RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

(Space Above Line for Recorder's Use)

DECLARATION OF RESTRICTIONS

This DECLARATION OF RESTRICTIONS ("Declaration") is made this ____ day of April X, 2002 by the XXXX (herein "Declarant"), for the benefit of the UNITED STATES OF AMERICA, acting by and through the U.S. Army Corps of Engineers ("ACOE") with reference to the following facts:

RECITALS

1. Declarant is the sole owner in fee simple of certain real property located in the XXX, Maricopa County, State of Arizona, consisting of X (X) separate but contiguous parcels totaling approximately XX acres legally described in Exhibit "A" and depicted on Exhibits "B" attached hereto and incorporated by this reference (the "District Parcels"). The District Parcels contain approximately XX acres of "waters of the United States, which, together with a XX-foot buffer on each side of the existing streambeds are particularly described on Exhibit "C" and depicted on Exhibit "D" attached hereto and incorporated herein by this reference (the "Property").

2. The Property's ephemeral streams (and a buffer area) possess aquatic, wildlife habitat and biological values (collectively, "Conservation Values") of great importance to ACOE;

3. The Property provides habitat for various species associated with ephemeral drainages and alkali streams/wetlands.

4. This Declaration provides compensatory mitigation for impacts to "waters of the United States" and is granted to satisfy Special Condition No. 4(f) of Section 404 Permit No. 1999-16129-RWF issued to Arizona State Land Department on April XX, 2002 by ACOE pursuant to its authority under the federal Clean Water Act (33 U.S.C. 1344).

5. Declarant and ACOE hereby agree that the third-party right of enforcement shall be held by the appropriate enforcement agencies of the United States.

COVENANTS, TERMS, CONDITIONS AND RESTRICTIONS

In consideration of the above recitals, Declarant hereby voluntarily places the following covenants and restrictions in perpetuity over the Property, such restrictions shall run with the land and be binding on Declarant's heirs, successors, administrators, assigns, lessees, or other occupiers and users.

1. Purpose. The purpose of this Declaration is to ensure the Property will be retained forever in a natural condition, defined below, and to prevent any use of the Property that will impair or interfere with the Conservation Values of the Property. Declarant intends that this Declaration will confine the use of the Property to such activities, including without limitation, those involving the preservation and enhancement of native species and their habitat in a manner consistent with the habitat conservation purposes of this Declaration.

(1) The term natural condition shall mean the condition of the protected property at the time of this grant. Declarant certifies there are no structures or other man-made improvements existing on the Property. Declarant further certifies there are no previously granted easements existing on the Property which interfere or conflict with the purpose of this Conservation Easement. The natural condition is evidenced by a surveyed plat of the Property showing all relevant property lines, and all existing man-made improvements and structures, and major, distinct natural features such as waters of the United States. Declarant has delivered further evidence of the "natural condition" to ACOE consisting of: (1) an aerial photograph of the protected property at an appropriate scale taken close in time to the date the grant is made; (2) on-site photographs showing all man-made improvements or structures, and all major natural features.

2. ACOE's Rights. To accomplish the purposes of this Declaration, Declarant hereby grants the following rights to ACOE by this Declaration:

(1) To enter upon the Property at reasonable times in order to monitor Declarant's compliance with and to otherwise enforce the terms of this Declaration and for scientific research and interpretive purposes by ACOE or their designees, provided that ACOE shall not unreasonably interfere with Declarant's use and quiet enjoyment of the Property;

(2) To prevent any activity on or use of the Property that is inconsistent with the purposes of this Declaration and to require the restoration of such areas or features of the Property that may be damaged by any act, failure to act, or any use that is inconsistent with the purposes of this Declaration;

3. Prohibited Uses. Any activity on or use of the Property inconsistent with the purposes of this Declaration is prohibited. Without limiting the generality of the foregoing, the following uses by Declarant, Declarant's agents, and third parties, are expressly prohibited:

(1) Unseasonal watering, use of herbicides, rodenticides, or weed abatement activities, incompatible fire protection activities and any and all other uses which may adversely affect the purposes of this Conservation Easement;

(2) Use of off-road vehicles;

(3) Grazing;

(4) Erecting of any building, billboard, sign;

(5) Depositing of soil, trash, ashes, garbage, waste, bio-solids or any other material;

(6) Excavating, dredging or removing of loam, gravel, soil, rock, sand or other material;

(7) Otherwise altering the general topography of the Property, including but not limited to building of roads and flood control work;

(8) Removing, destroying, or cutting of trees, shrubs or other vegetation, except as required by law for (1) fire breaks, (2) maintenance of existing foot trails or roads, or (3) prevention or treatment of disease;

(9) establishment of any easement, for any purpose (without the written consent of ACOE), within the boundaries of the Property not already in existence as of the date this Conservation Easement is executed; or

(10) surface entry for exploration or extraction of minerals.

4. Declarant's Duties. Declarant shall undertake reasonable actions to prevent the unlawful entry and trespass by persons whose activities may degrade or harm the Conservation Values of the Property.

5. Reserved Rights. Declarant reserves to itself, and to its personal representatives, heirs, successors, and assigns, all rights accruing from its ownership of the Property, including the right to engage in or to permit or invite others to engage in all uses of the Property that are consistent with the purposes of this Declaration.

6. ACOE's Remedies. If ACOE determines that Declarant is in violation of the terms of this Declaration or that a violation is threatened, ACOE shall give written notice to Declarant of such violation and demand in writing the cure of such violation. If Declarant fails to cure the violation within fifteen (15) days after receipt of said written notice and demand, or said cure reasonably requires more than fifteen (15) days to complete and Declarant fails to begin the cure within the fifteen (15) day period or fails to continue diligently to complete the cure, ACOE may bring an action at law or in equity in a court of competent jurisdiction to enforce compliance by Declarant with the terms of this Declaration, to recover any damages to which ACOE may be entitled for violation by Declarant of the terms of this Declaration, to enjoin the violation, *ex parte* as necessary, by temporary or permanent injunction without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies, or for other equitable relief, including, but not limited to, the restoration of the Property to the condition in which it existed prior

to any such violation or injury. Without limiting Declarant's liability therefore, ACOE may apply any damages recovered to the cost of undertaking any corrective action on the Property.

If ACOE, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values of the Property, ACOE may pursue its remedies under this paragraph without prior notice to Declarant or without waiting for the period provided for cure to expire. ACOE's rights under this paragraph apply equally to actual or threatened violations of the terms of this Declaration. Declarant agrees that ACOE's remedies at law for any violation of the terms of this Declaration are inadequate and that ACOE shall be entitled to the injunctive relief described in this section, both prohibitive and mandatory, in addition to such other relief to which ACOE may be entitled, including specific performance of the terms of this Declaration. ACOE'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, including but not limited to, the remedies set forth in Arizona Civil Code Section XXX, *et seq.*, inclusive.

If at any time in the future Declarant or any subsequent transferee uses or threatens to use such lands for purposes inconsistent with this Declaration, notwithstanding Arizona Civil Code Section XXX, the Arizona Attorney General, and/or the Department of Justice has standing to enforce this Declaration.

6.1 Costs of Enforcement. Any costs incurred by ACOE in enforcing the terms of this Declaration against Declarant, including, but not limited to, costs of suit and attorneys' fees, and any costs of restoration necessitated by Declarant's violation or negligence under the terms of this Declaration shall be borne by Declarant.

6.2 ACOE's Discretion. Enforcement of the terms of this Declaration shall be at the discretion of the ACOE, and any forbearance by ACOE to exercise its rights under this Declaration in the event of any breach of any term of the Declaration shall not be construed to be a waiver by ACOE of such terms or of any subsequent breach of the same or any other term of this Declaration or of any of ACOE's rights under this Declaration. No delay or omission by ACOE in the exercise of any right or remedy upon any breach by Declarant shall impair such right or remedy or be construed as a waiver. Further, nothing in this Declaration creates non-discretionary duty upon the ACOE 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 ACOE by any third parties.

6.3 Acts Beyond Declarant's Control. Nothing contained in this Declaration shall be construed to entitle ACOE to bring any action against Declarant for any significant injury to or change in the Property resulting from causes beyond Declarant's control, including: fire, flood, storm, and earth movement, or from any prudent action taken by Declarant under emergency conditions to prevent, abate, or mitigate significant injury to the Property or immediately adjacent property resulting from such causes. Such excuse from performance by Declarant shall only be allowed if such Catastrophic Event (or emergency event beyond Declarant's control) has caused a substantial failure of or degradation of the Conservation and Environmental values on the Property. Notwithstanding the foregoing, even actions undertaken during emergency conditions must receive prior authorization from the Department of Army (through expedited

procedures, if appropriate) if the action involves discharge of dredged or fill material into jurisdictional " waters of the United States."

6.4 Right of Enforcement. All rights and remedies conveyed to ACOE under this Declaration shall extend to and are enforceable by the Corps, the U.S. Department of Justice, and the Arizona Attorney General.

7. Access. This Declaration does not convey a general right of access to the public.

8. Costs and Liabilities. Declarant retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Property.

8.1 Taxes. Declarant 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 Declaration, and shall furnish ACOE with satisfactory evidence of payment upon request.

8.2 Condemnation. The purposes of the Property for conservation purposes are presumed to be the best and most necessary public use as defined at California Civil Procedure Code Section XXX notwithstanding Arizona Civil Procedure Code Sections XXX and XXX.

9. Assignment. This Declaration is transferable, but ACOE may assign its rights and obligations under this Declaration only to an entity or organization authorized to acquire and hold Declarations pursuant to Arizona Civil Code Section XXX, or a bonafide land trust. ACOE shall require the assignee to record the assignment in the county where the Property is located.

10. Subsequent Transfers. Declarant agrees to incorporate the terms of this Declaration in any deed or other legal instrument by which Declarant divests itself of any interest in all or a portion of the Property, including, without limitation, a leasehold interest. Declarant further agrees to give written notice to ACOE of the intent to transfer of any interest at least fifteen (15) days prior to the date of such transfer. ACOE shall have the right to prevent subsequent transfers in which prospective subsequent claimants or transferees are not given notice of the covenants, terms, conditions and restrictions of this Declaration. The failure of Declarant or ACOE to perform any act provided in this section shall not impair the validity of this Declaration or limit its enforceability in any way.

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

To Declarant:

_____

_____

Attn: _____

To ACOE: U.S. Army Corps of Engineers
District Counsel
U.S. Army Corps of Engineers
911 Wilshire Blvd, Room 1535
Los Angeles, CA 90017-3401

or to such other address as either party shall designate by written notice to the other. Notice shall be deemed effective upon delivery in the case of personal delivery or, in the case of delivery by first class mail, five (5) days after deposit into the United States mail.

12. Extinguishment. This Declaration may be extinguished by Declarant only after receiving written concurrence from ACOE.

13. Amendment. This Declaration may be amended by Declarant only after written concurrence by ACOE. Any such amendment shall be consistent with the purposes of this Declaration and, except as provided in Section 12, shall not affect its perpetual duration. Any such amendment shall be recorded in the official records of Maricopa County, State of Arizona.

14. General Provisions.

(1) Controlling Law. The interpretation and performance of this Declaration shall be governed by the laws of the State of Arizona.

(2) Liberal Construction. Any general rule of construction to the contrary notwithstanding, this Declaration shall be liberally construed in favor of the deed to effect the purpose of this Declaration and the policy and purpose Arizona Civil Code Section XXX, *et seq*. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purposes of this Declaration that would render the provision valid shall be favored over any interpretation that would render it invalid.

(3) Severability. If a court of competent jurisdiction voids or invalidates on its face any provision of this Declaration, such action shall not affect the remainder of this Declaration. If a court of competent jurisdiction voids or invalidates the application of any provision of this Declaration to a person or circumstance, such action shall not affect the application of the provision to other persons or circumstances.

(4) Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to the Declaration and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Declaration. No alteration or variation of this instrument shall be valid or binding unless contained in an amendment in accordance with Section 13.

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

(6) Successors. The covenants, terms, conditions, and restrictions of this Declaration shall be binding upon, and inure to the benefit of, the parties hereto and their respective personal representatives, heirs, successors, and assigns and shall continue as a servitude running in perpetuity with the Property.

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

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

IN WITNESS WHEREOF Declarant has executed this Declaration.

"Declarant"

By: _____

Its: _____

Approved as to Form:

By: _____

Assistant District Counsel
U.S. Army Corps of Engineers

CERTIFICATE OF ACCEPTANCE

This is to certify that the interest in real property conveyed by the Declaration by _____, dated _____, on behalf of the United States, acting by and through the U.S. Army Corps of Engineers, accepted by the undersigned officers on behalf of Corps.

ACOE:

U.S. ARMY CORPS OF ENGINEERS

By: _____

Title: _____

Authorized Representative

Date: _____