

CONSERVATION EASEMENT

RECORDING REQUESTED BY AND)
WHEN RECORDED MAIL TO:)
Coachella Valley Conservation Commission)
74-199 El Paseo, Suite 100)
Palm Desert, CA 92260)

Space Above Line for Recorder’s Use Only

CONSERVATION EASEMENT DEED

THIS CONSERVATION EASEMENT DEED is made this ___ day of _____, 2024, by the CITY OF PALM DESERT, a California municipal corporation (“Grantor”), in favor of the COACHELLA VALLEY CONSERVATION COMMISSION, a California Joint Powers Authority, (“Grantee,”) with reference to the following facts:

RECITALS

A. Grantor is the sole owner in fee simple of certain real property consisting of approximately 116.12 acres in the City of Palm Desert, County of Riverside, State of California, and more particularly described in Exhibit “A” attached hereto and incorporated herein by this reference (the “Property”).

B. The Property possesses wildlife and habitat values (collectively, “conservation values”) of great importance to Grantee, the people of the State of California, and the people of the United States;

C. The Property provides potential habitat for the Coachella Valley Jerusalem Cricket (*Stenopelmatus calhillaensis*), Desert Tortoise (*Gopherus agassizii*), Le Conte’s Thrasher (*Toxostoma lecontei*), Coachella Valley round-tailed ground squirrel, (*Spermophilus tereticaudus chlorus*), Palm Springs Pocket Mouse (*Perognathus longimembris bangsi*), Peninsular Bighorn Sheep (*Ovis canadiensis nelson*) and contains natural communities including sonorant creosote bush scrub;

D. The California Department of Fish and Wildlife (“CDFW”) has jurisdiction, pursuant to California Fish and Game Code section 1802 and other laws, over the conservation, protection, and management of fish, wildlife, native plants, and the habitat necessary for biologically sustainable populations of those species;

E. The United States Fish & Wildlife Service (“USFWS”) has jurisdiction over the conservation, protection, restoration, enhancement, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species to the extent set forth in the Federal Endangered Species Act, 16 U.S.C. sections 1531, *et seq.*, and other federal laws;

F. The Coachella Valley Conservation Commission (“CVCC”) is a California joint powers authority pursuant to Government Code sections 6500-6511 created to implement the Coachella Valley Multiple Species Habitat Conservation Plan/Natural Community Conservation Plan (“MSHCP”) and is a governmental agency qualified to hold conservation easements pursuant to Civil Code section 815.3;

G. This Conservation Easement provides mitigation for certain project impacts pursuant to the California Natural Community Conservation Planning Act Permit 2035-2008-001-06 dated September 9, 2008, issued by CDFW under the authority of California Fish and Game Code sections 2800 *et seq.* (“NCCP Permit”), and Permit No TE104604-0 dated October 1, 2008, issued by USFWS under the authority of section 10(a)(1)(B) and section 10(a)(2) of the Endangered Species Act of 1973 as amended (FESA) (“Section 10(a) Permit”), and the corresponding MSHCP dated September 2007 and Implementing Agreement, as same may be amended from time to time. The Section 10(a) Permit, the NCCP Permit, the Implementing Agreement, and the MSHCP, and any amendments thereto, are all incorporated herein by this reference. Information regarding these documents may be obtained from USFWS and CDFW, for each respective permit, and from CVCC regarding the Implementing Agreement and the MSHCP. Contact information for USFWS, CDFW, and CVCC is provided in the Notices section of this Conservation Easement Deed.

COVENANTS, TERMS, CONDITIONS AND RESTRICTIONS

In consideration of the above recitals and mutual covenants, terms, conditions, and restrictions contained herein, and pursuant to United States and California law, including Civil Code sections 815, *et seq.*, Grantor hereby voluntarily grants and conveys to Grantee a Conservation Easement in perpetuity over the Property.

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

1.1 The term “natural condition,” as referenced in the preceding paragraph and other portions of this Conservation Easement Deed, shall mean the condition of the Property, as it exists at the time this Conservation Easement Deed is executed, as well as future enhancements or changes to the Property that occur directly as a result of in-perpetuity maintenance and management obligations that occur on the Property as described herein.

1.2 Grantor certifies to Grantee that to Grantor’s actual knowledge the only existing improvements on the Property at the time this Deed is executed are the recreational trails and associated trailheads depicted in Exhibit “B” attached hereto and incorporated herein by this reference. Grantor further certifies to Grantee that to Grantor’s actual knowledge there are no previously granted easements existing on the Property that interfere or conflict with the purpose of this Conservation Easement.

1.3 Grantee's acceptance of this Conservation Easement is expressly conditioned on the receipt from Grantor, prior to recordation, of either (a) a baseline report on the condition of the Property in a form acceptable to Grantee, who will provide 15 business days to CDFW and USFWS for review and comment ahead of Grantee approval, at their sole discretion, or (b) payment of the sum necessary to reimburse Grantee for the cost of obtaining a baseline report as quoted by a contractor approved by Grantee. The baseline report shall be deemed evidence of the natural condition of the Property at the time of the grant of the Conservation Easement. Exhibits to the baseline report shall include (a) an aerial photograph(s) of the Property at an appropriate scale taken as close in time as possible to the date this Conservation Easement is executed; (b) an overlay of the boundaries of the Property on such aerial photograph(s); and (c) on-site color photographs showing the major, distinct natural features of the Property.

2. Grantee's Rights. To accomplish the purposes of this Conservation Easement, Grantor hereby grants and conveys to Grantee, and to USFWS and CDFW as third-party beneficiaries hereof, or their respective designee(s), all mineral, air, and water rights necessary to protect and to sustain the biological resources of the Property, and all present and future development rights, as well as all of the following rights:

(a) To preserve and protect the conservation values of the Property;

(b) To enter upon the Property at reasonable times in order to monitor compliance with and to otherwise enforce the terms of this Conservation Easement, 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 Property;

(c) To enter upon the Property at reasonable times to carry out management and monitoring consistent with the conservation goals, monitoring program, and management plans for the MSHCP;

(d) To prevent any activity on or use of the Property that is inconsistent with the purposes of this Conservation Easement and the MSHCP 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 Conservation Easement; and

(e) To enforce, by any means, including without limitation injunctive relief, the terms and conditions of this Conservation Easement.

3. Prohibited Uses. Any activity on or use of the Property inconsistent with the purposes of this Conservation Easement is prohibited except as allowed by Grantor and Grantee pursuant to an express written approval. Without limiting the generality of the foregoing, the following uses by Grantor, Grantor's agents, and third parties, are expressly prohibited:

(a) The application of water; the use of fertilizers, pesticides, biocides, herbicides or any agricultural chemical; incompatible fire protection activities; and any and all other activities and uses which may adversely affect the purposes of this Conservation Easement;

- (b) Use of off-road vehicles and use of any other motorized vehicles except on existing roadways;
- (c) Grazing or other agricultural activity of any kind;
- (d) Recreational activities except those specifically authorized on the Property under the MSHCP;
- (e) Residential, commercial or industrial uses;
- (f) Any legal or de facto division, subdivision or partitioning of the Property;
- (g) Construction, reconstruction or placement of any building, billboard or sign, or any other structure or improvement of any kind;
- (h) Dumping, depositing or accumulation of soil, trash, ashes, refuse, waste, biosolids or any other materials;
- (i) Planting, introduction or dispersal of non-native or invasive plant or animal species, except as otherwise approved by Grantee;
- (j) Filling, dumping, excavating, draining, dredging, mining, drilling, removing or exploring for or extraction of minerals, loam, soil, sands, gravel, rocks or other material on or below the surface of the Property, except as necessary to conduct authorized natural or cultural resources research or preservation in consultation with Native American Tribes, State Historic Preservation Office, and other entities/agencies as required by state or federal law;
- (k) Altering the surface or general topography of the Property, including building of roads except as necessary to conduct authorized natural or cultural resources research or preservation in consultation with Native American Tribes, State Historic Preservation Office, and other entities/agencies as required by state or federal law, or to modify and maintain the recreational trails depicted in Exhibit B as provided for in the MSHCP;
- (l) Removing, destroying, or cutting of trees, shrubs or other vegetation, except as required by law for fire breaks, maintenance of the existing foot trails depicted in Exhibit B, or prevention or treatment of disease;
- (m) Manipulating, impounding or altering any natural water course, body of water or water circulation or underground water table on the Property, and activities or uses detrimental to water quality, including but not limited to, degradation or pollution of any surface or subsurface waters;
- (n) Shining artificial light into the Property;
- (o) Any activities prohibited under the MSHCP; and

(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 Property; changing the place or purpose of use of the above and below ground 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 Property.

4. Grantor's Duties. To accomplish the purposes of this Conservation Easement, 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 Property;

(b) Undertake all necessary actions to perfect and defend the rights of the Grantee and third-party beneficiaries identified in section 2 hereunder;

(c) Comply with the terms of this Conservation Easement and cooperate with Grantee in the protection of the conservation values;

(d) Pursuant to the requirements set out herein, repair and restore damage to the Conservation Easement 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 Property without first consulting with Grantee; and

(e) Obtain any applicable governmental permits and approvals for any activity or use permitted by this Conservation Easement and conducted by Grantor, and any such 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. Reserved Rights. Grantor 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 Conservation Easement.

6. Grantee's Remedies. USFWS and CDFW, as a third-party beneficiaries under this Conservation Easement, shall have the same rights as Grantee under this section to enforce the terms of this Conservation Easement. If Grantee determines that Grantor is in violation of the terms of this Conservation Easement or that a violation is threatened. Grantee shall give written notice to Grantor, CDFW, and USFWS of such violation and demand in writing the cure of such violation. If Grantor fails to cure the violation within thirty (30) days after receipt of written notice and demand from Grantee, or if the cure reasonably requires more than thirty (30) days to complete and Grantor fails to begin the cure within the 30-day period or fails to continue diligently to complete the cure, Grantee may bring an action at law or in equity in a court of competent jurisdiction to enforce compliance by Grantor with the terms of this Conservation Easement, to recover any damages to which Grantee may be entitled for violation by Grantor of the terms of this Conservation Easement or for any injury to the conservation values of the

Property, 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, Prior to implementation of any remedial or restorative actions, Grantor shall consult with Grantee.

Without limiting Grantor's liability therefor, Grantee may apply any damages recovered to the cost of undertaking any corrective action on the Property.

If Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate damage to the conservation values of the Property, Grantee may pursue its remedies under this section without prior notice to Grantor or without waiting for the period provided for cure to expire. Grantee's rights under this section apply equally to actual or threatened violations of the terms of this Conservation Easement Deed. Grantor agrees that Grantee's remedies at law for any violation of the terms of this Conservation Easement Deed are inadequate and that Grantee shall be entitled to the injunctive relief described in this section, both prohibitive and mandatory, in addition to such other relief to which Grantee may be entitled, including specific performance of the terms of this Conservation Easement Deed, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Grantee'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 Civil Code sections 815, *et seq.*, inclusive. The failure of Grantee to discover a violation or to take immediate legal action shall not bar Grantee from taking such action at a later time.

If at any time in the future Grantor, Grantee, or any successor in interest uses or threatens to use the Property for purposes inconsistent with this Conservation Easement, or Grantee or any successor in interest releases or abandons this Conservation Easement in whole or in part, then, notwithstanding Civil Code section 815.7, the California Attorney General, USFWS, or any entity or individual with a justifiable interest in the preservation of this Conservation Easement has standing as interested parties in any proceeding affecting this Conservation Easement.

6.1 Costs of Enforcement. Any costs incurred by Grantee, where Grantee is the prevailing party, in enforcing the terms of this Conservation Easement against Grantor, including, but not limited to, costs of suit and attorneys' and experts' fees, and any costs of restoration necessitated by Grantor's negligence or breach of this Conservation Easement shall be borne by Grantor.

6.2 Grantee's Discretion. Enforcement of the terms of this Conservation Easement Deed by Grantee shall be at the discretion of Grantee, and any forbearance by Grantee to exercise its rights under this Conservation Easement Deed in the event of any breach of any term of this Conservation Easement Deed by Grantor shall not be deemed or construed to be a waiver by Grantee of such term or of any subsequent breach of the same or any other term of this Conservation Easement Deed or of any of Grantee's rights under this Conservation Easement Deed, No delay or omission by Grantee in the exercise of any right or remedy upon any breach by Grantor shall impair such right or remedy or be construed as a waiver.

6.3 Acts Beyond Grantor's Control. Nothing contained in this Conservation Easement Deed shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the Property resulting from: (a) any natural cause beyond Grantor's control, including, without limitation, fire not caused by Grantor, flood, storm, and earth movement, or any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes; or (b) acts by Grantee or its employees, directors, officers, agents, contractors, or representatives.

6.4 CDFW and USFWS Right of Enforcement. All rights and remedies conveyed to Grantee under this Conservation Easement Deed shall extend to and are enforceable by CDFW and USFWS. These rights are in addition to, and do not limit, the rights of enforcement under any other applicable permit, agreement or authority, including, but not limited to, the rights of enforcement under the NCCP and Section 10(a) Permits.

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

8. Costs and Liabilities. Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Property, Grantor agrees that Grantee shall have no duty or responsibility for the operation or maintenance of the Property, 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.

8.1 Taxes; No Liens. Grantor shall pay before delinquency all taxes, assessments, fees, and charges of whatever description levied on or assessed against the Property by competent authority (collectively "taxes"), including any taxes imposed upon, or incurred as a result of, this Conservation Easement, and shall furnish Grantee with satisfactory evidence of payment upon request. Grantor shall keep Grantee's interest in the Property free from any liens, including those arising out of any obligations incurred by Grantor or any labor or materials furnished or alleged to have been furnished to or for Grantor at or for use on the Property.

8.2 Hold Harmless. Grantor shall hold harmless, protect and indemnify Grantee, USFWS and CDFW, and their respective directors, officers, employees, agents, contractors, volunteers, and representatives and the heirs, personal representatives, successors and assigns of each of them (each an "Indemnified Party" and, collectively, "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 (a) 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 Property, regardless of cause, unless due solely to the negligence of the party to be indemnified; (b) Grantor's obligations hereunder, including but not limited to the obligations specified in the (sub)sections above entitled "Grantor's Duties," "Costs and Liabilities," and "Taxes; No Liens"; and (c) the existence or administration of this Conservation Easement. If any action or proceeding is brought against any of the 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 Indemnified Party or reimburse Grantee for all charges incurred in defending the action or proceeding.

8.3 Extinguishment. If circumstances arise in the future that render the 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. Grantor shall provide written notice to Grantee, USFWS, and CDFW at least forty-five (45) days prior to taking any action to extinguish this Conservation Easement and prior to extinguishment shall provide a conservation easement at an alternative site to Grantee, or another entity or organization authorized to acquire and hold conservation easements under California Civil Code section 815.3 (or any successor provision then applicable) or the laws of the United States, that has been approved in writing by USFWS and CDFW, or shall provide alternative mitigation acceptable to USFWS and CDFW and determined in writing by USFWS and CDFW to be adequate to mitigate for the impacts to the species covered under the NCCP Permit and Section 10(a) Permit. Any proceeds from extinguishment shall be used in a manner determined in writing by USFWS and CDFW to be consistent with the purposes of this Conservation Easement and Grantor's mitigation obligations under the NCCP Permit and Section 10(a) Permit.

8.4 Condemnation.

(a) This Conservation Easement is a "conservation easement" as defined in California Code of Civil Procedure section 1240.055(a)(1) and constitutes "property appropriated to public use" as defined in California Code of Civil Procedure section 1240.055(a)(3). CDFW and USFWS are public entities that imposed conditions upon issuance of the NCCP Permit and Section 10(a) Permit that were satisfied, in whole or in part, by the creation of this Conservation Easement, as described in California Code of Civil Procedure section 1240.055(a)(3).

(b) A person authorized to acquire property for public use by eminent domain shall seek to acquire the Property, if at all, only as provided in California Code of Civil Procedure section 1240.055. The purposes of the Conservation Easement are presumed to be the best and most necessary public use as defined at Code of Civil Procedure section 1240.680, notwithstanding Code of Civil Procedure sections 1240.690 and 1240.700. If any person seeks to acquire the Property for public use, Grantee shall immediately provide written notice to USFWS and CDFW and comply with all obligations of the holder of a conservation easement under California Code of Civil Procedure section 1240.055, as applicable.

(c) In the event that the Property is acquired, or authorized to be acquired, under eminent domain by the Federal Government, or any department or agency thereof, the Grantee, within 15 days of receipt of any notice of such acquisition or intent to acquire, shall send a copy of such notice by first-class mail to USFWS and CDFW; and shall notify the person who has acquired or is seeking to acquire the property that CDFW and USFWS, as public entities that imposed conditions upon issuance of the NCCP Permit and Section 10(a) Permit that were satisfied, in whole or in part, by the creation of the Conservation Easement, was sent a copy of the notice pursuant to this paragraph.

(d) Grantee shall use any proceeds received from condemnation of the Property in a manner determined by USFWS and CDFW in writing to be consistent with the purposes of this Conservation Easement and Grantor's mitigation obligations under the NCCP

Permit and Section 10(a) Permit. If the Conservation Easement is condemned, the net proceeds from the condemnation shall also be used in compliance with California Government Code section 65966(j).

9. Assignment by Grantee. This Conservation Easement is transferable, but Grantee or any successor in interest shall give Grantor, USFWS, and CDFW, at least thirty (30) days prior written notice of the transfer. Grantee or any successor in interest may assign its rights and obligations under this Conservation Easement only in favor of an entity or organization authorized to acquire and hold conservation easements pursuant to Civil Code section 815.3 and reasonably acceptable to USFWS and CDFW. Grantee or any successor in interest shall require the assignee to agree in writing that the conservation purposes that this Deed is intended to advance shall continue to be fulfilled by such assignee in accordance with the terms of this Conservation Easement Deed, the NCCP Permit and the Section 10(a) Permit, and shall require the assignee to record the assignment in the county where the Property 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 the section below entitled "No Merger."

10. Release or Abandonment. Grantee or any successor in interest shall not release, modify, relinquish or abandon its rights and obligations under this Conservation Easement without the prior written consent of USFWS and CDFW.

11. Subsequent Transfers. Grantor agrees to incorporate the terms of this Conservation Easement Deed in any deed or other legal instrument by which Grantor divests itself of any interest in all or any portion of the Property, including, without limitation, a leasehold interest. Grantor agrees that the deed or other legal instrument shall also incorporate by reference the MSHCP, Implementing Agreement, NCCP Permit, and Section 10(a) Permit and any amendments thereto. Grantor further agrees to give written notice to Grantee, USFWS and CDFW of the intent to transfer any interest in the Property at least thirty (30) days prior to the date of such transfer. Grantee, USFWS and CDFW 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 Conservation Easement Deed. The failure of Grantor or Grantee to perform any act provided in this section shall not impair the validity of this Conservation Easement Deed or limit its enforceability in any way. Any transfer under this section is subject to the requirements of the section below entitled "No Merger."

12. Dissolution of Grantee. Grantee shall immediately transfer the Conservation Easement and deliver any and all monies it is then holding for purposes of this Conservation Easement, to an entity or other non-profit organization in accordance with the section above entitled "Assignment by Grantee", if any of the following occurs: (a) Grantee dissolves; (b) Grantee is the subject of a voluntary or involuntary petition in bankruptcy; (c) Grantee is unable to carry out its obligations under this Conservation Easement; or (d) Grantor reasonably determines, with the concurrence of USFWS and CDFW, that any monies held by Grantee, or its successor entity, are not being held, managed, invested, or disbursed for conservation purposes consistent with this Conservation Easement and the MSHCP, Implementing Agreement, NCCP Permit, Section 10(a) Permit, and other legal requirements.

13. No Merger. The doctrine of merger is not intended to apply and shall not operate to extinguish this Conservation Easement if the Conservation Easement and the Property become vested in the same party. If, despite this express intent, the doctrine of merger applies to extinguish the Conservation Easement then, unless Grantor, Grantee, USFWS, and CDFW otherwise agree in writing, a replacement conservation easement or restrictive covenant containing the same protections embodied in this Conservation Easement shall promptly be recorded against the Property by Grantee, or its successor in interest, in favor of a third party approved in writing by USFWS and CDFW to ensure that the mitigation obligations required under the NCCP Permit and Section 10(a) Permit, which include conservation of the Property in perpetuity through execution and recordation of a conservation easement or equivalent legal mechanism, and the purposes of California Civil Code section 815, are fulfilled. Until such replacement conservation easement or equivalent legal mechanism is executed and recorded, Grantee or its successor in interest shall continue to protect the Property in accordance with the terms of the original Conservation Easement. Any and all terms and conditions of this Conservation Easement shall be deemed covenants and restrictions upon the Property, which shall run with the land according to California law and otherwise exist in perpetuity.

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

To Grantor:

City of Palm Desert
Palm Desert City Hall
73-510 Fred Waring Drive
Palm Desert, CA 92260
Attention: City Manager

To Grantee:

Coachella Valley Conservation Commission
74-199 El Paseo, Suite 100
Palm Desert, California 92260
Attention: Executive Director

With a copy:

To CDFW:

California Department of Fish and Wildlife
Office of the General Counsel
1416 Ninth Street, 12th Floor
Sacramento, California 95814-2090
Attn: General Counsel

To USFWS:

U.S. Fish and Wildlife Service
Attn: Field Supervisor
777 E. Tahquitz Canyon Way, Suite 208
Palm Springs, CA 92262

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 delivery by overnight courier or, in the case of delivery by first class mail, five (5) 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.

15. Amendment. This Conservation Easement Deed may be amended by Grantor and Grantee only by mutual written agreement, with the written approval of USFWS and CDFW (which approval shall not be unreasonably withheld or delayed). Any such amendment shall be consistent with the purposes of this Conservation Easement and shall not affect its perpetual duration. Any such amendment shall be recorded in the official records of Riverside County, State of California.

16. No Hazardous Materials Liability. Grantor represents and warrants that it has no knowledge of any release, threatened release, storage or disposal of Hazardous Materials (defined below) in, on, under, about or affecting the Property.

16.1 Without limiting any other indemnification obligations set out hereinabove, Grantor agrees to indemnify, protect and hold harmless the Indemnified Parties (as defined hereinabove) against any and all Claims (as defined hereinabove) arising from or connected with any Hazardous Materials present, alleged to be present, or otherwise associated with the Property at any time, except any Hazardous Materials placed, disposed or released by Grantee, its employees or agents. This release and indemnification includes, without limitation, Claims for injury to or death of any person or physical damage to any property; and 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 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 Indemnified Party or reimburse Grantee for all charges incurred in defending the action or proceeding.

16.2 Despite any contrary provision of this Conservation Easement Deed, 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 to Grantee any of the following:

(a) 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. sections 9601, *et seq.*; hereinafter, “CERCLA”); or

(b) The obligations or liabilities of a person described in 42 U.S.C. section 9607(a)(3) or (4); or

(c) the obligations of a responsible person under any applicable Environmental Laws; or

(d) The right to investigate and remediate any Hazardous Materials associated with the Property; or

(e) Any control over Grantor's ability to investigate, remove, remediate or otherwise clean up any Hazardous Materials associated with the Property.

16.3 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; the Resource Conservation and Recovery Act of 1976 (42 U.S.C. § 6901, *et seq.*); the Hazardous Materials Transportation Safety and Security Reauthorization Act of 2005 (49 U.S.C. sections 5101, *et seq.*); the Hazardous Materials Transportation Act (49 U.S.C. sections 6901 *et seq.*); the Hazardous Waste Control Law (California Health & Safety Code sections 25100, *et seq.*); the Carpenter-Presley-Tanner Hazardous Substance Account Act (California Health & Safety Code section 25300, *et seq.*); 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 Deed. 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.

16.4 Grantor represents, warrants and covenants to Grantee that Grantor's activities (including those of its agents, employees, invitees and contractors) upon and use of the Property will comply with all Environmental Laws.

17. General Provisions.

17.1 Controlling Law. The interpretation and performance of this Conservation Easement Deed shall be governed by the laws of the State of California, disregarding the conflicts of law principles of such state, and by applicable federal law (including the FESA).

17.2 Liberal Construction. Any general rule of construction to the contrary notwithstanding, this Conservation Easement Deed shall be liberally construed to affect the purposes of this Conservation Easement and the policy and purpose of Civil Code sections 815, *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.

17.3 Severability. If a court of competent jurisdiction voids or invalidates on its face any provision of this Conservation Easement Deed, such action shall not affect the remainder of this Conservation Easement Deed. If a court of competent jurisdiction voids or invalidates the

application of any provision of this Conservation Easement Deed to a person or circumstance, such action shall not affect the application of the provision to other persons or circumstances.

17.4 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. No alteration or variation of this instrument shall be valid or binding unless contained in a written amendment in compliance with all provisions herein.

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

17.6 Successors. The covenants, terms, conditions, and restrictions of this Conservation Easement Deed 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 Property.

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

17.8 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 its construction or interpretation.

17.9 Warranty. Grantor represents and warrants that there are no outstanding mortgages, liens, encumbrances or other interests in the Property which have not been expressly subordinated to this Conservation Easement Deed, and that the Property is not subject to any other conservation easement or interest that is adverse to this Conservation Easement.

17.10 Additional Easements. Grantor shall not grant any additional easements, rights of way or other interests in the Property (other than a security interest that is subordinate to this Conservation Easement Deed), or grant or otherwise abandon or relinquish any water agreement relating to the Property, without first obtaining the written consent of Grantee, USFWS and CDFW. Grantee, USFWS and CDFW may withhold such consent if it determines 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 Property. This section shall not prohibit transfer of a fee or leasehold interest in the Property that is subject to this Conservation Easement Deed and otherwise complies with the terms of this Deed.

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

17.12 Recording. Grantee shall record this Conservation Easement in the Official Records of the County in which the Property is located, and may re-record it at any time as Grantee deems necessary to preserve its rights in this Conservation Easement.

IN WITNESS WHEREOF Grantor has executed this Conservation Easement Deed the day and year first above written.

GRANTOR:
City of Palm Desert

By: _____
L. Todd Hileman
City Manager

GRANTEE:
Coachella Valley Conservation Commission

By: _____
Tom Kirk
Executive Director

CERTIFICATE OF ACCEPTANCE

This is to certify that the interest in real property conveyed by the foregoing Conservation Easement Deed by _____ dated is hereby accepted by the undersigned officer on behalf of the Grantee, Coachella Valley Conservation Commission, pursuant to authority conferred by the Commission, and the Grantee consents to recordation thereof by its duly authorized officer.

COACHELLA VALLEY CONSERVATION COMMISSION

By: _____
Tom Kirk
Executive Director

Date: _____

Exhibit A

	Legal Description	Corresponding Assessor Parcel Number	Ownership
1.	55.05 ACRES IN PAR 2 PM 163/030 PM	640 080 009	City of Palm Desert
2.	27.02 ACRES M/L IN POR SW 1/4 OF	640 180 016	City of Palm Desert
3.	.47 ACRES IN LOT 1 MB 223/019 TR	640 350 001	City of Palm Desert
4.	.28 ACRES IN LOT 2 MB 223/019 TR	640 350 002	City of Palm Desert
5.	.28 ACRES IN LOT 3 MB 223/019 TR	640 350 003	City of Palm Desert
6.	.31 ACRES IN LOT 4 MB 223/019 TR	640 350 004	City of Palm Desert
7.	.24 ACRES IN LOT 5 MB 223/019 TR	640 350 005	City of Palm Desert
8.	24 ACRES IN LOT 6 MB 223/019 TR	640 350 006	City of Palm Desert
9.	.24 ACRES IN LOT 7 MB 223/019 TR	640 350 007	City of Palm Desert
10.	.28 ACRES IN LOT 8 MB 223/019 TR	640 350 008	City of Palm Desert
11.	.30 ACRES IN LOT 9 MB 223/019 TR	640 350 009	City of Palm Desert
12.	.38 ACRES IN LOT 10 MB 223/019 TR	640 350 010	City of Palm Desert
13.	.37 ACRES IN LOT 11 MB 223/019 TR	640 350 011	City of Palm Desert
14.	.31 ACRES IN LOT 12 MB 223/019 TR	640 350 012	City of Palm Desert
15.	.35 ACRES IN LOT 13 MB 223/019 TR	640 350 013	City of Palm Desert
16.	.31 ACRES IN LOT 14 MB 223/019 TR	640 350 014	City of Palm Desert
17.	.32 ACRES IN LOT 15 MB 223/019 TR	640 350 015	City of Palm Desert
18.	.34 ACRES IN LOT 16 MB 223/019 TR	640 350 016	City of Palm Desert
19.	.26 ACRES IN LOT 17 MB 223/019 TR	640 350 017	City of Palm Desert
20.	.39 ACRES IN LOT 18 MB 223/019 TR	640 350 018	City of Palm Desert
21.	1.97 ACRES IN LOT 19 MB 223/019 TR	640 350 019	City of Palm Desert
22.	.92 ACRES IN LOT 20 MB 223/019 TR	640 350 020	City of Palm Desert
23.	1.14 ACRES IN LOT 21 MB 223/019 TR	640 350 021	City of Palm Desert
24.	1.67 ACRES IN LOT 22 MB 223/019 TR	640 350 022	City of Palm Desert
25.	2.10 ACRES IN LOT 23 MB 223/019 TR	640 350 023	City of Palm Desert
26.	3.21 ACRES IN POR LOT A AND LOTS B	640 350 024	City of Palm Desert
27.	4.39 ACRES IN LOT 29 MB 223/019 TR	640 360 001	City of Palm Desert
28.	3.89 ACRES IN LOT 28 MB 223/019 TR	640 360 002	City of Palm Desert

29.	4.49 ACRES IN LOT 27 MB 223/019 TR	640 360 003	City of Palm Desert
30.	.99 ACRES IN LOT 26 MB 223/019 TR	640 360 004	City of Palm Desert
31.	1.12 ACRES IN LOT 25 MB 223/019 TR	640 360 005	City of Palm Desert
32.	.99 ACRES M/L IN LOT 24 MB 223/019	640 360 006	City of Palm Desert
33.	.06 ACRES IN LOT D MB 223/019 TR	640 360 007	City of Palm Desert
34.	1.44 ACRES IN POR LOT A MB 223/019	640 360 008	City of Palm Desert

Exhibit B Existing Trails

