manager to sign and record the Conservation Easement.

Fiscal Impact:

NA

Board of Supervisor District:

☐ 1 ☐ 2 ☐ 3 ☒ 4 ☐ 5 ☐ All

Department: Regional Flood Control District Telephone: 724-4600

Contact: Suzanne Shields, P.E., Director Telephone: 724-4680

Department Director Signature/Date: *S. Shields* 8/26/20

Deputy County Administrator Signature/Date: *[Signature]* 8/28/2020

County Administrator Signature/Date: *C. Rulibey* 8/28/2020

10 October 2014

**LEGAL DESCRIPTION
CONSERVATION EASEMENT
CANOA RANCH**

A Conservation Easement situated within the San Ignacio De La Canoa Land Grant, Township 19 South, Range 13 East, Gila and Salt River Meridian, Pima County, Arizona. Said easement being more particularly described as follows:

Commencing at the 3" aluminum capped ADOT right-of-way monument at station 1885+57.54 BK, on the easterly right-of-way of I-19, as shown on the plat of Canoa Ranch Blocks 1 thru 45, recorded in Book 54 at Page 74, and corrected in Record of Survey recorded in Book 56 at Page 94, both in the office of the Pima County Recorder. From which, for the basis of bearings, a 3" aluminum capped ADOT right-of-way monument at station 1871+01.16 bears South 24°10'20" West, a distance of 1457.88 feet;

Thence South 73°10'28" East, a distance of 1753.01 feet to the **Point of Beginning**;

Thence South 49° 12' 16" West, a distance of 772.34 feet;

Thence South 59° 03' 41" West, a distance of 535.35 feet;

Thence South 27° 17' 37" West, a distance of 310.76 feet;

Thence South 05° 08' 22" West, a distance of 358.27 feet;

Thence South 12° 59' 29" East, a distance of 402.06 feet;

Thence North 78° 22' 38" East, a distance of 176.71 feet;

Thence South 11° 49' 47" East, a distance of 202.20 feet;

Thence South 78° 38' 47" West, a distance of 183.21 feet;

Thence South 24° 12' 42" West, a distance of 1518.96 feet;

Thence South 45° 02' 47" West, a distance of 288.86 feet;

Thence South 23° 52' 58" West, a distance of 2762.54 feet;

Thence South 87° 21' 24" East, a distance of 30.74 feet;

Thence South 00° 59' 26" West, a distance of 156.00 feet;

Thence North 87° 22' 34" West, a distance of 96.11 feet;

Thence South 23° 49' 38" West, a distance of 868.58 feet;

Thence South 15° 10' 37" East, a distance of 390.75 feet;

Thence South 47° 48' 35" West, a distance of 465.09 feet;

Thence South 14° 18' 30" West, a distance of 294.74 feet;

Thence North 86° 28' 20" East, a distance of 462.96 feet;

Thence North 11° 48' 52" West, a distance of 50.87 feet to the beginning of a non-tangent curve, concave to the southeast, having a radius of 351.33 feet , and to which a radial line bears North 75°34'28" West;

Thence northeasterly along said curve to the right, through a central angle of 30°46'19", an arc distance of 188.69 feet to a point of tangency;

Thence North 45° 11' 51" East, a distance of 275.11 feet;

Thence North 54° 55' 21" East, a distance of 291.30 feet;

Thence North 24° 30' 21" East, a distance of 273.16 feet;

Thence North 21° 39' 57" East, a distance of 338.83 feet;

Thence North 65° 48' 27" East, a distance of 609.45 feet;

Thence North 07° 39' 44" East, a distance of 247.78 feet;

Thence South 37° 56' 02" East, a distance of 753.71 feet;

Thence South 74° 28' 03" East, a distance of 143.40 feet;

Thence South 62° 39' 33" East, a distance of 69.49 feet, to the westerly right-of-way line of the Union Pacific Rail Road as shown on the plat of Canoa Ranch Blocks 1 thru 45, and the beginning of a non-tangent curve, concave to the southeast, having a radius of 5779.58 feet, to which a radial line bears North 58° 03' 18" West;

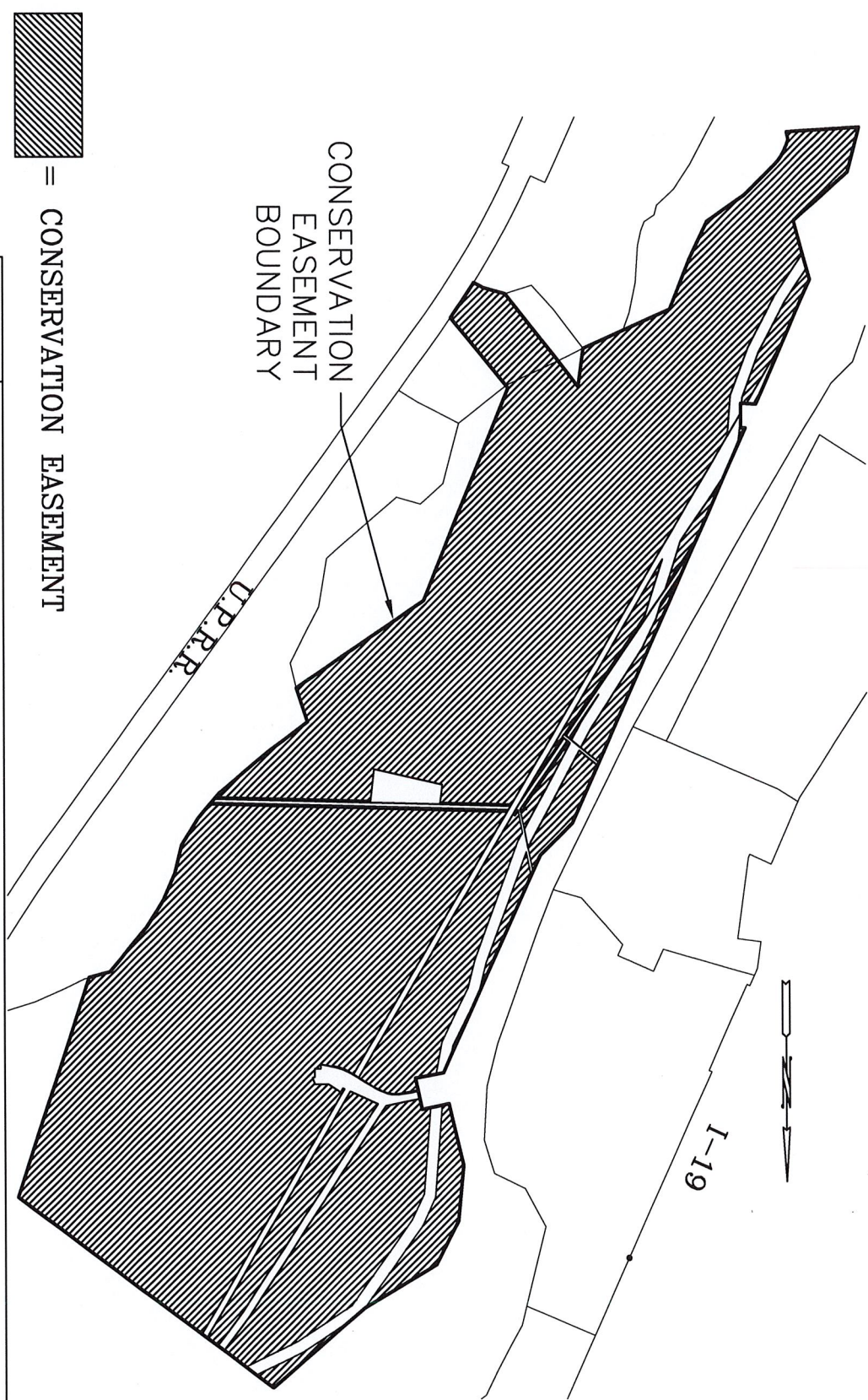
Thence along said right-of-way line, northeasterly along said curve to the right, through a central angle of 2° 40' 20", an arc distance of 269.55 feet to a point of non-tangency;

Thence North 39° 11' 03" West, a distance of 576.44 feet;
Thence North 21° 49' 32" East, a distance of 1465.89 feet;
Thence North 55° 36' 21" East, a distance of 987.79 feet;
Thence North 18° 30' 45" West, a distance of 229.45 feet;
Thence North 53° 16' 42" East, a distance of 297.84 feet;
Thence North 50° 41' 48" East, a distance of 234.86 feet;
Thence North 49° 31' 23" East, a distance of 197.90 feet;
Thence North 39° 40' 42" East, a distance of 208.67 feet;
Thence North 31° 46' 35" East, a distance of 196.59 feet;
Thence North 13° 41' 21" East, a distance of 186.44 feet;
Thence North 23° 56' 21" East, a distance of 186.68 feet;
Thence North 31° 15' 26" East, a distance of 203.59 feet;
Thence North 39° 46' 07" East, a distance of 186.01 feet;
Thence North 39° 22' 38" East, a distance of 181.20 feet;
Thence North 74° 25' 33" East, a distance of 138.30 feet;
Thence North 18° 10' 06" East, a distance of 1471.26 feet;
Thence North 53° 19' 56" West, a distance of 2026.72 feet to the **Point of Beginning**.



Expires 31 March 2015

DEPICTION OF EXHIBIT "A"



PIMA COUNTY SURVEY

A PORTION OF THE SAN IGNACIO DE LA CANOA LAND GRANT,
TOWNSHIP 19 SOUTH, RANGE 13 EAST, GILA AND SALT RIVER
MERIDIAN, PIMA COUNTY, ARIZONA

Exhibit J
Real Estate Instrument

RECORDING REQUESTED BY:)
AND WHEN RECORDED MAIL TO:)
)
Address)
)
)
)
)
)
)
)
)

Space Above Line for Recorder's Use Only

CONSERVATION EASEMENT DEED

THIS CONSERVATION EASEMENT DEED is made this _____ day of _____ 20__ by [insert name], a _____ company, ("**Grantor**"), in favor of the _____ ("**Grantee(s)**") with reference to the following facts:

RECITALS

A. Grantor is the sole owner in fee simple of certain real property containing

Approximately _____ acres, located in the City of _____, County of _____, State of Arizona, designated Assessor Parcel Number(s) _____ (the "**Property**"). The Property is legally described on **Exhibit "A"** attached hereto and incorporated by this reference.

Grantor intends to grant a conservation easement over a _____ acre portion of the Property (the "**Easement Area**"). The Easement Area is legally described and depicted in **Exhibit "B"** attached hereto and incorporated herein by this reference.

B. The Easement Area possesses wildlife and habitat values of great importance to Grantee, the people of the State of Arizona and the people of the United States. The Easement Area will provide high quality natural, restored and/or enhanced habitat for [*specify listed and sensitive plant and/or animal species*] and contain [*list habitats; native and/or non-native*], [*include the following phrase only if there are jurisdictional wetlands: and restored, created, enhanced and/or preserved jurisdictional Waters of the United States*]. Individually and collectively, these wildlife and habitat values comprise the "**Conservation Values**" of the Easement Area.

C. Grantee is authorized to hold conservation easements pursuant to Arizona Revised Statute Section 33-271, et seq. Specifically, Grantee is an entity identified in Arizona Revised Statute Section 33-271 and otherwise authorized to acquire and hold title to real property.

D. The United States Army Corps of Engineers (“USACE”) is the Federal agency charged with regulatory authority over discharges of dredged and fill material in Waters of the United States pursuant to Section 404 of the Clean Water Act, and is a third party beneficiary of this Conservation Easement.

E. This Conservation Easement Deed is granted pursuant to the In-Lieu Fee Enabling Instrument (the “**ILFEI**”) by and between [Grantor or Grantee depending on role of **DISTRICT**], the Los Angeles District of USACE, Region IX of the United States Environmental Protection Agency (“**USEPA**”), the U.S. Fish and Wildlife Service (“**USFWS**”), the Arizona Game and Fish Department (“**AGFD**”), the Arizona Department of Environmental Quality (“**ADEQ**”), Pima County dated _____, and the Development Plan (the “**Development Plan**”), and the Interim Management Plan and Long-Term Management Plan (as applicable, the “**Management Plan**”) created under the ILFEI. USACE, USEPA, USFWS, AGFD, ADEQ, and Pima County are together referred to in this Conservation Easement Deed as the “**Signatory Agencies.**” The ILFEI, the Development Plan and the Management Plan are incorporated by this reference into this Conservation Easement as if fully set forth herein.

F. All section numbers referred to in this Conservation Easement Deed are references to sections within this Conservation Easement Deed, unless otherwise indicated.

COVENANTS, TERMS, CONDITIONS AND RESTRICTIONS

In consideration of the above recitals and the mutual covenants, terms, conditions, and restrictions contained herein, and pursuant to the laws of the United States and State of Arizona, including Arizona Revised Statute Section 33-271, et seq., Grantor hereby voluntarily grants and conveys to Grantee a conservation easement in perpetuity over the Easement Area of the nature and character and to the extent hereinafter set forth (“**Conservation Easement**”). This Conservation Easement shall run with the land and be binding on Grantor’s heirs, successors, administrators, assigns, lessees, and other occupiers or users of the Easement Area or any portion of it.

1. Purposes.

- (a) The purposes of this Conservation Easement are to ensure that the Easement Area will be retained in perpetuity in its natural, restored, or enhanced condition as contemplated by the ILFEI, the Development Plan, and the Management Plan, and to prevent any use of the Easement Area that will impair or interfere with the Conservation Values of the Easement Area. Grantor intends that this Conservation Easement will confine the use of

the Easement Area to activities that are consistent with such purposes, including, without limitation, those involving the preservation, restoration and enhancement of native species and their habitats implemented in accordance with the ILFEI, the Development Plan and the Management Plan.

- (b) The term “Natural Condition,” as referenced in the preceding paragraph and other portions of this Conservation Easement, shall mean the condition of the Easement Area, as it exists at the time this Conservation Easement is executed, as well as future enhancements or changes to the Easement Area that occur directly as a result of the following activities:
 - (1) Compensatory mitigation activities, including implementation, maintenance and monitoring as described in the Development Plan and Management Plan; or
 - (2) Activities described in Section 4 and Section 6 herein.
- (c) Grantor represents and warrants that there are no structures or improvements existing on the Easement Area at the time this grant is executed that interfere or conflict with the Purposes of this Conservation Easement. Grantor further represents and warrants that there are no other previously granted easements existing on the Easement Area that interfere or conflict with the Purposes of this Conservation Easement as evidenced by the Title Report attached at Exhibit “C.” The present Natural Condition is evidenced in part by the depiction of the Easement Area attached on Exhibit “D,” showing all relevant and plottable property lines, easements, dedications, improvements, boundaries and major, distinct natural features such as Waters of the United States. Grantor has delivered further evidence of the present Natural Condition to Grantee and USACE consisting of (1) a color aerial photograph of the Easement Area at an appropriate scale taken as close in time as possible to the date this Conservation Easement is executed; (2) an overlay of the Easement Area boundaries on such aerial photograph; and (3) on-site color photographs showing all man-made improvements or structures (if any) and the major, distinct natural features of the Easement Area.
- (d) If a controversy arises with respect to the current Natural Condition of the Property, Grantor, Grantee or USACE or any designees or agents of Grantor, Grantee, and USACE shall not be foreclosed from utilizing any and all other relevant documents, surveys, photographs or other evidence or information to assist in the resolution of the controversy.

2. Grantee’s Rights. To accomplish the Purposes of this Conservation Easement, Grantor, its successors and assigns hereby grants and conveys the following rights to Grantee. These rights are also granted to the USACE or its designees as third party beneficiaries of this Conservation Easement:

- (a) To preserve and protect the Conservation Values of the Easement Area;
- (b) To enter upon the Property and Easement Area at reasonable times in order to monitor compliance with and to otherwise enforce the terms of this Conservation Easement, the ILFEI, the Development Plan and the Management Plan, to implement at Grantee's sole discretion Development Plan and Management Plan activities that have not been implemented, and for scientific research and interpretive purposes by Grantee or its designees, provided that Grantee shall not unreasonably interfere with Grantor's authorized use and quiet enjoyment of the Easement Area; and
- (c) To prevent any activity on or use of the Easement Area that is inconsistent with the Purposes of this Conservation Easement and to require the restoration of such areas or features of the Easement Area that may be damaged by any act, failure to act, or any use that is inconsistent with the Purposes of this Conservation Easement; and
- (d) To require that all mineral, air, and water rights (if any) as Grantee deems necessary to preserve, protect and sustain the biological resources and Conservation Values of the Easement Area shall remain a part of and be put to beneficial use upon the Easement Area, consistent with the Purposes of this Conservation Easement. Grantor shall not transfer, encumber, sell, lease, or otherwise separate the mineral, air or water rights for the Easement Area, or change the place or purpose or use of the known water rights, without first obtaining the written consent of Grantee, which Grantee, in its sole discretion, may withhold. Grantor shall not abandon or allow the abandonment of, by action or inaction, any of Grantor's right, title or interest in and to any known: water or water rights, ditch or ditch rights, spring rights, reservoir or storage rights, wells, ground water rights, or other rights in and to the use of water historically used on or otherwise appurtenant to the Easement Area including without limitation: (1) riparian water rights; (2) appropriative water rights; (3) rights to waters which are secured under contract with any irrigation or water district, to the extent such waters are customarily applied to the Easement Area; or (4) any water from wells that are in existence or may be constructed in the future on the Easement Area; and
- (e) All present and future development rights allocated, implied, reserved or inherent in the Easement Area; such rights are hereby terminated and extinguished, and may not be used on or transferred to any portion of the Property, nor any other property adjacent or otherwise; and
- (f) The right to enforce by any means, including, without limitation, injunctive relief, the terms and conditions of this Conservation Easement; and
- (g) The right to enhance native plant communities, including the removal non- native species, the right to plant trees and shrubs of the same type as currently existing on the Easement Area, or other appropriate native species. Habitat enhancement activities shall

not conflict with the preservation of the Natural Condition of the Easement Area or the Purposes of this Conservation Easement and shall be performed in compliance with all applicable laws, regulations, and permitting requirements.

3. Prohibited Uses. Any activity on or use of the Easement Area that is inconsistent with the Purposes of this Conservation Easement is prohibited. Without limiting the generality of the foregoing, the following uses and activities by Grantor, Grantee, and their respective agents, and third parties are expressly prohibited:

- (a) Introduction of nuisance water, such as any drainage or overflow, including but not limited to water from pools, aquariums, waterbeds and fountains, and unseasonable and supplemental watering, except nuisance water associated with irrigation outside the Easement Area by adjacent homeowners or others and the natural drainage of rainfall and water related to Grantee's habitat enhancement activities as set forth in Section 2(g);
- (b) Use of herbicides, pesticides, biocides, fertilizers, or other agricultural chemicals or weed abatement activities, except weed abatement activities necessary to control or remove invasive, exotic plant species as set forth in the Development Plan or Management Plan;
- (c) Use of off-road vehicles and use of any other motorized vehicles except in the execution of management duties;
- (d) Grazing or other agricultural activity of any kind except [if provided in the approved Management Plan: highly managed, short duration, spatially controlled grazing utilized for invasive species control in areas effectively devoid of native perennial vegetation for the execution of management duties (e.g. a few goats corralled within a mobile and flexible shaped paddock made of electric fencing used to graze Bermuda grass back to the roots which encourages new sprouts which make the plant more susceptible to herbicides)];
- (e) Recreational activities including, but not limited to, camping, picnicking, horseback riding, biking, hunting or fishing;
- (f) Residential, commercial, retail, institutional, or industrial structures or uses;
- (g) Any legal or de facto division, subdivision or partitioning of the Easement Area;
- (h) Construction, reconstruction or placement of any building, road, wireless communication cell towers, billboard, sign, or any other structure or improvement of any kind except those signs specifically allowed under Section 5(e) or as specifically provided for in the Development Plan or Management Plan;

- (i) Dumping soil, trash, ashes, refuse, waste, bio-solids, garbage or any other material;
- (j) Planting, gardening, or introduction or dispersal of non-native plant or animal species except [if provided in the Development Plan or Management Plan: in the execution of management duties where biologically or ecologically advantageous to the restoration of the site including, but not limited to:
 - 1- introducing temporary hives of honeybees to ensure pollination during critical periods for areas depauperate of native pollinators
 - 2- introducing certain plants, with future removal once purpose is accomplished, used in specific instances to:
 - a- increase soil nutrient level for heavily depleted former agricultural fields
 - b- decrease soil nutrient level for areas that have become hyper-nutrient due to anthropogenic effects
 - c- remediate levels of toxins in soil making them more suitable to native plants which may not be tolerant of anthropogenic chemical loads
 - 3- introducing soil mycorrhizae that are commercially available if unable to generate sufficient quantities of inoculum from mycorrhizae that are native to the specific restoration site
 - 4- introducing soil Rhizobial bacteria that are commercially available if unable to generate sufficient quantities of inoculum from Rhizobia that are native to the specific restoration site
 - 5- introducing established biological control agents for control of invasive species
 - 6- introducing commercially available species of plants, with planned removal once purpose is accomplished, used to provide equivalent critical habitat components for local sensitive species of animals while native species, which are not commercially available, can be produced and established in a bespoke fashion, that will fill the habitat needs long-term.
 - 7- non-native annual plants with no capacity to self-seed that are of high palatability to herbivorous animals on site may be planted as 'sacrificial plants' to help protect the establishment of native plants until mature enough to survive herbivory.]
- (k) Filling, dumping, excavating, draining, dredging, mining, drilling, removing or exploring for or extraction of minerals, loam, gravel, soil, rock, sand or other material on or below the surface of the Easement Area;
- (l) Altering the surface or general topography of the Easement Area, including but not limited to any alterations to habitat, building roads or trails, paving or otherwise covering the Easement Area with concrete, asphalt or any other impervious material except for those habitat management activities specified in the Development Plan or Management Plan;
- (m) Removing, destroying, or cutting of trees, shrubs or other vegetation, except for (1) emergency fire breaks as required by fire safety officials, (2) prevention or

treatment of disease, (3) control of invasive species which threaten the integrity of the habitat, (4) completing the Development Plan and Management Plan, or (5) activities described in Section 2;

- (n) Manipulating, impounding or altering any natural watercourse, body of water or water circulation on the Easement Area, and activities or uses detrimental to water quality, including but not limited to degradation or pollution of any surface or sub-surface waters except for as specifically provided for in the Development Plan or Management Plan;
- (o) Creating, enhancing, and maintaining fuel modification zones (defined as a strip of mowed land or the planting of vegetation possessing low combustibility for purposes of fire suppression) or other activities that could constitute fuel modification zones;
- (p) Without the prior written consent of Grantee, which Grantee may withhold, transferring, encumbering, selling, leasing, or otherwise separating the mineral, air or water rights for the Easement Area; changing the place or purpose of use of the water rights; abandoning or allowing the abandonment of, by action or inaction, any water or water rights, ditch or ditch rights, spring rights, reservoir or storage rights, wells, ground water rights, or other rights in and to the use of water historically used on or otherwise appurtenant to the Easement Area, including but not limited to: (1) riparian water rights; (2) appropriative water rights; (3) rights to waters which are secured under contract with any irrigation or water district, to the extent such waters are customarily applied to the Easement Area; and (4) any water from wells that are in existence or may be constructed in the future on the Easement Area;
- (q) Engaging in any use or activity that may violate, or may fail to comply with, relevant federal, state, or local laws, regulations, or policies applicable to Grantor, the Easement Area, or the use or activity in question; and
- (r) No use shall be made of the Easement Area, and no activity thereon shall be permitted, that is or is likely to become inconsistent with the Purposes of this Conservation Easement. Grantor and Grantee acknowledge that, in view of the perpetual nature of this Conservation Easement, they are unable to foresee all potential future land uses, future technologies, and future evolution of the land and other natural resources, and other future occurrences affecting the Purposes of this Conservation Easement. Grantee, in consultation with USACE, may determine whether (1) proposed uses or proposed improvements not contemplated by or addressed in this Conservation Easement or (2) alterations in existing uses or structures, are consistent with the Purposes of this Conservation Easement.

4. Grantor's Duties. To accomplish the Purposes of this Conservation Easement as described in Section 1, Grantor, its successors and assigns shall:

- (a) Undertake all reasonable actions to prevent the unlawful entry and trespass by persons whose activities may degrade or harm the Conservation Values of the Easement Area. In addition, Grantor shall undertake all necessary actions to perfect Grantee's rights under Section 2 of this Conservation Easement;
- (b) Cooperate with Grantee in the protection of the Conservation Values;
- (c) Repair and restore damage to the Easement Area directly or indirectly caused by Grantor, Grantor's guests, representatives, employees or agents, and third parties within Grantor's control; provided, however, Grantor, its successors or assigns shall not engage in any repair or restoration work on the Easement Area without first consulting with the Grantee and USACE; and
- (d) Obtain any applicable governmental permits and approvals for any activity or use permitted by this Conservation Easement, and any activity or use shall be undertaken in accordance with all applicable federal, state, local and administrative agency statutes, ordinances, rules, regulations, orders or requirements.

5. Grantee's Duties. To accomplish the Purposes of this Conservation Easement as described in Section 1, Grantee, its successors and assigns shall:

- (a) Perform, at least annually, compliance monitoring inspections of the Easement Area;
- (b) Prepare reports on the results of the compliance monitoring inspections, and provide these reports to the Signatory Agencies on an annual basis;
- (c) Undertake construction, maintenance and monitoring of mitigated areas pursuant to the Development Plan and Interim Management Plan until issuance of final approval from the USACE confirming that Grantee has successfully completed construction, maintenance and monitoring of mitigated areas pursuant to said Plans ("Final Approval"). This duty is non- transferable;
- (d) Upon receipt of Final Approval, perform long-term management of the Easement Area pursuant to the Long-term Management Plan;
- (e) Within 120 days of recordation of this Conservation Easement, install signs and other notification features saying "Natural Area Open Space," "Protected Natural Area," or similar descriptions. Prior to erection of such signage, the Grantee shall submit plans showing the location and language of such signs to the USACE for review and approval;
- (f) Repair and restore damage to the Easement Area directly or indirectly caused by Grantee, Grantee's guests, representatives, employees or agents, and third parties within Grantee's

control provided, however, Grantee, its successors or assigns shall not engage in any repair or restoration work on the Easement Area without first consulting with USACE.

6. Reserved Rights. Grantor reserves to itself, and to its personal representatives, heirs, successors, and assigns, all rights accruing from its ownership of the Easement Area, including the right to engage in or to permit or invite others to engage in all uses of the Easement Area that are not prohibited or limited by, and are consistent with, the Purposes of this Conservation Easement.

7. Enforcement.

(a) Right to Enforce. Grantor, its successors and assigns, grant to the USACE, the U.S. Department of Justice, and the State Attorney General a discretionary right to enforce this Conservation Easement in a judicial or administrative action against any person(s) or other entity(ies) violating or attempting to violate this Conservation Easement; provided, however, that no violation of this Conservation Easement shall result in a forfeiture or reversion of title. The USACE, U.S. Department of Justice, and the State Attorney General shall have the same rights, remedies and limitations as Grantee under this Section 7. The rights under this Section are in addition to, and do not limit rights conferred in Section 2 above. The term "Party" means Grantor or Grantee, as the case may be. Grantor, Grantee, and any third party beneficiaries, when implementing any remedies under this Conservation Easement, shall provide timely written notice to each other of any actions taken under this section, including, but not limited to copies of all notices of violation and related correspondence.

(b) Notice of Violation. In the event that either Party or its employees, agents, contractors or invitees is in violation of the terms of this Conservation Easement or that a violation is threatened, the non-violating Party and/or third party beneficiaries may demand the cure of such violation. In such a case, the non-violating Party and/or third party beneficiaries shall issue a written notice to the violating Party (hereinafter "Notice of Violation") informing the violating Party of the actual or threatened violations and demanding cure of such violations. The Notice of Violation shall be sent to the other Party and third party beneficiaries listed under Section 15 of this Conservation Easement.

(c) Time to Cure. The violating Party shall cure the noticed violation within thirty (30) days of receipt of said written Notice of Violation. If said cure reasonably requires more than thirty (30) days, the violating Party shall, within the thirty (30) day period, submit to the non-violating Party and/or third party beneficiaries, as the case may be, for review and approval a plan and time schedule to diligently complete a cure. The violating Party shall complete such cure in accordance with the approved plan. If the violating Party disputes the notice of violation, it shall issue a written notice of such dispute (hereinafter "Notice of Dispute") to the appropriate Party and/or third party beneficiary within thirty (30) days of receipt of written Notice of Violation.

(d) Failure to Cure. If the violating Party fails to cure the violation within the time period(s) described in Section 7(c), above, or Section 7(e)(2), below, the non-violating Party and/or third party beneficiaries may bring an action at law or in equity in a court of competent jurisdiction to enforce compliance by the violating Party with the terms of this Conservation Easement. In such action, the non-violating Party and/or third party beneficiaries may:

- (1) Recover any damages to which they may be entitled for violation by the violating Party of the terms of this Conservation Easement or for any injury to the Conservation Values of the Easement Area. The non-violating Party shall first apply any damages recovered to the cost of undertaking any corrective action on the Easement Area. Prior to implementation of any remedial or restorative actions pursuant to this paragraph, USACE shall be consulted.
- (2) Enjoin the violation by temporary or permanent injunction without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies.
- (3) Obtain other equitable relief, including, but not limited to, the restoration of the Easement Area to the condition in which it existed prior to any such violation or injury.

(e) Notice of Dispute.

- (1) If the violating Party provides the non-violating Party and/or third party beneficiaries with a Notice of Dispute, as provided herein, the non-violating Party and/or third party beneficiaries shall meet and confer with the violating Party at a mutually agreeable place and time, not to exceed thirty (30) days from the date that the non-violating Party and/or third party beneficiaries receive the Notice of Dispute. The non-violating Party and/or third party beneficiaries shall consider all relevant information concerning the disputed violation provided by the violating Party and shall determine whether a violation has in fact occurred and, if so, whether the Notice of Violation and demand for cure issued by the non-violating Party and/or third party beneficiaries is appropriate in light of the violation.
- (2) If, after reviewing the violating Party's Notice of Dispute, conferring with the violating Party, and considering all relevant information related to the violation, the non-violating Party and/or third party beneficiaries determine that a violation has occurred, the non-violating Party and/or third party beneficiaries shall give the violating party notice of such determination in writing. Upon receipt of such determination, the violating Party shall have fifteen (15) days to cure the violation. If said cure reasonably requires more than fifteen (15) days, the violating Party shall, within the fifteen (15) day period, submit to the non-violating Party and/or third party beneficiaries for review and approval a plan and time schedule to diligently

complete a cure. The violating Party shall complete such cure in accordance with the approved plan.

(f) Conflicting Notices of Violation.

- (1) If any Party receives a Notice of Violation that is in material conflict with one or more prior written Notices of Violation that have not yet been cured by the Party (hereinafter "Active Notice(s) of Violation") such that the conflict makes it impossible for the Party to carry out the cure consistent with all prior Active Notices of Violation, the Party shall give written notice (hereinafter "Notice of Conflict") to the non-violating Party and/or third party beneficiaries issuing the later, conflicting Notice(s) of Violation. The Party shall issue said Notice of Conflict to the appropriate non-violating Party and/or third party beneficiaries within fifteen (15) days of the receipt of each such conflicting Notice of Violation. A valid Notice of Conflict shall describe the conflict with specificity, including a description of how the conflict makes compliance with all Active Notices of Violation impossible.
- (2) Upon issuing a valid Notice of Conflict to the appropriate non-violating Party and/or third party beneficiaries, as described above, the violating Party shall not be required to carry out the cure described in the conflicting Notice or Notices of Violation until such time as the non-violating Party responsible for said conflicting Notice(s) of Violation issue(s) a revised Notice of Violation that is consistent with prior Active Notices of Violation. Upon receipt of a revised, consistent Notice of Violation, the violating Party shall carry out the cure recommended in such notice within the time period(s) described in Section 7(c) above. Notwithstanding Section 7(g), failure to cure within said time period(s) shall entitle the non-violating Party to the remedies described in Section 7(d) and Section 7(h).
- (3) The failure of the violating Party to issue a valid Notice of Conflict within fifteen (15) days of receipt of a conflicting Notice of Violation shall result in a waiver of the violating Party's ability to claim a conflict.

- (g) Immediate Action. In the event that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values of the Property, the Party and/or third party beneficiary seeking enforcement pursuant to Section 7(b) above may immediately pursue all available remedies, including injunctive relief, available pursuant to both this Conservation Easement and state and federal law after giving the violating Party at least twenty four (24) hours' written notice before pursuing such remedies. So long as such twenty-four (24) hours' notice is given, the non-violating Party may immediately pursue all available remedies without waiting for the expiration of the time periods provided for cure or Notice of Dispute as described in Section 7(c). The written notice pursuant to this paragraph may be transmitted to the violating Party by facsimile

and shall be copied to the other Party and/or third party beneficiaries listed in Section 15 of this Conservation Easement. The rights of the non-violating Party and/or third party beneficiaries under this paragraph apply equally to actual or threatened violations of the terms of this Conservation Easement. The violating Party agrees that the remedies at law for any violation of the terms of this Conservation Easement are inadequate and that the non-violating Party and third party beneficiaries shall be entitled to the injunctive relief described in this section, both prohibitive and mandatory, in addition to such other relief to which they may be entitled, including specific performance of the terms of this Conservation Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. The remedies described in this Section 7(g) shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity, including but not limited to, the remedies set forth in Arizona Revised Statute Section 33-271, et seq., inclusive.

- (h) Costs of Enforcement. All costs incurred by a Party, where that Party is the prevailing party, in enforcing the terms of this Conservation Easement against the other Party, including, but not limited to, costs of suit and attorneys' and experts' fees, and any costs of restoration necessitated by negligence or breach of this Conservation Easement, shall be borne by the non-prevailing Party.
- (i) Enforcement Discretion. Enforcement of the terms of this Conservation Easement by a Party and/or third party beneficiary shall be at the discretion of the Party and/or third party beneficiary, and any forbearance by such Party and/or third party beneficiary to exercise its rights under this Conservation Easement in the event of any breach of any term of the Conservation Easement by a Party or any subsequent transferee shall not be deemed or construed to be a waiver by the non-violating Party and third party beneficiary of such terms or of any subsequent breach of the same or any other term of this Conservation Easement or of any of the rights of the non-violating Party and third party beneficiary under this Conservation Easement. No delay or omission by the non-violating Party and/or third party beneficiaries in the exercise of any right or remedy upon any breach by the violating Party shall impair such right or remedy or be construed as a waiver. Further, nothing in this Conservation Easement creates a non-discretionary duty upon the non-violating Party and/or third party beneficiaries to enforce its provisions, nor shall deviation from these terms and procedures, or failure to enforce its provisions give rise to a private right of action against the non-violating Party and/or third party beneficiaries by any third parties.
- (j) Acts Beyond Grantor's Control. Nothing contained in this Conservation Easement shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the Easement Area resulting from:
 - (1) Any natural cause beyond Grantor's control, including without limitation, fire not caused by Grantor, flood, storm, and earth movement;

- (2) Any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Easement Area resulting from such causes;
- (3) Acts by Grantee, USACE, or their employees, directors, officers, agents, contractors, or representatives; or
- (4) Acts of third parties (including any governmental agencies) that are beyond Grantor's control.

Notwithstanding the foregoing, Grantor must obtain any applicable governmental permits and approvals for any emergency activity or use permitted by this Conservation Easement, and undertake any activity or use in accordance with all applicable federal, state, local and administrative agency statutes, ordinances, rules, regulations, orders or requirements.

(k) Acts Beyond Grantee's Control. Nothing contained in this Conservation Easement shall be construed to entitle Grantor to bring any action against Grantee for any injury to or change in the Easement Area resulting from:

- (1) Any natural cause beyond Grantee's control, including without limitation, fire not caused by Grantee, flood, storm, and earth movement;
- (2) Any prudent action taken by Grantee under emergency conditions to prevent, abate, or mitigate significant injury to the Easement Area resulting from such causes;
- (3) Acts by Grantor, USACE or their employees, directors, officers, agents, contractors, or representatives; or
- (4) Acts of third parties (including any governmental agencies) that are beyond Grantee's control.

Notwithstanding the foregoing, Grantee must obtain any applicable governmental permits and approvals for any emergency activity or use permitted by this Conservation Easement, and undertake any activity or use in accordance with all applicable federal, state, local and administrative agency statutes, ordinances, rules, regulations, orders or requirements.

8. Access. This Conservation Easement does not convey a general right of access to the public.

9. Costs and Liabilities.

- (a) Grantor, its successors and assigns retain all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance (except Long-Term Maintenance by Grantee) of the Easement Area. Grantor agrees Grantee and USACE shall not have any duty or responsibility for the operation, upkeep, or maintenance (except Long-Term Maintenance by Grantee) of the Easement Area, the monitoring of hazardous conditions thereon, or the protection of Grantor, the public or any third parties from risks relating

to conditions on the Property. Grantor, its successor or assign remains solely responsible for obtaining any applicable governmental permits and approvals for any activity or use permitted by this Conservation Easement, and any activity or use shall be undertaken in accordance with all applicable federal, state, local and administrative agency statutes, ordinances, rules, regulations, orders and requirements.

(b) Hold Harmless.

- (1) Grantor shall hold harmless, protect and indemnify Grantee and its directors, officers, employees, agents, contractors, and representatives and the heirs, personal representatives, successors and assigns of each of them (each a "Grantee Indemnified Party" and collectively, "Grantee's Indemnified Parties") from and against any and all liabilities, penalties, costs, losses, damages, expenses (including, without limitation reasonable attorneys' fees and experts' fees), causes of action, claims, demands, orders, liens or judgments (each a "Claim" and, collectively, "Claims"), arising from or in any way connected with: (i) injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Easement Area, regardless of cause, except that this indemnification shall be inapplicable to any Claim due solely to the negligence of Grantee or any of its employees; (ii) the obligations or rights specified in Sections 4, 6, 9(a), 10, and 19(l); and (iii) the existence or administration of this Conservation Easement. If any action or proceeding is brought against any of the Grantee's Indemnified Parties by reason of any such Claim, Grantor shall, at the election of and upon written notice from Grantee, defend such action or proceeding by counsel reasonably acceptable to the Grantee's Indemnified Party or reimburse Grantee for all charges incurred in defending the action or proceeding.

- (2) Grantor shall hold harmless, protect and indemnify USACE and their respective directors, officers, employees, agents, contractors, and representatives and the heirs, personal representatives, successors and assigns of each of them (each a "**Third-Party Beneficiary Indemnified Party**" and collectively, "**Third-Party Beneficiary Indemnified Parties**") from and against any and all Claims arising from or in any way connected with: (i) injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or

occurring on or about the Easement Area, regardless of cause except that any indemnification under this Section 9(b) shall be inapplicable to Third-Party Beneficiary Indemnified Parties with respect to any Claim due to the negligence or intentional acts only of USACE or any of its employees.

10. Taxes, No Liens. Grantor, its successors and assigns shall pay before delinquency all taxes, assessments, fees, and charges of whatever description levied on or assessed against the Easement Area by competent authority, including any taxes imposed upon, or incurred as a result of, this Conservation Easement, and shall furnish Grantee and USACE with satisfactory evidence of payment upon request. Grantor, its successors and assigns shall keep Grantee's interest in the Easement Area free from any liens.

11. Condemnation. The Purposes of the Conservation Easement is presumed to be the best and most necessary public use as defined in Arizona Revised Statute Section 12-1122 notwithstanding. Nevertheless, if the Easement Area is taken, in whole or in part, by exercise of the power of eminent domain, Grantor and Grantee shall be entitled to compensation in accordance with applicable law.

12. Transfers of Conservation Easement or Easement Area.

(a) Conservation Easement. This Conservation Easement may be assigned or transferred by Grantee upon written approval of the Signatory Agencies, which approval shall not be unreasonably withheld or delayed, but Grantee shall give Grantor and the Signatory Agencies at least sixty (60) days prior written notice of the proposed assignment or transfer. Grantee may assign or transfer its rights under this Conservation Easement only to an entity or organization: (i) authorized to acquire and hold conservation easements pursuant to Arizona Revised Statute Section 33-271 (and any successor or other provision(s) then applicable), or the laws of the United States; and (ii) otherwise reasonably acceptable to the Signatory Agencies. Grantee shall require the assignee to record the assignment in the county where the Easement Area is located. The failure of Grantee to perform any act provided in this section shall not impair the validity of this Conservation Easement or limit its enforcement in any way. Any transfer under this section is subject to the requirements of Section 13.

(b) Easement Area. Grantor agrees to incorporate the terms of this Conservation Easement by reference in any deed or other legal instrument by which Grantor divests itself of any interest in all or any portion of the Easement Area, including, without limitation, a leasehold interest. Grantor agrees that the deed or other legal instrument shall also incorporate by reference the ILFEI, the Development Plan, the Management Plan, and any amendment(s) to those documents. Grantor further agrees to give written notice to Grantee and the Signatory Agencies of the intent to transfer any interest at least sixty (60) days prior to the date of such transfer. Grantee or the Signatory Agencies shall have the right to prevent any transfers in which prospective subsequent claimants or

transferees are not given notice of the terms, covenants, conditions and restrictions of this Conservation Easement (including the exhibits and documents incorporated by reference in it). The failure of Grantor to perform any act provided in this section shall not impair the validity of this Conservation Easement or limit its enforceability in any way. Any transfer under this section is subject to the requirements of Section 13.

13. Merger. The doctrine of merger shall not operate to extinguish this Conservation Easement if the Conservation Easement and the Easement Area become vested in the same party. If, despite this intent, the doctrine of merger applies to extinguish the Conservation Easement then, unless Grantor, Grantee, and the Signatory Agencies otherwise agree in writing, a replacement conservation easement containing the same protections embodied in this Conservation Easement shall be recorded against the Easement Area.

14. Additional Interests. Grantor shall not grant any additional easements, rights of way or other interests in the Easement Area (other than a security interest that is expressly subordinated to this Conservation Easement), nor shall Grantor grant, transfer, abandon or relinquish (each a “**Transfer**”) any mineral, air, or water right or any water associated with the Easement Area, without first obtaining the written consent of Grantee and the Signatory Agencies. Such consent may be withheld if Grantee or the Signatory Agencies determine(s) that the proposed interest or Transfer is inconsistent with the Purposes of this Conservation Easement or will impair or interfere with the Conservation Values of the Easement Area. This Section 14 shall not limit the provisions of Section 2(d) or 3(p), nor prohibit transfer of a fee or leasehold interest in the Easement Area that is subject to this Conservation Easement and complies with Section 12. Grantor shall provide a copy of any recorded or unrecorded grant or Transfer document to the Grantee and Signatory Agencies.

15. Notices. Any notice, demand, request, consent, approval, or other communication that Grantor or Grantee desires or is required to give to the other shall be in writing, with a copy to each of the Signatory Agencies, and served personally or sent by recognized overnight courier that guarantees next-day delivery or by first class United States mail, postage fully prepaid, addressed as follows:

To Grantor:

To Grantee:

With a copy to:

District Counsel
U.S. Army Corps of Engineers

Los Angeles District
915 Wilshire Boulevard, Room 1535
Los Angeles, California 90017-3401

Regulatory Division
U.S. Army Corps of Engineers
Los Angeles District, Arizona Office
3636 North Central Avenue
Phoenix, AZ 85012

United States Environmental Protection Agency
Region IX, WTR-2-4
75 Hawthorne Street
San Francisco, CA 94105

Wildlife Management Division
Arizona Game and Fish Department
5000 W. Carefree Hwy
Phoenix, AZ 85086-5000

Arizona Department of Environmental Quality
Mailstop 5415A-1
1110 W. Washington
Phoenix, AZ 85007

Pima County
Office of Conservation Science and Environmental Policy
201 N. Stone Ave, 6th Floor
Tucson, AZ 85701
U.S. Fish and Wildlife Service
Arizona Ecological Services Field Office
2321 W. Royal Palm Road, Suite 103
Phoenix, AZ 85021

or to such other address a Party or a Signatory Agency shall designate by written notice to Grantor, Grantee and the Signatory Agencies. Notice shall be deemed effective upon delivery in the case of personal delivery or delivery by overnight courier or, in the case of delivery by first class mail, three (3) days after deposit into the United States mail.

The Parties agree to accept facsimile signed documents and agree to rely upon such documents as if they bore original signatures. Each party agrees to provide to the other parties, within

seventy-two (72) hours after transmission of such a facsimile, the original documents that bear the original signatures.

16. Amendment. This Conservation Easement may be amended only by mutual written agreement of Grantor and Grantee and written approval of the USACE, which approval shall not be unreasonably withheld or delayed. Any such amendment shall be consistent with the Purposes of this Conservation Easement and Arizona law governing conservation easements, and shall not affect its perpetual duration. Any such amendment shall be recorded in the official records of the county in which the Easement Area is located, and Grantee shall promptly provide a conformed copy of the recorded amendment to the Grantor and the Signatory Agencies.

17. Recordation. Grantor shall promptly record this instrument in the official records of Pima County, Arizona and immediately notify the Grantee and USACE through the mailing of a conformed copy of the recorded easement. Grantee may re-record this Conservation Easement at any time as Grantee deems necessary to preserve its rights in this Conservation Easement.

18. Estoppel Certificate. Upon request, Grantee shall within fifteen (15) days execute and deliver to Grantor, its successors and assigns any document, including an estoppel certificate, which certifies compliance with any obligation of Grantor, its successors and assigns contained in this Conservation Easement and otherwise evidences the status of this Conservation Easement as may be requested by Grantor, its successors and assigns.

19. General Provisions.

(a) Controlling Law. The laws of the United States and the State of Arizona, disregarding the conflicts of law principles of such state, shall govern the interpretation and performance of this Conservation Easement.

(b) Liberal Construction. Any general rule of construction to the contrary notwithstanding, this Conservation Easement shall be liberally construed in favor of and to effect the Purposes of this Conservation Easement and the policy and purpose set forth in Arizona Revised Statute 33-271, et seq. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the Purposes of this Conservation Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

(c) Change of Conditions. If one or more of the Purposes of this Conservation Easement may no longer be accomplished, such failure of purpose shall not be deemed sufficient cause to terminate the entire Conservation Easement as long as any other purpose of the Conservation Easement may be accomplished. In addition, the inability to carry on any or all of the permitted uses, or the unprofitability of doing so, shall not impair the validity of this Conservation Easement or be considered grounds for its termination or extinguishment. Grantor and Grantee agree that global warming and climate change-caused effects shall not be a basis for termination of this Conservation Easement.

- (d) Severability. If a court of competent jurisdiction voids or invalidates on its face any provision of this Conservation Easement, such action shall not affect the remainder of this Conservation Easement. If a court of competent jurisdiction voids or invalidates the application of any provision of this Conservation Easement to a person or circumstance, such action shall not affect the application of the provision to other persons or circumstances.
- (e) Entire Agreement. This document (including its exhibits and ILFEI, the Development Plan, and the Management Plan incorporated by reference in this document) sets forth the entire agreement of the Parties and the Signatory Agencies with respect to the Conservation Easement and supersedes all prior discussions, negotiations, understandings, or agreements of the parties relating to the Conservation Easement. No alteration or variation of this Conservation Easement shall be valid or binding unless contained in an amendment in accordance with Section 15.
- (f) No Forfeiture. Nothing contained herein will result in a forfeiture or reversion of Grantor's title in any respect.
- (g) Successors and Assigns. The covenants, terms, conditions, and restrictions of this Conservation Easement shall be binding upon, and inure to the benefit of, the parties hereto and their respective personal representatives, heirs, successors, and assigns and shall constitute a servitude running in perpetuity with the Easement Area. The covenants hereunder benefiting Grantee shall also benefit the USACE as a third party beneficiary.
- (h) Termination of Rights and Obligations. Except as otherwise expressly set forth in this Conservation Easement and provided the transfer was consistent with the terms of this Conservation Easement, a party's rights and obligations under this Conservation Easement shall terminate upon transfer of the party's interest in the Conservation Easement or Property (respectively), except that liability for acts or omissions occurring prior to transfer shall survive transfer.
- (i) 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 its construction or interpretation.
- (j) Counterparts. The parties may execute this instrument in two or more counterparts, which shall, in the aggregate, be signed by all 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.

(k) Exhibits. All Exhibits referred to in this Conservation Easement are attached and incorporated herein by reference.

(l) No Hazardous Materials Liability.

- (1) Grantor represents and warrants that there has been no release or threatened release of Hazardous Materials (defined below) or underground storage tanks existing, generated, treated, stored, used, released, disposed of, deposited or abandoned in, on, under, or from the Easement Area, or transported to or from or affecting the Easement Area.
- (2) Without limiting the obligations of Grantor under Section 9(b), Grantor hereby releases and agrees to indemnify, protect and hold harmless the Grantee Indemnified Parties (defined in Section 9(b)(1)) from and against any and all Claims (defined in Section 9(b)(1)) arising from or connected with any Hazardous Materials or underground storage tanks present, alleged to be present, released in, from or about, or otherwise associated with the Easement Area at any time, except any Hazardous Materials placed, disposed or released by Grantee or any of its employees. This release and indemnification includes, without limitation, Claims for (i) injury to or death of any person or physical damage to any property; and (ii) the violation or alleged violation of, or other failure to comply with, any Environmental Laws (defined below). If any action or proceeding is brought against any of the Grantee's Indemnified Parties by reason of any such Claim, Grantor shall, at the election of and upon written notice from the applicable Grantee Indemnified Party, defend such action or proceeding by counsel reasonably acceptable to the Grantee Indemnified Party or reimburse Grantee for all charges incurred in defending the action or proceeding.
- (3) Without limiting the obligations of Grantor under Section 9(b)(2) herein, Grantor hereby releases and agrees to indemnify, protect and hold harmless the Third Party Beneficiary Indemnified Parties (defined in Section 9(b)(2)) against any and all Claims (defined in Section 9(b)(1)) arising from or connected with any Hazardous Materials present, alleged to be present, or otherwise associated with the Easement Area at any time, except that this release and indemnification shall be inapplicable to the Third Party Beneficiary Indemnified Parties with respect to any Hazardous Materials placed, disposed or released by third party beneficiaries, their employees or agents. This release and indemnification includes, without limitation, Claims for (i) injury to or death of any person or physical damage to any property; and (ii) the violation or alleged violation of, or other failure to comply with, any Environmental Laws (defined below).
- (4) Despite any contrary provision of this Conservation Easement, the parties do not intend this Conservation Easement to be, and this Conservation Easement shall not

be, construed such that it creates in or gives Grantee and USACE any of the following:

- (i) The obligations or liabilities of an “owner” or “operator,” as those terms are defined and used in Environmental Laws (defined below), including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Section 9601 et seq.; hereinafter, “**CERCLA**”); or
- (ii) The obligations or liabilities of a person described in 42 U.S.C. Section 9607(a)(3) or (4); or
- (iii) The obligations of a responsible person under any applicable Environmental Laws; or
- (iv) The right to investigate and remediate any Hazardous Materials associated with the Property; or
- (v) Any control over Grantor’s ability to investigate, remove, remediate or otherwise clean up any Hazardous Materials associated with the Easement Area.

The term “**Hazardous Materials**” includes, without limitation, (a) material that is flammable, explosive or radioactive; (b) petroleum products, including by-products and fractions thereof; and (c) hazardous materials, hazardous wastes, hazardous or toxic substances, or related materials defined in CERCLA; Resource Conservation and Recovery Act (42 U.S.C. 6901 et seq.); the Hazardous Materials Transportation Act (49 U.S.C. Section 5101 et seq.); the Arizona equivalents (18 AAC Chapter 16 and Chapter 8; 17 AAC Chapter 5) and in the regulations adopted and publications promulgated pursuant to them, or any other applicable federal, state or local laws, ordinances, rules, regulations or orders now in effect or enacted after the date of this Conservation Easement.

The term “**Environmental Laws**” includes, without limitation, any federal, state, local or administrative agency statute, ordinance, rule, regulation, order or requirement relating to pollution, protection of human health or safety, the environment or Hazardous Materials. Grantor represents, warrants and covenants to Grantee and USACE that Grantor’s activities upon and use of the Easement Area will comply with all Environmental Laws.

- (m) Extinguishment. If circumstances arise in the future that render the preservation of Conservation Values, or other Purposes of this Conservation Easement impossible to

accomplish, this Conservation Easement can only be terminated or extinguished, in whole or in part, by judicial proceedings in a court of competent jurisdiction.

- (n) Warranty. Grantor represents and warrants that Grantor is the sole owner of the Easement Area. Grantor also represents and warrants that, except as specifically disclosed to and approved by the Grantee and USACE pursuant to the Property Assessment dated _____ [***choose applicable statement***: there are no outstanding mortgages, liens, encumbrances or other interests in the Easement Area (including, without limitation, mineral interests) which may conflict or are inconsistent with this Conservation Easement or the holder of any outstanding mortgage, lien, encumbrance or other interest in the Easement Area (including, without limitation, mineral interest) which conflicts or is inconsistent with this Conservation Easement has expressly subordinated such interest to this Conservation Easement by a recorded Subordination Agreement approved by Grantee and the Signatory Agencies].
- (p) Third-Party Beneficiary. Grantor and Grantee acknowledge that the USACE is a third party beneficiary of this Conservation Easement with the right of access to the Easement Area and the right to enforce all of the obligations of Grantor and Grantee under this Conservation Easement.
- (q) Funding. Funding for the perpetual management, maintenance and monitoring of the Easement Area is specified in and governed by the ILFEI and the approved ILF Project budget in the Development Plan.

IN WITNESS WHEREOF Grantor and Grantee have executed this Conservation Easement the day and year first above written and have agreed to be bound by the terms and provisions hereof.

GRANTOR: [insert name]

By: _____
Name: _____
Title: _____

[attach notary acknowledgement]

CERTIFICATE OF ACCEPTANCE

This is to certify that the Conservation Easement by _____, a ____ corporation, dated _____, 20____, to _____, is accepted by the undersigned officers on behalf of Grantee.

GRANTEE: [insert name]

By: _____

Name: _____

Title: _____

[attach notary acknowledgement]

Exhibit A

Legal Description of Property

[See attached]

Exhibit B

Legal Description and Depiction of Easement Area

[See Attached]

Exhibit C

Title Report

[See Attached]

Exhibit D

Map of the major, distinct natural features on the Easement Area

[See Attached]