

When recorded Mail To:  
The Nature Conservancy  
Western Resource Office  
Attn: Legal Department  
2424 Spruce Street, Suite 100  
Boulder, Colorado 80302

## RESERVATION OF CONSERVATION EASEMENT

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This Reservation of Conservation Easement (Conservation Easement or Easement) is hereby reserved by The Nature Conservancy, a District of Columbia non-profit corporation (Holder), with the agreement of Maricopa County, a political subdivision of the State of Arizona (Landowner) (collectively referred to as “Parties” or individual as “Party”). This Conservation Easement constitutes an integral part of the Gift Deed with Reservation of Conservation Easement (Deed), to which it is attached, through which Holder, is conveying the Property described in Exhibit D to the Deed, located in Maricopa County, Arizona, to Landowner. By this instrument, Holder conveys the Property to Landowner subject to the terms and conditions of the Conservation Easement, and Landowner accepts the Property subject to the terms and conditions of the Conservation Easement.

Exhibits to this Conservation Easement include the following:

- Exhibit A – Property Description
- Exhibit A-1 – Building Envelope Description
- Exhibit A-2 – Map of the Property
- Exhibit B – Water Rights and Wells

### RECITALS

- A. **PROPERTY.** Landowner is the owner in fee simple of the property legally described in **Exhibit A** and depicted in **Exhibit A-2** which consists of approximately 77 acres located in Maricopa County, Arizona (the **Property**). For the purposes of this Conservation Easement the Property includes any and all water and water rights beneficially used or conditionally decreed for use on the land described in **Exhibit A** that are owned by the Landowner, and all ditches, headgates, springs, reservoirs, water allotments, water shares and stock certificates, contracts, units, and wells, together with any associated easements and rights of way (the “Water Rights”). The Water Rights include surface water rights and groundwater rights of any nature, including, but not limited to, those water rights or interests specifically described on **Exhibit B** attached hereto.
- B. **MISSION.** The mission of The Nature Conservancy is to conserve the lands and waters on which all life depends.
- C. **QUALIFIED ORGANIZATION.** Holder is a “qualified organization” as that term is defined in 26 U.S.C. § 170(h)(3) and applicable regulations.
- D. **AUTHORIZING STATUTE.** The State of Arizona has authorized the creation of conservation easements pursuant to A.R.S. Sections 33-271 to 33-276, and Landowner and Holder wish to avail themselves of the provisions of that law without intending that the existence of this Conservation Easement be dependent on the continuing existence of such law.

NOW, THEREFORE, simultaneously with the conveyance of the Property by the Holder to the Landowner, for and in consideration of the facts recited above and of the mutual covenants, terms, conditions and restrictions contained herein, and the sum of Ten Dollars (\$10.00) cash in hand paid, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Holder hereby reserves and retains unto itself a Conservation Easement in gross in perpetuity consisting of the rights and restrictions enumerated below, over and across the Property. Landowner agrees, for itself and for any and all heirs, successors, and assigns of Landowner's interest in the Property that this Easement is hereby reserved and retained by Holder, for the benefit of Holder, its successors and assigns:

1. **PURPOSE.** The purpose of this Conservation Easement is to preserve and protect in perpetuity the Conservation Values (defined below in this **Section 1**) (the Conservation Purpose),

The Property is a natural area that consists of "a relatively natural habitat of fish, wildlife, or plants, or similar ecosystem," as that phrase is used in 26 U.S.C. § 170(h)(4)(A)(ii) and applicable regulations. Specifically, the Property is habitat for one of the best remaining occurrences of Fremont cottonwood – Goodding willow riparian forest in the Sonoran desert. This forest supports the Endangered southwestern willow flycatcher, and Endangered western yellow-billed cuckoo, among a community of at least 291 resident and migratory bird species. The riverine habitat of the Hassayampa River currently supports native desert fish. In addition to the Hassayampa's riparian resources, the currently unfragmented desert landscape that surrounds the Preserve represents an intact desert upland to river corridor, a rare feature in the urbanizing Sonoran desert. This landscape supports a full complement of desert fauna and flora associated with the Arizona upland subdivision of the Sonoran desert. Combined with the river corridor, this landscape provides an open space buffer between the developing urban areas of Phoenix and Wickenburg.

The attributes of the Property described in this section and in the Easement Documentation Report referenced below are collectively hereinafter referred to in this Conservation Easement as the Conservation Values.

2. **EASEMENT DOCUMENTATION REPORT.** The parties acknowledge that an Easement Documentation Report (Report) of the Property has been prepared and that the Report has been approved in writing by Holder and Landowner, and the Report is an integral part of this Conservation Easement and is incorporated herein by reference. A copy of the Report is on file with Landowner and Holder at their respective addresses for notices set forth below. The Holder agrees to provide a copy of the Report to the Landowner's successors in title upon written request. The parties agree that the Report contains an accurate representation of the natural resources and physical condition of the Property at the time of this reservation, of the current and historical uses of the Property, and a more detailed description of the Conservation Values. The Report also documents the nature of historic use of the Water Rights on the Property. In case of any conflict or inconsistency between the terms of the Conservation Easement and the Report, the terms of this Conservation Easement shall prevail.

3. **PROPERTY USES.** The following uses and practices by Landowner are not an exhaustive recital of uses and practices on the Property. Certain of these uses and practices are identified as being subject to specified conditions or to the requirement of and procedures for prior approval by Holder, and procedures for such prior approval are provided below. Except as prohibited or otherwise limited by this **Section 3**, Landowner

reserves the right to use and enjoy the Property in any manner which is consistent with the Conservation Purposes of this Conservation Easement.

3.1. Construction of Buildings and Structures. Construction or placement of any Buildings or Structures as those terms are defined in **Section 32** below is prohibited except as follows:

(a) The maintenance, repair, remodel, relocation or, in the event of its destruction, reconstruction or replacement of existing Buildings and Structures as documented in the Easement Documentation Report is permitted: provided that (i) in the event Landowner desires to replace an existing Building or Structure, said existing Building or Structure is demolished and removed within six (6) months of the completion of construction of the replacement Building or Structure, and (ii) all replacement or relocated Buildings and Structures must be built within the building area, as described in **Exhibit A-1** which description may consist of either a surveyed legal description or GPS points and shown in the Report (the Building Envelope). Holder and Landowner acknowledge that a Visitor Center, guest house with covered patio, conference building, two garage structures, three sheds, a corral, and picnic area (the Existing Buildings and Structures) are located in the Building Envelope at the time of the creation of this Conservation Easement. Descriptions and photographs of Existing Buildings and Structures are in the Report. Landowner shall have the right to construct, maintain, repair, remodel, relocate or in the event of its destruction, reconstruct or replace new Buildings or Structures in the Building Envelope with the prior written approval of Holder or as agreed to in the Master Plan defined in **Section 32** below.

(b) Notwithstanding the above, Landowner reserves the right to construct, maintain, repair, remodel, relocate or in the event of its destruction, reconstruct or replace new Structures outside of the Building Envelope that support the recreational use of the Property and are reasonably necessary to the use of the Property as a public park with the prior written approval of Holder or as agreed to in the Master Plan.

(c) Establishment, creation and construction of utility systems consistent with the Conservation Values for use on the Property, including but not limited to, solar power generation and distribution systems, is permitted, so long as the energy produced by such utility systems is for use in conjunction with those activities permitted by this Conservation Easement and is not for commercial purposes, provided however, that any solar energy generated on the Property in accordance with this paragraph that is in excess of Landowner's consumption may be sold, conveyed, or credited to a provider of retail electric services to the extent permitted by Arizona law. Installation and use of any wind driven devices, including but limited to wind turbines, on the Property are prohibited except with the prior written approval of Holder or as agreed to in the Master Plan. Nothing in this provision shall be construed as permitting the construction or establishment of a wind farm or commercial solar energy production facility. Any disturbed areas shall be revegetated and restored to a natural condition with native vegetation as soon as is practicably possible after completion of any utility construction permitted by this Conservation Easement.

(d) The granting of easements or rights-of-way for power lines, gas lines, sewer lines, water lines, telecommunications towers, and wind farms is prohibited. Notwithstanding this prohibition Landowner may grant utility easements provided that Holder determines that such utility easements are not inconsistent with the Conservation Values and the purposes of this Conservation Easement.

(e) The temporary parking of vehicular campers and motorized vehicles owned by park visitors shall be parked in the designated parking areas within the Building Envelope. There shall be no parking of motorized vehicles on the Property outside of the Building Envelope.

(f) Notwithstanding anything herein to the contrary, for the purposes of this **Section 3.1.**, the term “Structure(s)” shall not be deemed to include water related structures.

3.2 Subdivision. The legal or de facto division, subdivision, or partitioning of the Property is prohibited. Notwithstanding the fact that, as of the date of this Conservation Easement, the Property might be comprised of separate legal parcels, the terms and conditions of this Conservation Easement shall apply to the Property as a whole, and the Property shall not be sold, transferred, or otherwise conveyed except as a whole, intact, single piece of real estate; it being expressly agreed that neither the Landowner nor the Landowner’s personal representative, heirs, successors, or assigns shall sell, transfer, or otherwise convey any portion of the Property that constitutes less than the entire Property. Landowner may reconfigure and/or combine the assessor parcels into one assessor parcel. Notwithstanding the foregoing, the Landowner may enter into boundary line agreements to resolve bona fide boundary disputes with the prior written consent of Holder, which shall not be unreasonably withheld, provided that the total acreage of land protected under this Conservation Easement shall not materially be reduced thereby. Regardless of anything to the contrary in the foregoing, ownership of the Property may be held in the form of undivided interests as tenants in common, whether by choice or by operation of any applicable laws, but no owner of an undivided interest in the Property shall have the right of exclusive occupancy or exclusive use of any separate portion of the Property, or any right to have the Property partitioned in kind, whether pursuant to Arizona statute or otherwise.

3.3 Commercial and/or Industrial Activities. Commercial and/or industrial activities are prohibited on the Property unless (i) allowed by other provisions of this Conservation Easement, (ii) has been agreed to in the Master Plan, or (iii) Holder has determined that the activity does not materially affect the Conservation Purpose of this Conservation Easement and has approved the activity in writing pursuant to **Paragraph 4.2** of this Conservation Easement.

No access shall be granted or retained across or upon the Property if that access is used in conjunction with any commercial or industrial activities (except for those types of activities permitted as set forth immediately above) unless Holder has given prior written approval in its sole discretion.

3.4 Feedlots. Establishment and operation of a livestock Feedlot (which shall be defined for purposes of this Conservation Easement as a permanently constructed confined area within which the land is not grazed or cropped annually, and which is used

and maintained for purposes of engaging in the business of the reception and feeding of livestock for hire) is prohibited.

3.5 Recreational and Educational Activities. Recreational and educational uses (both non-commercial and commercial) including, but not limited to, hiking, wildlife observation, nature photography, picnicking, bicycling, other traditional non-motorized recreational activities and similar low-impact recreational activities, except water activities, are permitted on the Property, provided that such activities (a) require no infrastructure, surface alteration (including trail development), development, or other disturbance of or on the Property, except as permitted with the prior written approval of Holder or as agreed to in the Master Plan; (b) do not impair the Conservation Values of the Property as determined by Holder in its reasonable discretion or as agreed to in the Master Plan; (c) are consistent with the Conservation Purpose of the Easement; and (d) do not involve capture or collecting of wildlife. Recreational or educational activities that require infrastructure, surface alteration, or development of or on the Property, or negatively affect, as determined by Holder in its reasonable discretion or as agreed to in the Master Plan, the Conservation Values of the Property, and/or are inconsistent with the Conservation Purpose of the Conservation Easement are not permitted on the Property. Water activities including, but not limited to, boating of any kind, tubing, swimming, wading, fishing, collecting of native fish, frogs or other aquatic or amphibious native species are not allowed on the Property. Hunting is not permitted on the Property without the prior written approval of the Holder or as agreed to in the Master Plan. No off-road use of vehicles for the recreational or education activities described in this Paragraph is allowed on the Property.

3.6 Roads. Construction, maintenance and improvement of roads shall be prohibited except as follows:

(a) Maintenance and improvement of existing Improved Roads, as documented in the Report, are permitted provided that (i) each road shall have a permeable surface, (ii) no improvement shall widen the existing roads beyond thirty (30) feet or the width necessary to allow emergency vehicles to pass, whichever is greater, and (iii) no road shall be paved or oiled or have calcium carbonate applied or otherwise be maintained or improved with chemical coatings or impervious materials, including but not limited to, asphalt or concrete without the prior written approval of the Holder or as agreed to in the Master Plan.

(b) Construction, maintenance and improvement of new Improved Roads to access any new Buildings or Structures, or realignment of Improved Roads is permitted provided that (i) each such new or realigned road shall not exceed thirty (30) feet or the width necessary to allow emergency vehicles to pass, whichever is greater, (ii) shall have a permeable surface, (iii) any improvement shall be designed so as to minimize erosion and (iv) shall not be paved or oiled or have calcium carbonate applied or otherwise be maintained or improved with non-organic chemical coatings or impervious materials, including but not limited to, asphalt or concrete without the prior written approval of the Holder or as agreed to in the Master Plan. Consideration for organic plant based palliative may be considered for dust control.

(c) Unimproved Roads are permitted only as minimally necessary to access Structures and to conduct activities expressly permitted in this Easement.

(d) In the event of unforeseen circumstances or exceptional situations, the Holder may permit, upon mutual agreement of Landowner and the Holder, the construction, maintenance and improvement of new Improved Roads and creation of new Unimproved Roads for uses other than those identified herein.

3.7 Motorized Vehicles. Off road vehicle courses for, all-terrain vehicles, motorcycles, or other motorized vehicles are prohibited, and use of, all-terrain vehicles, motorcycles, or other motorized vehicles off of roads permitted by the terms of this Conservation Easement, is prohibited except as follows

(a) Regular use of motorized vehicles for property maintenance and monitoring purposes is permitted, provided that such use does not materially diminish or impair the Conservation Values of the Property as determined by Holder in its reasonable discretion.

3.8 Hazardous Materials. The dumping or other disposal of Hazardous Materials on the Property is prohibited. The storage of Hazardous Materials on the Property, other than in the normal course of maintenance of the Property, is also prohibited.

Notwithstanding anything in this Conservation Easement to the contrary, this prohibition does not make Holder an owner of the Property, nor does it permit Holder to control any use of the Property by the Landowner which may result in the storage, dumping or disposal of Hazardous Materials; provided, however, that Holder may bring an action to protect the Conservation Values of the Property, as described in this Conservation Easement. Nothing in this Conservation Easement shall be construed as giving rise to any right or ability in Holder, nor shall Holder have any right or ability, to exercise physical or managerial control over the day-to-day operations of 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 1980, as amended (**CERCLA**). This prohibition does not impose liability on Holder nor shall Holder be construed as having liability as a "responsible party" under CERCLA or similar federal or state statutes.

3.9 Trash. Dumping or other disposal on the Property of non-compostable refuse, wildlife-attracting materials, or any other material which could reasonably be considered debris is prohibited.

3.10 Animal Trapping. Animal trapping is prohibited except as follows:

(a) Animal trapping is permitted (i) for control of predatory animals which demonstrably have caused damage to property or injury to humans or domestic animals; (ii) for control of animals which present an immediate risk to person, real or personal property or livestock; (iii) for animals when conducted as an official restoration or research effort by state, federal or non-governmental conservation organizations and with prior written approval by Holder or as agreed to in the Master Plan; or (iv) for removal of non-native species with prior written approval by Holder or as agreed to in the Master Plan.

Any trapping must be in compliance with state, federal and local laws. Any trapping methods employed must be selective for the target species, be administered as humanely as is possible, and be conducted only so long as needed to protect persons or private property from damage as indicated above.

3.11 Fences. Maintenance, removal, repair, and, if destroyed, reconstruction of existing fencing, as documented in the Report, and the construction of new fences is permitted; provided that new or reconstructed boundary or pasture-division fences shall not unduly restrict or exclude wildlife use of the Property.

3.12 Biocides, Biological Agents, and Fertilizers. Application of herbicides, pesticides, fungicides, biocides, defoliant, chemical fertilizers, or other chemicals is prohibited on the Property except as follows:

(a) Biocides. Herbicides, pesticides, fungicides, biocides and defoliant (collectively, "Biocides") may be used to manage and/or control county, state or federally-designated noxious weeds, invasive plants and/or invasive woody species, state approved list of invasive alien plant species or animals or, if such list ceases to be published, a similar list promulgated by the state or the federal government, which the Holder shall notify, within thirty (30) days of such list being released to the public, the Landowner is the list that shall be binding on the Landowner for purposes of this Section, non-native plants, pathogens, or pests on the Property, for forestry, landscaping, and habitat preservation uses using accepted habitat management and/or forestry practices, provided the use of such Biocides is designed to minimize the impact on the Conservation Values of the Property. Any Biocide use as described in this Paragraph shall be: (i) in compliance with all applicable federal, state, and local statutes and regulations, (ii) in those amounts and with a frequency of application that constitutes the minimum necessary for control; (iii) applied consistent with label instructions, and (iv) consistent with the Conservation Values as determined by Holder. Notwithstanding the foregoing, there shall be no indiscriminate broadcast spraying of Biocides. Without the prior written approval of Holder, Biocides may be used by targeted applications (including by gun or boom nozzles) only. Broadcast spraying of Biocides, including aerial applications, may be permitted with prior written approval by the Holder provided that, at a minimum, the following conditions are met: (a) targeted treatment is not practical because of the severity of the infestation or infection; (b) timing of application is scheduled to minimize damage to non-target species; and (c) type of Biocide used has the least impact to non-target species while still being effective in controlling target species or pathogens. The Holder shall have sole and absolute discretion in granting or denying broadcast spraying of Biocides.

(b) Biological Agents. Use of biological weed and insect control agents is permitted, subject to prior written approval of Holder or as agreed to in the Master Plan.

(c) Fertilizers. The use of chemical and/or organic fertilizers is permitted with the prior written approval of Holder or as agreed to in the **Master Plan**, provided that use of fertilizers, including, but not limited to, the amount, frequency, and manner of application, shall be in accordance with the labeling

instructions and all applicable laws and regulations, and that fertilizer use is not intended to injure or destroy the naturally occurring ecosystem, beyond the effects associated with the intended use of such fertilizers, as used in reasonable farming practices.

3.13 Conversion of Native Vegetation. Conversion of native vegetation to exotic cover species or the introduction of non-native plant species; farming, plowing or any type of cultivation is prohibited except as follows:

- (a) Gardening for landscaping is permitted within the Building Envelope;
- (b) Pursuant to the terms and conditions of a Restoration/Enhancement/Research Plan (as that term is defined in **Paragraph 3.18** below), plowing or other cultivation is permitted where it may be necessary for the restoration or enhancement of the Conservation Values in the event of their degradation or destruction or for a scientific, educational and/or historic project.

3.14 Introduction/Release of Nonnative Animal Species. Introduction or release of nonnative animal species is prohibited.

3.15 Cutting of Native Vegetation. Cutting, removing, or destruction of native vegetation is prohibited except as follows:

- (a) The selective harvesting of timber is permitted for the following purposes: controlling forest disease; protecting persons or property from the hazards of falling trees or branches or wildfire; constructing the Buildings, Structures, and roads authorized in this Conservation Easement; maintaining existing fields and open pastures, as documented in the Report; and, subject to Holder's prior written approval, enhancing wildlife habitat pursuant to **Paragraph 3.18** below. These conditions apply to both living and standing dead trees. Subject to Holder's prior written approval, in the event that Landowner desires to sell wood products as a result of selective harvesting of timber permitted herein, such activity shall not be deemed a commercial activity prohibited by this Conservation Easement.
- (b) Cutting, removing, burning, or destruction of native vegetation is permitted to the extent necessary to allow for uses and activities permitted under this Conservation Easement such as permitted construction activities, and restoration/enhancement/research activities permitted under **Paragraph 3.18**.

3.16 Mining. Filling, excavating, dredging, mining, drilling, and the exploration for or extraction of minerals, hydrocarbons, soils, sand, gravel, rock, or other materials on or below the surface of the Property is prohibited, except as follows:

- (a) Soils, sand, gravel, rock or other materials on or below the surface of the Property may be moved or removed as may be necessary and permissible for the purposes specifically permitted in this Easement such as the construction and maintenance of Buildings, Structures or roads so long as (i) the methods used will have a limited and localized impact on the Property, and will not materially impair or diminish the Conservation Values of the Property and the purposes of this Easement as determined by Holder in its reasonable discretion, and (ii) the

area from which removal occurs does not exceed one-half (1/2) acre in size at any given time. Any area which is disturbed by extraction of soils, sand, gravel, rock or other materials for use elsewhere on the Property must be revegetated and restored to a natural condition with native vegetation promptly after completion of extraction.

3.17 Changing the Topography of the Property. Changing the topography of the Property by placing on it or removing from it any soil, dredging spoils, land fill, or other material, is prohibited except as follows:

- (a) Such activity is permitted as is necessary to conduct activities permitted by this Conservation Easement and/or restoration/enhancement/research activities permitted under **Paragraph 3.18.**
- (b) Such activity is permitted pursuant to **Paragraph 3.16(a).**

3.18 Restoration/Enhancement/Research. Landowner shall have the right to propose activities and projects which prevent the degradation of, restore, and/or enhance and improve the quality of the watershed, wildlife habitat, and ecological health of the Property, including but not limited to soil erosion prevention and/or restoration activities, as well as the filing and creation of new water rights and/or the alteration or change of existing Water Rights in furtherance thereof. Landowner shall also have the right to propose research, restoration, and enhancement activities associated with scientific, educational, and/or historic projects. Landowner's activities or projects under this **Paragraph 3.18** shall be undertaken only (a) if such activities or projects have been agreed to in the Master Plan, or (b) after creation of a comprehensive site specific plan for restoration/enhancement/research (the **Restoration/Enhancement/Research Plan**), which has been submitted to and approved by Holder in its sole and absolute discretion. Subject to Holder's prior written approval or as agreed to in the Master Plan, in the event the Landowner desires to sell byproducts, including but not limited to timber and fill, as a result of restoration activities permitted herein, such activity shall not be deemed a commercial activity prohibited by this Conservation Easement.

Notwithstanding the foregoing, should the Landowner propose any activities or projects relating to fire, including prescribed burns and/or the cutting, removing, burning or destruction of native vegetation for fire mitigation purposes, a Prescribed Burn Plan or Fire Mitigation Plan shall be prepared by the Landowner and Holder prior to the commencement of any such activity.

3.19 Water Courses, Wetlands and Groundwater. Any new manipulation, diversion, or other alteration of natural water courses, wetlands, or other natural bodies of water, any new practice that degrades or destabilizes their natural banks or shorelines, any new pumping of groundwater or subflow, or any other new development of water resources for diversion or use on the Property is prohibited except as follows:

- (a) The development, construction, use and maintenance of new exempt well(s) to provide domestic supply to buildings permitted herein, provided all new and existing wells are fit with a flowmeter to monitor annual water use for park operations.

(b) Landowner shall have the right to continue the current use of the Water Rights on the Property as described in the Report and to maintain, repair, and if destroyed, reconstruct any existing facilities as documented in the Report related to the Water Rights unless the Conservation Values of the Property are materially diminished or impaired as determined by Holder in its reasonable discretion.

(c) Pursuant to the terms and conditions of a Restoration/Enhancement/Research Plan (as that term is defined in **Paragraph 3.18** above), Landowner may engage in activities that prevent the degradation of, restore, and/or enhance and improve the quality of the watershed, including but not limited to filing and creation of new water rights and/or the alteration or change of existing Water Rights in furtherance thereof.

3.20 Water Rights. The Water Rights may never (a) be changed to or used for municipal, industrial, commercial uses, or other new uses, (b) be changed for use other than on the Property, (c) be sold, leased, encumbered separately from the Property or otherwise legally separated from the Property, or (d) have their points of diversion, or their type or place of use within the Property changed, except after a written determination by Holder in its sole judgment that such changes, sale, lease or encumbrance are in furtherance of a Restoration/Enhancement/Research Plan or do not materially diminish or impair the Conservation Values of the Property as determined by Holder in its reasonable discretion. No loss of any or all of the Water Rights through injury or abandonment, shall be considered a loss, severance or other transfer of the Water Rights from the Property for federal or state tax or other purposes.

3.21 Impairment of Conservation Values. Subject to the foregoing, any use of the Property that materially impairs the Conservation Values of the Property is prohibited.

#### **4. NOTICE AND APPROVAL REQUIREMENTS.**

4.1 Approval. When Holder's approval is required prior to Landowner engaging in any activity, Landowner's request for approval shall be in writing and contain detailed information regarding the proposed activity, including location, design, materials or equipment to be used, dates and duration, and any other relevant information. Such a request shall be delivered to Holder at least sixty (60) days prior to the anticipated start date of such activity. Holder agrees to use reasonable diligence to respond to the request within 60 days; provided, however, that approval shall not be deemed to have been given in the event of Holder's delay in response. The 60 days period shall not begin until such time as Holder has received adequate information from Landowner to evaluate the proposed activity. In the event that Holder requires additional information to evaluate the proposed activity, Holder shall request the information from Landowner as soon as practicable and in any case not later than 60 days after the receipt of the notice of the proposed activity. If Holder cannot approve or deny the request within 60 days following receipt of such request or receipt of adequate information, Holder shall, on or before the 60<sup>th</sup> day, provide Landowner with a list of reasons for the delay, along with an estimated timetable for its response, not to exceed 30 additional days unless Landowner agrees to further extension. Failure by the Holder to comply with the provisions of the foregoing sentence shall not be deemed approval of the requested activity. If Holder has failed to notify Landowner of its approval or denial of the Landowner's request on or before the 90<sup>th</sup> day following such request by Landowner, Landowner shall send written notification

**(Final Notice)** to Holder that Landowner has not received a response from Holder. If Holder then fails to send Landowner within 30 days of receipt of Landowner's Final Notice, such request shall be deemed to be approved. A decision by Holder to disapprove a proposed activity must be based upon Holder's determination that the proposed activity is inconsistent with the Conservation Purpose of the Easement and/or materially diminish or impair the Conservation Values of the Property. If in the Holder's judgment it is possible that the proposed activity can be modified to be consistent with the Easement, Holder's decision notice shall inform Landowner of such modification(s). Once modification is made to the satisfaction of Holder or Holder otherwise concurs with the matters set forth in Landowner's notice, the proposed activity may thereafter be conducted in a manner that is acceptable to Holder.

This section is only intended to request approval for activities which are expressly allowed in the Conservation Easement but are subject to Holder's approval or consent. It is not intended for any other purpose, including, without limitation, to request approval for activities that are expressly prohibited or activities for which an amendment of this Conservation Easement is needed.

5. **HOLDER'S RIGHTS.** To accomplish the Conservation Purpose, the following rights are granted to Holder (and Holder's agents, representatives and invitees) by this Conservation Easement:

5.1 **Right to Enforce.** The right to preserve and protect the Conservation Values of the Property and enforce the terms of this Conservation Easement.

5.2 **Right of Entry.** The right to enter the Property at reasonable times for the purposes of: (a) inspecting the Property to determine if there is compliance with the terms of this Conservation Easement; (b) obtaining evidence for the purpose of seeking judicial enforcement of this Conservation Easement; and (c) implementing activities (such as monitoring and research, signage, boundary marking, fencing, etc.) as agreed to in the Master Plan; provided, however, that the foregoing rights of Holder shall not relieve Landowner from any obligations to comply with the terms of this Conservation Easement or waive any of Holder's rights or remedies to enforce this Conservation Easement against any violation.

Holder agrees that entry will be done in a manner that will not interfere unreasonably with Landowner's permitted uses of the Property. Holder also agrees to provide thirty (30) days advance notice to Landowner prior to entering the Property, except in any case where immediate entry is necessary or desirable to prevent, terminate, or mitigate damage to, or the destruction of, the Conservation Values, or to prevent, terminate or mitigate a violation of the terms of this Conservation Easement. In the event Landowner elects to maintain gated, locked access to and through the Property, Landowner shall provide Holder with keys for all such locks, except keys to locked Buildings and Structures.

This right of entry shall include the right to access the Property, and adjacent property owned by the Holder, over roads owned by Landowner and any rights-of-way or other access ways now or hereafter available to Landowner for access to the Property.

**6. VIOLATION AND REMEDIES.**

6.1 Notice of Violation; Corrective Action. If Holder determines that a violation of the terms of this Conservation Easement has occurred, Holder shall give written notice to Landowner of such violation and demand corrective action sufficient to (a) cure the violation, and (b) where the violation involves injury to the Property resulting from any use or activity inconsistent with the Conservation Purpose, restore the portion of the Property so injured to its condition before the violation occurred, or to a condition otherwise acceptable to Holder, in accordance with a plan approved by the Holder. If Holder has justifiable cause to believe that a violation will occur, Holder shall give written notice to Landowner of such threatened violation. Landowner shall take no further actions regarding such threatened violation and Landowner and Holder shall meet to agree upon a course of action that prevents a violation of the Conservation Easement from such use or activity.

6.2 Injunctive Relief. If Landowner fails to prevent or to cure the violation of this Conservation Easement, fails to comply with any affirmative obligation under this Conservation Easement, or fails to cause such other corrective action to be taken as requested by the Holder within forty-five (45) days after receipt of notice thereof from Holder, or under circumstances where the violation cannot reasonably be cured within the forty-five (45) day period, fails to make good faith efforts to initiate and pursue the requested corrective action within the forty-five (45) day period, Holder may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Conservation Easement, to enjoin the violation, *ex parte* as necessary, by temporary or permanent injunction, and to require the restoration of the Property to the condition that existed prior to any such injury or to a condition otherwise acceptable to Holder (regardless of whether the costs of restoration exceed the value of the Property).

6.3 Damages. Holder shall be entitled to recover damages for violation of the terms of this Conservation Easement or injury to any Conservation Values protected by this Conservation Easement, including, without limitation, damages for the loss of environmental, ecologic, scenic or aesthetic values.

6.4 Emergency Enforcement. If Holder, in its sole discretion, determines that circumstances require immediate action to prevent, terminate or mitigate significant damage to the Conservation Values of the Property, or to prevent, terminate or mitigate a violation of this Conservation Easement, the Holder may pursue its remedies under this section without prior notice to Landowner and/or without waiting for the period provided for cure to expire.

6.5 Scope of Relief. Holder's rights under this section apply equally in the event of either an actual violation of the terms of this Conservation Easement or where the Holder has justifiable cause to believe that violations of the terms of the Conservation Easement will occur. Landowner agrees that Holder's remedies at law for any violation of the terms of this Conservation Easement may be inadequate and that Holder shall be entitled to the injunctive relief described above, both prohibitive and mandatory, in addition to such other relief to which Holder may be entitled, including without limitation: (a) 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; and (b) the right to enter the Property to undertake any corrective action Holder may elect to

complete. Holder's remedies described in this section shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

6.6 Costs of Enforcement. In any action, suit or other proceeding undertaken to enforce any right or obligation under this Conservation Easement, or to interpret any of the provisions of this Conservation Easement, if the court determines that Landowner has failed to comply with this Conservation Easement, Landowner shall reimburse Holder for any reasonable costs associated with enforcement, including Holder's staff time, costs of restoration, court costs and reasonable attorneys' fees, in addition to any other payments ordered by such court. However, if Holder initiates litigation and the court determines that Landowner has complied with all the terms of this Conservation Easement and that Holder initiated litigation in bad faith, then Holder shall reimburse Landowner for any reasonable costs of defending such action, including court costs and reasonable attorneys' fees.

6.7 Forbearance. Forbearance by Holder or Landowner to exercise its rights under this Conservation Easement in the event of any violation of any term of this Conservation Easement by the other party shall not be deemed or construed to be a waiver by Holder or Landowner of such term or of any subsequent breach of the same or any other term of this Conservation Easement or of any of Holder's or Landowner's rights under this Conservation Easement. No delay or omission by Holder or Landowner in the exercise of any right or remedy upon any breach by the other party shall impair such right or remedy or be construed as a waiver.

6.8 Waiver of Certain Defenses. Each party hereby waives any defense of laches, estoppel or prescription with respect to any failure to act or any delay by the other party in enforcing any restriction or exercising any rights under this Conservation Easement.

6.9 Acts Beyond Landowner's Control. Nothing contained in this Conservation Easement shall be construed to entitle Holder to bring any action against Landowner for any injury to or change in the Property resulting from causes beyond Landowner's control, including, without limitation, fire, flood, storm, infestations, natural deterioration, earth movement, acts of third parties legally authorized to act by recorded instrument or other legally established rights, the wrongful acts of third parties other than Landowner's agents, employees, invitees or contractors (provided the Landowner has taken reasonable steps to prevent such third parties from trespassing and from causing harm to the Property and has not consented to or participated in the acts of such third parties), or from any prudent action taken by Landowner under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes. Landowner shall notify Holder of any occurrence that would adversely affect or interfere with the Conservation Purpose, whether caused by the Landowner's acts or omissions or by a third party or parties. In the event of violations of this Conservation Easement caused by the wrongful acts of a third party, Landowner shall cooperate fully with Holder in enforcement of this Conservation Easement, including but not limited to: gathering facts and information relevant to the violation; in some cases assigning its right of action to the Holder; joining in any claim or legal action; and/or appointing the Holder as its attorney-in-fact for purposes of enforcement, all at the election of the Holder.

6.10 Enforcement Rights of Others. Nothing in this Conservation Easement is intended to create any right to enforce this Conservation Easement in any third party where no such right otherwise exists under this Conservation Easement or under law.

Nothing contained herein shall affect any rights that the State where the Property is located may have to protect the public's interest in any matter pertaining to this Conservation Easement.

7. **COSTS AND LIABILITIES.** Landowner retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Property, or the protection of Landowner, the public, or any third parties from risks relating to conditions on the Property. Landowner shall maintain adequate comprehensive general liability insurance coverage on the Property. Holder acknowledges that at the time of creation of this Conservation Easement Landowner is self-insured as provided in A.R.S. §11-981 and that this self-insurance fully complies with the requirements under this section. Upon failure of the Landowner to maintain self-insurance pursuant to A.R.S. §11-981 or the sale, conveyance or transfer of the Property to an individual or entity that is not self-insured as provided in A.R.S. §11-981, then the requirement to maintain adequate comprehensive general liability insurance coverage on the Property shall apply. Landowner shall keep the Property free of any liens arising out of any work performed for, materials furnished to, or obligations incurred by Landowner.

Landowner 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 Conservation Easement, and shall furnish Holder with satisfactory evidence of payment upon request.

8. **ACCESS.** Nothing contained in this Conservation Easement shall give or grant to the public a right to enter upon or to use the Property or any portion thereof, nor shall it prohibit Landowner from allowing the public the right to enter upon the Property and use it in a manner consistent with the Conservation Easement. Landowner will undertake all reasonable actions to prevent the unlawful entry and trespass by persons whose activities might diminish or impair the Conservation Values.

9. **TRANSFER OF EASEMENT.** The parties recognize and agree that the benefits of this Conservation Easement are in gross and assignable. Holder shall have the right, subject to the consent of the Landowner, which consent shall not be unreasonably withheld, to transfer or assign this Conservation Easement to an entity that: (a) satisfies the requirements of §170(h)(3) of the U.S. Internal Revenue Code (or successor provisions thereof) and is qualified to hold the Conservation Easement under applicable state law, and (b) as a condition of transfer, agrees to uphold the Conservation Purpose of this Conservation Easement, as required in Treasury Regulations §1.170A-14, as amended. If Holder ever ceases to exist or no longer qualifies under §170(h) or applicable state law, a court with jurisdiction shall transfer this Conservation Easement to another qualified organization having similar purposes that agrees to assume the responsibility. The Holder may also assign separately, subject to the Landowner's consent which shall not be unreasonably withheld, all restrictions and responsibilities in this Conservation Easement concerning the Water Rights subject to the terms of this Conservation Easement. In the event Holder transfers or assigns this Conservation Easement, in whole or in part, Holder is hereby granted the right to reserve a third-party right of enforcement if Holder so elects at the time of the transfer.

10. **TRANSFER OF PROPERTY.** As set forth below, Landowner agrees that a reference to this Conservation Easement will be inserted by Landowner in any subsequent deed or other legal instrument by which Landowner divests either the fee simple title or possessory interest in the Property, including without limitation a leasehold or mortgage interest. Landowner further agrees to notify Holder of any pending transfer at least thirty (30) days in advance of transfer and to provide Holder with a copy of any legal instrument affecting such transfer within thirty (30) days following its execution. The failure of Landowner to comply with this section shall not impair the validity of this Conservation Easement or limit its enforceability in any way. Any successor in interest of Landowner, by acceptance of a deed or other document purporting to convey an interest in the Property, shall be deemed to have consented to, reaffirmed and agreed to be bound by all of the terms, covenants, restrictions and conditions of this Conservation Easement.
11. **PRESUMPTION AGAINST AMENDMENT.** It is the parties' intention that this Conservation Easement will not be amended or modified. In the event of unforeseen circumstances or exceptional situations the Holder may in its sole discretion consider an amendment or modification to this Conservation Easement, but in no event shall such amendment be made without compliance with Holder's internal procedures and standards for such modification, and federal, state and local laws regarding the creation and amendment of conservation easements. No amendment shall be allowed that would adversely affect the qualifications of this Conservation Easement as a charitable gift (if applicable) or the status of Holder under any applicable laws, including §170 (h) of the Internal Revenue Code or the laws of the State where the Property is located, or that would weaken the Conservation Easement in terms of protection of the Conservation Values or its perpetual duration. Any such amendment shall be signed by both parties, and shall be recorded in the official records of the county in which the Property is located.
12. **EASEMENT VALUATION, EXTINGUISHMENT, TERMINATION, EMINENT DOMAIN.**

12.1 **Value of Easement and Proceeds.** Landowner hereby agrees that at the time of the reservation of this Conservation Easement, this Conservation Easement gives rise to a real property right, immediately vested in Holder, with a fair market value that is at least equal to the proportionate value that this Conservation Easement, at that time, bears to the value of the Property as a whole at that time.

Accordingly, if this Conservation Easement is extinguished, terminated, or taken by eminent domain as described below, Holder on any sale, exchange or involuntary conversion of the Property shall be entitled to a portion of the proceeds at least equal to that proportionate value. Holder's interest shall be valued at the greater of the following: (1) the proportionate value that the Conservation Easement at the time of the reservation, bears to the value of the Property as a whole at that time, as described above; or (2) the proportionate value that this Conservation Easement at the time of termination, extinguishment or condemnation bears to the then value of the Property as a whole.

Holder shall use any proceeds received in conjunction with this provision and the following provisions in a manner consistent with the Conservation Purpose of this Conservation Easement.

12.2 Extinguishment or Termination. This Conservation Easement may be released, terminated or otherwise extinguished, whether in whole or in part, only if (1) a court with jurisdiction determines a subsequent unexpected change in conditions surrounding the Property makes impossible or impractical the continued use of the Property for the Conservation Purpose of this Conservation Easement, and (2) any conditions or limitations imposed by federal and state law are also complied with.

No loss of any or all of the Water Rights through injury or abandonment shall be considered a termination or extinguishment of all or any part of this Conservation Easement.

12.3 Eminent Domain. Whenever all or part of the Property is taken with authority to exercise eminent domain by public, corporate, or other authority so as to terminate or extinguish the restrictions imposed by or so as to make it impossible to fulfill the Conservation Purpose of this Conservation Easement, Landowner and Holder shall join in appropriate actions and negotiations at the time of such taking to recover the full value of the taking and all incidental or direct damages resulting from the taking, which proceeds shall be divided in accordance with the value of Landowner's and Holder's interests, as described above.

13. **CHANGED CONDITIONS.** In accepting the Property subject to this reservation, Landowner has considered the possibility that uses prohibited by the terms of this Conservation Easement may become more economically valuable than permitted uses, and that neighboring properties may in the future be put entirely to such prohibited uses. In addition, the unprofitability of conducting or implementing any or all of the uses permitted under the terms of this Conservation Easement shall not impair the validity of this Conservation Easement or be considered grounds for its termination or extinguishment. It is the intent of both Landowner and Holder that any such economic changes shall not be deemed to be changed conditions or a change of circumstances justifying the judicial termination, extinguishment or amendment of this Conservation Easement.

14. **INTERPRETATION.** This Conservation Easement shall be interpreted under the laws of the state or commonwealth in which the Property is located, resolving any ambiguities and questions of the validity of specific provisions so as to give maximum effect to its Conservation Purpose. No remedy or election given by any provision in this Conservation Easement shall be deemed exclusive unless so indicated, but it shall, wherever possible, be cumulative with all other remedies at law or in equity. The parties acknowledge that each party has reviewed and revised this Conservation Easement and that no rule of construction that ambiguities are to be resolved against the drafting party shall be employed in the interpretation of this Conservation Easement. In the event of any conflict between the provisions of this Conservation Easement and the provisions of any use and zoning restrictions of the state or county in which the Property is located, or any other governmental entity with jurisdiction, the more restrictive provisions shall apply.

15. **INTENTIONALLY LEFT BLANK**

16. **TITLE.** Landowner covenants, represents and warrants that Landowner has the right to accept the Property subject to this Conservation Easement, and that Holder shall have the

use of and enjoy all of the benefits derived from and arising out of this Conservation Easement.

17. **NOTICES.** Any notices required by this Conservation Easement shall be in writing and shall be served by any of the following means: (i) by delivery in person, in which case notice shall be deemed given upon delivery (or refusal of delivery), (ii) by certified U.S. mail, return receipt requested, postage prepaid, in which case notice shall be deemed given upon the earlier of the date of first attempted delivery or the third day after deposit in the mail, (iii) by reputable commercial courier service, charges prepaid, in which case notice shall be deemed given upon the earlier of the date of first attempted delivery or the third day after deposit with the courier service, or (iv) by confirmed facsimile if sent during normal business hours of the recipient, and if not, then on the next business day. Notices sent by facsimile transmission shall be effective on the date of successful transmission, and the original of such notice shall be deposited in the U.S. mail postage prepaid. All notices shall be sent to the following addresses, or such other address as either party may hereafter specify by written notice to the other:

For TNC:

Director, Land Protection  
The Nature Conservancy  
1510 E. Fort Lowell Road  
Tucson, AZ 85719  
Phone: (520) 622-3861  
Fax: (520) 620-1799

For County:

Operations Manager  
Maricopa County Parks and Recreation Department  
41835 N. Castle Hot Springs Road  
Morristown, AZ 85342  
Phone: (928) 501-9202  
Fax: (602) 372-8596

18. **ENVIRONMENTAL LIABILITY.** Landowner is solely responsible, and Holder has no responsibility, for the operation of the Property or the monitoring of hazardous or other conditions thereon. Landowner covenants, represents, and warrants that, after investigation and to the best of their knowledge:

(a) Landowner and the Property are in compliance with, and shall remain in compliance with, all applicable Environmental Laws (as defined below). Landowner has no actual knowledge of any use or release of hazardous materials, toxic substances, or petroleum products on the Property that is in violation of any Environmental Law. Landowner has received no notices from any governmental authority of any violation or alleged violation of, noncompliance or alleged noncompliance with, or any liability under any Environmental Law relating to the operations or conditions on the Property.

(b) **Environmental Laws** means any and all federal, state, local, or administrative agency statutes, regulations, rules, codes, ordinances or requirements of any governmental authority regulating or imposing standards of liability or standards of conduct (including common law) regarding air, water, solid waste, hazardous materials, petroleum products, worker and community right-to-know, hazard communication, radioactive material, resource protection, wetlands and watercourses, health protection and similar environmental health, safety, building and land use laws and regulations as may now or at any time hereafter be in effect.

(c) There are not now any underground storage tanks subject to Environmental Laws located on the Property, whether presently in service or closed, abandoned, or decommissioned, and no underground storage tanks subject to Environmental Laws have been removed from the Property in a manner not in compliance with applicable federal, state, and local laws, regulations, and requirements.

Without limitation of any other indemnity or release set forth in this Conservation Easement, Landowner releases and shall indemnify, defend and hold Holder and its directors, officers and employees, harmless from any liability related to Landowner's representations and warranties in this Conservation Easement or related to the use, deposit or release of any substances regulated by Environmental Laws on the Property. Nothing in this Conservation Easement shall be construed as giving rise, in the absence of a judicial decree, to any right or ability to Holder to exercise physical or managerial control over the day-to-day operations of the Property, or any of Landowner'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"), or any successor, related, or similar law, or any corresponding state statute.

19. **COMPLIANCE WITH APPLICABLE LAWS.** Landowner shall comply with all statutes, laws, ordinances, rules, regulations, codes, orders, guidelines, or other restrictions, or requirements applicable to the Property. Nothing herein shall be construed to allow Landowner to engage in any activity which is restricted or prohibited by law, restrictions or other requirements applicable to the Property.
20. **SEVERABILITY.** If any provision of this Conservation Easement is found to be invalid, the remaining provisions shall not be altered thereby.
21. **PARTIES.** Every provision of this Conservation Easement that applies to Landowner or Holder shall also apply to their respective heirs, executors, administrators, assigns, and all other successors as their interest may appear. A person's or entity's obligation hereunder as Landowner, or successor owner of the Property, shall be joint and several, and will cease, if and when such person or entity ceases to have any present, partial, contingent, collateral, or future interest in the Property (or pertinent portion thereof), but only to the extent that the Property (or relevant portion thereof) is then in compliance herewith. Responsibility of owners for breaches of this Conservation Easement that occur prior to transfer of title will survive such transfer, provided that the new owner shall also be responsible for bringing the Property into compliance.

22. **RE-RECORDING.** In order to ensure the perpetual enforceability of the Conservation Easement, Holder is authorized to re-record this instrument or any other appropriate notice or instrument; for such purpose, Landowner appoints Holder as Landowner's attorney-in-fact to execute, acknowledge and deliver any necessary instrument on Landowner's behalf. Without limiting the foregoing, Landowner agrees to execute any such instruments upon request.
23. **SUBSEQUENT LIENS ON PROPERTY.** No provision of this Conservation Easement should be construed as impairing the ability of Landowner to use this Property as collateral for subsequent borrowing, provided that any mortgage or lien arising from such a borrowing is subordinate to this Conservation Easement and does not violate the restrictions on subdivision of the Property.
24. **ACCEPTANCE & EFFECTIVE DATE.** As attested by signature of its authorized representative, Holder hereby accepts without reservation the rights and responsibilities conveyed by this Conservation Easement.
25. **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.
26. **ENTIRE AGREEMENT.** This instrument sets forth the entire agreement of the parties with respect to the Conservation Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Conservation Easement, all of which are merged herein. No alteration or variation of this instrument shall be valid or binding unless contained in an amendment that complies with the terms of this Conservation Easement.
27. **CAPTIONS, RECITALS AND EXHIBITS.** The captions herein have been inserted solely for convenience of reference, are not a part of this Conservation Easement, and shall have no effect upon its construction or interpretation. The Recitals set forth above and, all Exhibits referred to in this Conservation Easement and the Easement Documentation Report are an integral part of this Conservation Easement and are incorporated herein by reference.
28. **GOVERNING LAW.** This Conservation Easement will be interpreted in accordance with the laws of the state or commonwealth in which the Property is located.
29. **DISCLAIMER.** Holder does not represent the interests of Landowner. Holder has advised Landowner to have the document reviewed by Landowner's attorney, and Landowner has had ample opportunity to do so. Holder makes no representation as to whether this Conservation Easement qualifies for a charitable deduction or if it is in the proper form for that purpose, in the event Landowner claims a charitable gift deduction on its federal or state income tax returns.
30. **SUBSEQUENT ACTIVITIES: NO REPRESENTATIONS OR WARRANTIES.** Permission to carry out any proposed use or activity will not constitute consent to any subsequent use or activity of the same or any different nature, unless explicitly included in said permission. Likewise, permission by the Holder to carry out, or failure by the Holder to object to, or any language in this Conservation Easement that allows any proposed use or activity or designates a specific area of the Property where the use or

activity is to be conducted, will not be deemed to constitute any representation or warranty by the Holder regarding the use or activity, including, without limitation, the fitness of the Property for the use or activity or the legality of the use or activity.

31. **MERGER.** The parties agree that the terms of this Conservation Easement shall survive any merger of the fee and conservation easement interests in the Property.

32. **DEFINITIONS.**

32.1 **Hazardous Materials.** The term “**Hazardous Materials**” includes, without limitation, (a) material that is flammable, explosive, or radioactive; (b) petroleum products; and (c) hazardous materials, hazardous wastes, hazardous or toxic substances, or related materials defined in the CERCLA (42 USC 9601 et seq.), and the Hazardous Materials Transportation Act (49 USC section 6901 et seq.), and in the regulations adopted and publications promulgated pursuant to them, or any other applicable federal, state, or local laws, ordinances, rules, or regulations now in effect or enacted after this date.

32.2 **Building.** The term “**Building(s)**” shall mean an enclosed space with walls and a roof that provides shelter or housing or provides working, office, parking, display or sales space and which includes, but is not limited to houses, barns, sheds, cabins, garages, temporary living quarters of any sort, and mobile homes.

32.3 **Structure.** The term “**Structure(s)**” shall mean a man-made improvement such as a dock, picnic pavilion, well house, sign, billboard or other advertising material, utility tower, etc., that is not a Building, fence, or road.

32.4 **Improved Road.** The term “**Improved Road**” shall mean a graded surface for vehicular access.

32.5 **Unimproved Road.** The term “**Unimproved Road**” shall mean a set of ruts, either well established or faint, but otherwise not in any way improved, except for structural drainage features. Unimproved Roads are not graded, surfaced, and have no shoulders.

32.6 **Master Plan.** The term “**Master Plan**” shall mean the Hassayampa River Preserve Site Master Plan as approved by The Nature Conservancy and the Maricopa County Board of Supervisors dated \_\_\_\_\_, as the same may be amended from time to time.

32.7 **Building Envelope.** The term “Building Envelope” shall mean that area described in **Exhibit A-1**.

TO HAVE AND TO HOLD this Conservation Easement, together with all appurtenances and privileges belonging or in any way pertaining thereto, either in law or in equity, either in possession or expectancy, for the proper use and benefit of Holder forever.

*REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK  
SIGNATURE PAGE FOLLOWS*

IN WITNESS WHEREOF, Landowner and Holder have executed this document the day and year first above written.

LANDOWNER:

HOLDER:

Maricopa County, a  
Political subdivision of the State of Arizona

The Nature Conservancy, a  
District of Columbia nonprofit corporation

BOARD OF SUPERVISORS

By: \_\_\_\_\_  
Clint Hickman

By: \_\_\_\_\_

Its: Chairman

Its: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Clerk of the Board Date

APPROVED AS TO FORM:

\_\_\_\_\_  
Deputy County Attorney Date

NOTARY BLOCK FOR HOLDER:

STATE OF \_\_\_\_\_ )  
 )ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_,  
by \_\_\_\_\_ [name], \_\_\_\_\_ [title] of The Nature  
Conservancy, a District of Columbia non-profit corporation, on behalf of the corporation.

[SEAL]

\_\_\_\_\_  
(Notary's official signature)

\_\_\_\_\_  
(Commission expiration date)

EXHIBIT A  
Property Description  
(Forthcoming)

DRAFT

EXHIBIT A-1  
Building Envelope Description  
(Forthcoming)

DRAFT

EXHIBIT A-2  
Map of the Property  
(Forthcoming)

DRAFT

**EXHIBIT B**  
**Water Rights and Well**

Wells:

Registration #	File #	Drill Date	Depth to Water	Use	Location
<b>55-535404</b>	B(7-4)20caa	6/4/1992	100	Domestic	NE4 SW4 Sec 20 T7N R4W

Surface Claims:

**36-67941**

Claims 200 afa from Hassayampa for stockwater, recreation, domestic and commercial use. Point of Diversion is within the NW SE Section 20, T7N R4W.. Place of Use is within the NW SE Section 20, T7N R4W. Priority date is approximately 1850. It was assigned to The Nature Conservancy in 1987.

Adjudication Claims:

**39-38039**

Associated filing 36-67941. A claim for 200 acre feet per annum used for stockwater and recreation. The source of water is groundwater which is conveyed by ditch. Some water is also pumped using well 55-650140. The priority date is approximately 1850 and the Statement of Claim was filed by The Nature Conservancy in 1987.

Instream Flow Certificate (partial assignment):

**39-36904**

Associated with filing 33-92304 for Instream Flow in the Hassayampa River. It is a claimed right for 5-10 cfs to maintain base flows. The priority date is 1986, upon The Nature Conservancy's acquisition of the property.

**33-92304**

Certificated instream flow water right for the Hassayampa River stretch, applies to two locations, an Upper and Lower reach of the Hassayampa River.