

RECORDING REQUESTED BY:

City of Cathedral City
68-700 Avenida Lalo Guerrero
Cathedral City, CA 92234

AND WHEN RECORDED MAIL TO:

City of Cathedral City
68-700 Avenida Lalo Guerrero
Cathedral City, CA 92234

Revised: January 24, 2016

CONSERVATION EASEMENT DEED

This CONSERVATION EASEMENT DEED (“**Conservation Easement**”) is made this ____ day of _____, 2016 by the City of Cathedral City, a governmental entity (“**Grantor**”), in favor of Coachella Valley Conservation Commission, a government entity and Permittee under the Coachella Valley Multiple Species Habitat Conservation Plan, and herein referred to as “**Grantee**”.

RECITALS

A. Grantor is the sole owner in fee simple of real property containing 105.36 acres located in the City of Cathedral City, County of Riverside, State of California (the “Property”). The Property is legally described on Exhibit “A” attached hereto and incorporated by this reference. Grantor intends to grant a conservation easement over an 18.7 acre portion of the Property (the “**Easement Area**”). The Easement Area is legally described on **Exhibit “B”** and depicted on **Exhibit “C”** attached hereto and incorporated by this reference.

B. The Easement Area provides, among other things, compensatory mitigation for unavoidable impacts associated with the Cathedral Canyon Drive Bridge over the Whitewater River Project by Grantor pursuant to requirements of the following state and Federal approvals (collectively, “**Agency Approvals**”): (1) United States Army Corps of Engineers’ (“**ACOE**”) Section 404 Permit No. SPL-2010-00505-VCC and any amendments thereto (the “**Section 404 Permit**”). The Project has already secured approval of a Streambed Alteration Agreement (No. 1600-2010-0148-R6). Project certification pursuant to Section 401 of the federal Clean Water Act from the US Environmental Protection Agency and the California Water Quality Control Board have also been issued.

C. This Conservation Easement is designed to satisfy and is granted in satisfaction of the Agency Approvals.

D. Consistent with the terms and conditions of this Conservation Easement, the Easement Area is and will remain in a Natural Condition as defined herein and is intended to be preserved in its natural, scenic, open condition to maintain its ecological, historical, visual and educational values (collectively, “**Conservation Values**”). The Conservation Values are of importance to the people of the City of Cathedral City and County of Riverside, and the people of the State of California and United States.

E. Grantee is a California joint powers authority created to implement the Coachella Valley Multiple Species Habitat Conservation Plan (CVMSHCP) and is authorized to hold conservation easements pursuant to Civil Code Section 815.3. Specifically, Grantee is a local governmental entity identified in Civil Code Section 815.3(b) and otherwise authorized to acquire and hold title to real property.

F. The ACOE is the Federal agency charged with regulatory authority over discharges of dredged and fill material in waters of the United States pursuant to Section 404 of the Clean Water Act, and is a third party beneficiary of this Conservation Easement.

COVENANTS, TERMS, CONDITIONS AND RESTRICTIONS

In consideration of the above recitals and the mutual covenants, terms, conditions, and restrictions contained herein, and pursuant to the laws of the United States and State of California, including Civil Code Section 815, *et seq.*, Grantor hereby voluntarily grants and conveys to Grantee and its successors or assigns, as appropriate, a Conservation Easement in perpetuity over the Easement Area of the nature and character and to the extent hereinafter set forth. This Conservation Easement shall run with the land and be binding on Grantor’s heirs, successors, administrators, assigns, lessees, and other occupiers or users of the Easement Area or any portion of it.

1. Purpose.

(a) The purpose of this Conservation Easement is to ensure the Easement Area will be managed and preserved in a Natural Condition, as defined herein, in perpetuity and to prevent any use of the Easement Area that will impair or interfere with the Conservation Values of the Easement Area (the “**Purpose**”). Grantor intends that this Conservation Easement will confine the use of the Easement Area to such activities that are consistent with this Purpose, including without limitation, those involving the preservation, restoration, and enhancement of native species and their habitats.

(b) The term “**Natural Condition**,” as referenced in the preceding paragraph and other portions of this Conservation Easement, shall mean the condition of the Easement Area, as it exists at the time this Conservation Easement is executed, as well as future enhancements or changes to the Easement Area that occur directly as a result of the following activities:

(1) Compensatory mitigation measures, including implementation, maintenance, and monitoring activities (collectively, “**Compensatory Mitigation**”) required by the Agency Approvals and as described in the “Long-Term Management Plan (LTMP) for the East Cathedral Canyon Wash (ECCW) dated March 2016 (“**Mitigation Plan**”), a copy of which is attached as **Exhibit “D;**”

(2) In-perpetuity maintenance (“**Long-Term Maintenance**”) as described in Section 16 herein; or

(3) Activities described in Sections 4 and 6 herein.

(c) To the best of the Grantor’s knowledge, Grantor represents and warrants that there are no structures or improvements existing on the Easement Area at the time this grant is executed. Grantor further represents and warrants that there are no other previously granted easements existing on the Easement Area that interfere or conflict with the Purpose of this Conservation Easement as evidenced by the Title Report attached at **Exhibit “E.”** The present Natural Condition is evidenced in part by the depiction of the Easement Area attached on **Exhibit “F,”** showing all relevant and plottable property lines, easements, dedications, improvements, boundaries and major, distinct natural features such as waters of the United States. Grantor has delivered further evidence of the present Natural Condition to Grantee and ACOE consisting of (1) a color aerial photograph of the Easement Area at an appropriate scale taken as close in time as possible to the date this Conservation Easement is executed; (2) an overlay of the Easement Area boundaries on such aerial photograph; and (3) on-site color photographs showing all man-made improvements or structures (if any) and the major, distinct natural features of the Easement Area.

(d) If a controversy arises with respect to the present Natural Condition of the Easement Area, Grantor, Grantee, or ACOE or any designees or agents of Grantor, Grantee, and ACOE shall not be foreclosed from utilizing any and all other relevant documents, surveys, photographs or other evidence or information to assist in the resolution of the controversy.

(e) The term “**Biological Monitor**” shall mean an independent third-party consultant, an employee or Grantee, or a consultant to Grantee with knowledge of Property’s resources in the Riverside County area and expertise in the field of biology or related field.

2. Grantee's Rights. To accomplish the Purpose of this Conservation Easement, Grantor hereby grants and conveys the following rights to Grantee. These rights, without obligation, are also granted to the ACOE or its designees as third party beneficiaries of this Conservation Easement:

(a) To preserve and protect the Conservation Values of the Easement Area; and

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

(c) To prevent any activity on or use of the Easement Area that is inconsistent with the Purpose of this Conservation Easement and to require the restoration of such areas or features of the Easement Area that may be damaged by any act, failure to act, or any use that is inconsistent with the Purpose of this Conservation Easement; and

(d) To require that all mineral, air, and water rights (if any) as Grantee deems necessary to preserve, protect and sustain the biological resources and Conservation Values of the Easement Area shall remain a part of and be put to beneficial use upon the Easement Area, consistent with the Purposes of this Conservation Easement. Grantor shall not transfer, encumber, sell, lease, or otherwise separate the mineral, air or water rights for the Easement Area, or change the place or purpose or use of the known water rights, without first obtaining the written consent of Grantee, which Grantee, in its sole discretion, may withhold. Grantor shall not abandon or allow the abandonment of, by action or inaction, any of Grantor's right, title or interest in and to any known: water or water rights, ditch or ditch rights, spring rights, reservoir or storage rights, wells, ground water rights, or other rights in and to the use of water historically used on or otherwise appurtenant to the Easement Area including without limitation: (i) riparian water rights; (ii) appropriative water rights; (iii) rights to waters which are secured under contract with any irrigation or water district, to the extent such waters are customarily applied to the Easement Area; or (iv) any water from wells that are in existence or may be constructed in the future on the Easement Area;

(e) All present and future development rights allocated, implied, reserved or inherent in the Easement Area; such rights are hereby terminated and extinguished and such present and future development rights may not be used on or transferred to any portion of the Property, nor any other property adjacent or otherwise;

(f) The right to enforce by any means, including, without limitation, injunctive relief, the terms and conditions of this Conservation Easement.

(g) The right to enhance native plant communities, including the removal of non-native species and the right to plant trees and shrubs of the same type as currently existing on the Easement Area, or other appropriate native species. Habitat enhancement activities shall not conflict with the preservation of the Natural Condition of the Easement Area or the Purpose of this Conservation Easement and shall be performed in compliance with all applicable laws, regulations, and permitting requirements.

3. Prohibited Uses. Except as provided in Section 6, any activity on or use of the Easement Area inconsistent with the Purpose of this Conservation Easement and not reserved as a right of Grantor is prohibited. Excepted from prohibited uses are those trail uses set forth in Section 7.3.3.2: Public Use and Trails Management on Reserve Lands within the Santa Rosa and San Jacinto Mountains Conservation Area of the Coachella Valley MSHCP. These include authorized trails as identified in and managed under the Santa Rosa and San Jacinto Mountains Trails Plan, and such Public uses as birdwatching, photography, and scientific research not inconsistent with the Purpose of the Conservation Easement. Without limiting the generality of the foregoing, the following uses by Grantor, Grantee, and their respective guests, agents, assigns, employees, representatives, successors, and third parties are expressly prohibited on the Easement Area except as otherwise provided herein or unless specifically provided for in the Agency Approvals, the Mitigation Plan, and any easements and reservations of rights recorded in the chain of title to the Easement Area at the time of this conveyance (as set forth on **Exhibits E and F** hereto):

(a) Unseasonable or supplemental watering except for habitat enhancement activities described in Section 2(g), Section 6(b), or the Mitigation Plan;

(b) Use of chemical herbicides, pesticides, rodenticides, fungicides, biocides, fertilizers, or other agents or weed abatement activities, except weed abatement activities necessary to control or remove invasive, exotic plant species in accordance with Section 6(c);

(c) Incompatible fire protection activities except fire prevention activities set forth in Section 6;

(d) Use of off-road vehicles and use of any other motorized vehicles except on existing roadways;

(e) Grazing or other agricultural activity of any kind;

(f) Recreational activities including, but not limited to, horseback riding, biking, hunting or fishing, except those trail uses as set forth in Section 7.3.3.2 of the Coachella Valley MSHCP, including authorized trails as identified in and managed under the Santa Rosa and San Jacinto Mountains Trails Plan;

(g) Residential, commercial, retail, institutional, or industrial structures or uses;

(h) Any legal or de facto division, subdivision or partitioning of the Easement Area;

(i) Construction, reconstruction, expansion, location, relocation, installation or placement of any building, road, wireless communication cell towers, or any other structure or improvement, except as provided for in Section 6, or any billboard, fence, boundary marker or sign, except those signs permitted in Section 5(c);

(j) Dumping soil, trash, ashes, refuse, waste, bio-solids, garbage or any other material;

(k) Planting, gardening, or introduction or dispersal of non-native plant or animal species;

(l) Filling, dumping, excavating, draining, dredging, mining, drilling, removing or exploring for or extraction of minerals, loam, gravel, soil, rock, sand or other material on or below the surface of the Easement Area;

(m) Altering the surface or general topography of the Easement Area, including but not limited to any alterations to habitat, building of roads, trails, and flood control work, or paving or otherwise covering any portion of the Easement Area; except as permitted by the Agency Approvals, or as necessary to implement the Mitigation Plan, or any right reserved in Section 6, or Section 16;

(n) Removing, destroying, or cutting of trees, shrubs or other vegetation, except for (1) emergency fire breaks as required by fire safety officials as set forth in Section 6(e), (2) prevention or treatment of disease, (3) control of invasive species which threaten the integrity of the habitat, (4) completing the Mitigation Plan, or (5) activities described in Section 4, Section 6, or Section 16. In the event that activity on the Easement Area is necessary to prevent or treat disease as listed herein, the first priority for action shall be chemical and biological methods. No invasive or non-native species shall be introduced to prevent or treat disease, unless chemical or biological methods have failed to resolve the problem and the County of Riverside Department of Environmental Health, or other agency with authority, determines that no other methods will address the problem. Removal of vegetation to prevent or treat disease shall only be allowed if chemical or biological methods have failed to resolve the problem or upon a showing that removal of vegetation is required on an emergency basis;

(o) Manipulating, impounding or altering any natural watercourse, body of water or water circulation on the Easement Area, and activities or uses detrimental to water quality, including but not limited to degradation or pollution of any surface or sub-surface waters;

(p) Creating, enhancing, and maintaining fuel modification zones (defined as a strip of mowed land or the planting of vegetation possessing low combustibility for purposes of fire suppression) or other activities that could constitute fuel modification zones;

(q) Without the prior written consent of Grantee, which Grantee may withhold, transferring, encumbering, selling, leasing, or otherwise separating the mineral rights or water rights for the Easement Area; changing the place or purpose of use of the water rights; abandoning or allowing the abandonment of, by action or inaction, any water or water rights, ditch or ditch rights, spring rights, reservoir or storage rights, wells, ground water rights, or other rights in and to the use of water historically used on or otherwise appurtenant to the Easement Area; and

(r) Creation of any encumbrance superior to this Conservation Easement, other than those encumbrances set forth in **Exhibit "E"** hereto, or the recording of any involuntary lien (which is not released within thirty calendar days), or the granting of any lease, license or similar possessory interest in the Easement Area which will affect the Conservation Values of the Easement Area; and

(s) Any use or activity that may violate, or fail to comply with, relevant federal, state, or local laws, regulations, or policies applicable to Grantor, the Easement Area, or the use or activity in question;

(t) No use shall be made of the Easement Area, and no activity thereon shall be permitted, that may adversely affect the Conservation Values of the Property or otherwise interfere with the Purposes of this Conservation Easement. Grantor and Grantee acknowledge that, in view of the perpetual nature of this Conservation Easement, they are unable to foresee all potential future land uses, future technologies, and future evolution of the land and other natural resources, and other future occurrences affecting the Purpose of this Conservation Easement. Grantee, in consultation with ACOE and CDFW, may determine whether (1) proposed uses or proposed improvements not contemplated by or addressed in this Conservation Easement or (2) alterations in existing uses or structures, are consistent with the Purpose of this Conservation Easement.

4. Grantor's Duties. To accomplish the Purpose of this Conservation Easement as described in Section 1, Grantor shall undertake the following construction, maintenance and monitoring of mitigated areas pursuant to the Mitigation Plan until issuance of final approval per the Agency Approvals confirming that Grantor has successfully completed construction, maintenance and monitoring of mitigated areas pursuant to the Mitigation Plan ("**Final Approval**"). This duty is non-transferable. Grantor, its successors and assigns shall:

(a) Undertake all reasonable actions to prevent the unlawful entry and trespass by persons whose activities may degrade or harm the Conservation Values of the Easement Area. In addition, Grantor shall undertake all necessary actions to perfect Grantee's rights under Section 2 of this Conservation Easement;

(b) Cooperate with Grantee, its successors or assigns in the protection of the Conservation Values;

(c) Pursuant to Section 16(d), below, repair and restore damage to the

Easement Area directly or indirectly caused by Grantor, Grantor's guests, representatives, employees or agents, and third parties within Grantor's control; provided, however, Grantor, its successors or assigns shall not engage in any repair or restoration work in the Easement Area without first consulting with the Grantee or its successor or assigns and ACOE; and

(d) Obtain any applicable governmental permits and approvals for any activity or use permitted by this Conservation Easement, and any activity or use shall be undertaken in accordance with all applicable federal, state, local and administrative agency statutes, ordinances, rules, regulations, orders or requirements.

5. Grantee's Duties. To accomplish the Purpose of this Conservation Easement as described in Section 1, Grantee shall:

(a) Perform at least annual compliance inspections of the Easement Area, prepare an annual inspection report that documents the annual inspection results, and shall make reports available to the ACOE and/or its assignee upon request;

(b) Upon receipt of Final Approval, perform the Long-Term Maintenance of the Easement Area as described in Section 16;

(c) Within 90 days of recordation of this Conservation Easement, erect signs and other notification features saying "Natural Area Open Space," "Protected Natural Area," or similar descriptions. Prior to erection of such signage, Grantee shall submit detailed plans showing the location and language of such signs to the ACOE for review and approval. The erection and maintenance of informative signage shall not be in direct or potential conflict with the preservation of the Natural Condition of the Easement Area or the Purpose of this Conservation Easement and shall be performed in compliance with all applicable statutes, regulations, and permitting requirements;

(d) Pursuant to the requirements of Section 16(e), below, repair and restore damage to the Easement Area directly or indirectly caused by Grantee, Grantee's guests, representatives, employees or agents, and third parties within Grantee's control provided, however, Grantee, its successors or assigns shall not engage in any repair or restoration work on the Easement Area without first consulting with Grantor and ACOE;

(e) Set aside, hold, invest and disburse adequate Endowment funds (described in Section 17) in trust solely for the purposes of preserving the Conservation Values of the Easement Area under this Conservation Easement in perpetuity. ACOE and/or its assignee shall have the right to review and approve the terms of the endowment agreement, which shall be executed concurrently with this Conservation Easement. ACOE shall be a third party beneficiary of that endowment agreement with the right to review and approve any amendments;

(f) Have a fiduciary duty to ensure that both Endowments held in trust for the Easement Area, are properly managed in accordance with the terms of the approved endowment agreement; and

(g) Obtain any applicable governmental permits and approvals for any activity or use permitted by this Conservation Easement, and any activity or use shall be undertaken in accordance with all applicable federal, state, local and administrative agency statutes, ordinances, rules, regulations, orders or requirements.

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

(a) Access. Reasonable access through the Easement Area and Property to adjacent land over existing roads, or to perform obligations or other activities permitted by this Conservation Easement.

(b) Habitat Enhancement Activities. Creation and enhancement of native plant communities, including the right to plant trees and shrubs of the same type as currently existing on the Easement Area, so long as such activities do not harm the habitat types identified in the Agency Approvals or Mitigation Plan. For purposes of preventing erosion and reestablishing native vegetation, the Grantor shall have the right to revegetate areas that may be damaged by the permitted activities under this Section 6, naturally occurring events or by the acts of persons wrongfully damaging the Natural Condition of the Easement Area. Prior to any habitat enhancement activities, Grantor shall have a Biological Monitor submit detailed plans to the ACOE for review and approval. Habitat enhancement activities shall not be in direct or potential conflict with the preservation of the Natural Condition of the Easement Area or the Purpose of this Conservation Easement and shall be performed in compliance with all applicable statutes, regulations, and permitting requirements.

(c) Vegetation, Debris, and Exotic Species Removal. Removal or trimming of vegetation downed or damaged due to natural disaster, removal of man-made debris, removal of parasitic vegetation (as it relates to the health of the host plant) and removal of non-native or exotic plant or animal species. Vegetation, debris, and exotic plant species removal shall not be in direct or potential conflict with the preservation of the Natural Condition of the Easement Area or the Purpose of this Conservation Easement and shall be performed in compliance with all applicable laws, regulations, and permitting requirements.

(d) No Interference with Development of Adjoining Property.

Notwithstanding anything set forth herein to the contrary, nothing in this Conservation Easement is intended nor shall be applied to in any way limit Grantor or any of Grantor's successors and assigns from (1) constructing, placing, installing, and/or erecting any improvements upon the portions of the Property not constituting the Easement Area and/or (2) developing adjoining property for any purposes, except as limited by any local, state or federal permit requirements for such development and provided that for all of the above clauses (1) and (2) neither such activity nor any effect resulting from such activity amounts to a use of the Easement Area, or has an impact upon the Easement Area, that is prohibited by Section 3 above.

(e) Fire Protection. The right, in an emergency situation only, to maintain firebreaks (defined as a strip of plowed or cleared land made to check the spread of a fire), trim or remove brush, otherwise perform preventative measures required by the fire department to protect structures and other improvements from encroaching fire. All other brush management activities shall be limited to areas outside the Easement Area.

7. Enforcement.

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

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

other Party and third party beneficiaries listed under Section 14 of this Conservation Easement.

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

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

(1) Recover any damages to which they may be entitled for violation by the violating Party of the terms of this Conservation Easement or for any injury to the Conservation Values of the Easement Area. The non-violating Party shall first apply any damages recovered to the cost of undertaking any corrective action on the Easement Area. Prior to implementation of any remedial or restorative actions pursuant to this paragraph, ACOE shall be consulted.

(2) Enjoin the violation by temporary or permanent injunction without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies.

(3) Obtain other equitable relief, including, but not limited to, the restoration of the Easement Area to the condition in which it existed prior to any such violation or injury. This remedy is expressly available notwithstanding the ability to claim damages as provided for in subdivision (1).

(e) Notice of Dispute.

(1) If the violating Party provides the non-violating Party and/or third party beneficiaries with a Notice of Dispute, as provided herein, the non-violating Party and/or third party beneficiaries shall meet and confer with the violating Party at a mutually agreeable place and time, not to exceed thirty (30) days from the date that the non-violating Party and/or third party beneficiaries receive the Notice of Dispute. The non-violating Party and/or third party beneficiaries shall consider all relevant information

concerning the disputed violation provided by the violating Party and shall determine whether a violation has in fact occurred and, if so, whether the Notice of Violation and demand for cure issued by the non-violating Party and/or third party beneficiaries is appropriate in light of the violation.

(2) If, after reviewing the violating Party's Notice of Dispute, conferring with the violating Party, and considering all relevant information related to the violation, the non-violating Party and/or third party beneficiaries determine that a violation has occurred, the non-violating Party and/or third party beneficiaries shall give the violating party notice of such determination in writing. Upon receipt of such determination, the violating Party shall have fifteen (15) days to cure the violation. If said cure reasonably requires more than fifteen (15) days, the violating Party shall, within the fifteen (15) day period, submit to the non-violating Party and/or third party beneficiaries for review and approval a plan and time schedule to diligently complete a cure. The violating Party shall complete such cure in accordance with the approved plan.

(f) Conflicting Notices of Violation.

(1) If any Party receives a Notice of Violation that is in material conflict with one or more prior written Notices of Violation that have not yet been cured by the Party (hereinafter "**Active Notice(s) of Violation**") such that the conflict makes it impossible for the Party to carry out the cure consistent with all prior Active Notices of Violation, the Party shall give written notice (hereinafter "**Notice of Conflict**") to the non-violating Party and/or third party beneficiaries issuing the later, conflicting Notice(s) of Violation. The Party shall issue said Notice of Conflict to the appropriate non-violating Party and/or third party beneficiaries within fifteen (15) days of the receipt of each such conflicting Notice of Violation. A valid Notice of Conflict shall describe the conflict with specificity, including a description of how the conflict makes compliance with all Active Notices of Violation impossible.

(2) Upon issuing a valid Notice of Conflict to the appropriate non-violating Party and/or third party beneficiaries, as described above, the violating Party shall not be required to carry out the cure described in the conflicting Notice or Notices of Violation until such time as the non-violating Party responsible for said conflicting Notice(s) of Violation issue(s) a revised Notice of Violation that is consistent with prior Active Notices of Violation. Upon receipt of a revised, consistent Notice of Violation, the violating Party shall carry out the cure recommended in such notice within the time period(s) described in Section 7(c) above. Notwithstanding Section 7(g), failure to cure within said time period(s) shall entitle the non-violating Party to the remedies described in Section 7(d) and Section 7(h).

(3) The failure of the violating Party to issue a valid Notice of Conflict within fifteen (15) days of receipt of a conflicting Notice of Violation shall result in a waiver of the violating Party's ability to claim a conflict.

(g) Immediate Action. In the event that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values of the Easement Area, the Party and/or third party beneficiary seeking enforcement pursuant to Section 7(b) above may immediately pursue all available remedies, including injunctive relief, available pursuant to both this Conservation Easement and state and federal law after giving the violating Party at least twenty four (24) hours' written notice before pursuing such remedies. So long as such twenty-four (24) hours' notice is given, the non-violating Party may immediately pursue all available remedies without waiting for the expiration of the time periods provided for cure or Notice of Dispute as described in Section 7(c). The written notice pursuant to this paragraph may be transmitted to the violating Party by facsimile and shall be copied to the other Party and/or third party beneficiaries listed in Section 14 of this Conservation Easement. The rights of the non-violating Party and/or third party beneficiaries under this paragraph apply equally to actual or threatened violations of the terms of this Conservation Easement. The violating Party agrees that the remedies at law for any violation of the terms of this Conservation Easement are inadequate and that the non-violating Party and third party beneficiaries shall be entitled to the injunctive relief described in this section, both prohibitive and mandatory, in addition to such other relief to which they may be entitled, including specific performance of the terms of this Conservation Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. The remedies described in this Section 7(g) shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity, including but not limited to, the remedies set forth in Civil Code Section 815, *et seq.*, inclusive.

(h) Costs of Enforcement. Any costs incurred by a Party in enforcing the terms of this Conservation Easement against another Party, including, but not limited to, costs of suit and attorneys' fees, and any costs of restoration necessitated by a Party's violation or negligence under the terms of this Conservation Easement shall be borne by the violating Party.

(i) Enforcement Discretion. Enforcement of the terms of this Conservation Easement by a Party and/or third party beneficiary shall be at the discretion of the Party and/or third party beneficiary, and any forbearance by such Party and/or third party beneficiary to exercise its rights under this Conservation Easement in the event of any breach of any term of the Conservation Easement by a Party or any subsequent transferee shall not be deemed or construed to be a waiver by the non-violating Party and third party beneficiary of such terms or of any subsequent breach of the same or any other term of this Conservation Easement or of any of the rights of the non-violating Party and third party beneficiary under this Conservation Easement. No delay or omission by the non-violating Party and/or third party beneficiaries in the exercise of any right or remedy upon any breach by the violating Party shall impair such right or remedy or be construed as a waiver. Further, nothing in this Conservation Easement creates a non-discretionary duty upon the non-violating Party and/or third party beneficiaries to enforce its provisions, nor shall deviation from these terms and

procedures, or failure to enforce its provisions give rise to a private right of action against the non-violating Party and/or third party beneficiaries by any third parties.

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

(1) Any natural cause beyond Grantor's control, including without limitation, fire not caused by Grantor, flood, storm, and earth movement;

(2) Any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Easement Area resulting from such causes; provided that once the emergency has abated, Grantor, its successors or assigns promptly take all reasonable and necessary actions required to restore the Easement Area to the condition it was in immediately prior to the emergency;

(3) Acts by Grantee, ACOE, or their employees, directors, officers, agents, contractors, or representatives; or

(4) Acts of third parties (including any governmental agencies) that are beyond Grantor's control.

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

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

(1) Any natural cause beyond Grantee's control, including without limitation, fire not caused by Grantee, flood, storm, and earth movement;

(2) Any prudent action taken by Grantee under emergency conditions to prevent, abate, or mitigate significant injury to the Easement Area resulting from such causes, provided that once the emergency has abated, Grantee, its successors or assigns promptly take all reasonable and necessary actions required to restore the Easement Area to the condition it was in immediately prior to the emergency;

(3) Acts by Grantor, ACOE or their employees, directors, officers, agents, contractors, or representatives; or

(4) Acts of third parties (including any governmental agencies) that are beyond Grantee's control.

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

(l) Use of Endowment. If a court of competent jurisdiction determines that there has been a violation of any term of this Conservation Easement:

(1) Funds from the Maintenance and Monitoring Endowment which was created to manage the Easement Area cannot be used to pay damages awarded as part of the judgment;

(2) Funds from the Maintenance and Monitoring Endowment which was created to manage the Easement Area cannot be used to restore the Easement Area to the condition in which it existed prior to the violation; and

(3) In lieu of recovering monetary damages against Grantee from any source, ACOE may direct the role of Grantee and related management responsibility to a new entity, which shall be a public agency or non-profit concerned with conservation.

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

9. Costs and Liabilities.

(a) Grantor, its successors and assigns retain all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance (except Long-Term Maintenance pursuant to Section 16) of the Property. Grantor agrees Grantee and ACOE shall not have any duty or responsibility for the operation, upkeep, or maintenance (except Long-Term Maintenance pursuant to Section 16) 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. Grantor, its successor or assign remains solely responsible for obtaining any applicable governmental permits and approvals for any activity or use permitted by this Conservation Easement, and any activity or use shall be undertaken in accordance with all applicable federal, state, local and administrative agency statutes, ordinances, rules, regulations, orders and requirements.

(b) Hold Harmless.

(1) Grantor, its successors and assigns shall hold harmless, protect, defend and indemnify ACOE and its respective directors, officers, employees, agents, contractors, and representatives and the heirs, personal representatives, successors and assigns of each of them (“**ACOE Indemnified Party**” and collectively, “**ACOE 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: 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 caused by the negligence or willful misconduct of any of the ACOE Indemnified Parties.

(2) Grantor, and its successors and assigns shall hold harmless, protect, defend and indemnify Grantee and its respective directors, officers, employees, agents, contractors, and representatives and the heirs, personal representatives, successors and assigns of each of them (“**Grantee Indemnified Party**” and collectively “**Grantee Indemnified Parties**”) from and against any and all Claims which are in contravention of this Conservation Easement, arising from or in any way connected with: 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 area of the Property not constituting the Easement Area regardless of cause unless caused by the negligence or willful misconduct of any of the Grantee Indemnified Parties.

10. Taxes, No Liens. Grantor and its successors and assigns shall pay before delinquency all taxes, assessments, fees, and charges of whatever description levied on or assessed against the Property by competent authority, including any taxes imposed upon, or incurred as a result of, this Conservation Easement, and shall furnish Grantee and ACOE with satisfactory evidence of payment, if assessed, upon request. Grantor, Grantee, and their successors and assigns shall keep the Easement Area free from any liens. Should either Grantor’s work or Grantee’s work in or upon the Easement Area result in a lien on the Easement Area Grantor or Grantee, as the case may be, shall take all steps required to have said lien removed from the Easement Area.

11. Condemnation. Pursuant to Code of Civil Procedure section 1240.055, this Conservation Easement is “property appropriated to public use,” as used in Article 6 (commencing with section 1240.510) and Article 7 (commencing with section 1240.610) of Chapter 3 of Title 7 of the California Code of Civil Procedure. A person authorized to acquire property for public use by eminent domain shall seek to acquire the Easement Area, if at all, only as provided in Code of Civil Procedure section 1240.055. If any person seeks to acquire the Easement Area for public use, Grantor shall provide notice to Grantee and ACOE and comply with all obligations of the holder of a conservation

easement under Code of Civil Procedure section 1240.055. If the Conservation Easement is condemned, the net proceeds from the condemnation shall be used in compliance with California Government Code section 65966(j), and the location of the replacement property is subject to approval by ACOE and within six (6) months of acquiring the replacement property, Grantor shall record a conservation easement over the replacement property, in a form approved by Grantee and ACOE prior to recordation.

12. Subsequent Transfers.

(a) By Grantee.

(1) This Conservation Easement is transferable by Grantee, but Grantee may assign its rights and delegate obligations under this Conservation Easement only to an entity or organization authorized to acquire and hold conservation easements pursuant to Civil Code Section 815.3 and Government Code Section 65966 (or any successor provision(s) then applicable) and only with the prior written approval of Grantor and ACOE; and

(2) Grantee shall record the assignment in the County of Riverside;

(3) Unless otherwise provided for through the Grantor's establishment and maintenance of Endowment Funds, or as otherwise agreed by Grantor, Grantee and ACOE, along with such transfer of this Conservation Easement, Grantee shall transfer any funds remaining in the Endowment established under this Conservation Easement, after deducting reasonable costs of transfer and the cost of satisfying all outstanding contracts and obligations; and

(4) Unless otherwise agreed by Grantor, Grantee and ACOE, along with such transfer of this Conservation Easement, Grantee shall transfer any funds remaining in both Endowments established under this Conservation Easement, after deducting reasonable costs of transfer and the cost of satisfying all outstanding contracts and obligations.

(b) By Grantor.

(1) The covenants, conditions, and restrictions contained in this Conservation Easement are intended to and shall run with the land and bind all future owners of any interest in the Easement Area. Grantor, its successor or assign agrees to (i) incorporate by reference to the title of and the recording information for this Conservation Easement in any deed or other legal instrument by which each divests itself of any interest in all or a portion of the Easement Area, including, without limitation,

a leasehold interest and (ii) give actual notice to any such transferee or lessee of the existence of this Conservation Easement. Grantor, its successor and assign agrees to give written notice to Grantee and ACOE of the intent to transfer any interest at least sixty (60) days prior to the date of such transfer. The failure of Grantor, its successor or assign to perform any act provided in this Section 12 shall not impair the validity of this Conservation Easement or limit its enforceability in any way, and Grantor, its successors or assigns assume any liability relating to transfer(s) or assignment(s) to bona fide purchasers without notice of the existence or terms of this Conservation Easement.

(2) From and after the date of any transfer of all or any portion of the Easement Area by Grantor and each transfer thereafter, (i) the transferee shall be deemed to have assumed all of the obligations of Grantor as to the portion transferred, as set forth in this Conservation Easement, (ii) the transferee shall be deemed to have accepted the restrictions contained herein as to the portion transferred, (iii) the transferor, as applicable, shall have no further obligations hereunder except for any obligations pursuant to Section 20(g), and (iv) all references to Grantor in this Conservation Easement shall thereafter be deemed to refer to such transferee.

13. Additional Interests. Grantor, its successors and assigns shall not grant additional easements or other interests in the surface or subsurface of the Easement Area (other than a security interest that is subordinate to this Conservation Easement) without the prior written authorization of Grantee and ACOE. It shall be reasonable for Grantee and ACOE to withhold consent for the grant of additional easements or other interest in the Easement Area that are in direct or potential conflict with the Agency Approvals and the preservation of the Purpose and the Natural Condition of the Easement Area as defined in Section 1 of this Conservation Easement or will impair or otherwise interfere with the Conservation Values of the Easement Area. Grantor or its successors and assigns shall record any additional easements or other interests in the Easement Area approved by Grantee and ACOE, in the official records of Riverside County, California and shall provide a copy of the recorded document to Grantee and ACOE.

14. Notices. All notices, demands, requests, consents, approvals, or communications from one party to another shall be personally delivered or sent by facsimile to the persons set forth below or shall be deemed given five (5) days after deposit in the United States mail, certified and postage prepaid, return receipt requested, and addressed as follows, or at such other address as any Party may from time to time specify to the other parties in writing:

To Grantor: City Attorney
City of Cathedral City
68-700 Avenida Lalo Guerrero
Cathedral City, CA 92234
Fax: 760-770-0399

To Grantee: Coachella Valley Conservation Commission
73-710 Fred Waring Drive, Suite 119

Palm Desert, CA 92260
Fax: 760-340-5949

With a copy to: District Counsel
U.S. Army Corps of Engineers
Los Angeles District
915 Wilshire Boulevard, Room 1535
Los Angeles, CA 90017-3401
FAX: 213-452-4217

15. Amendment. Grantor and Grantee may amend this Conservation Easement only by mutual written agreement and with the written consent of the ACOE. Any such amendment shall be consistent with the Purpose of this Conservation Easement and shall not affect its perpetual duration. Grantor shall record any amendments to this Conservation Easement approved by the Grantee and ACOE in the official records of Riverside County, California and shall provide a copy of the recorded document to the Grantee and ACOE.

16. Long-Term Maintenance.

(a) Grantee's Responsibilities for Maintenance and Management. Grantee, its successors and assigns shall be responsible for in-perpetuity, ongoing, long-term maintenance and management of the Easement Area. Such long-term maintenance and management shall consist of the following activities: (1) annual removal of trash or man-made debris and (2) annual maintenance of signage and other notification features installed pursuant to Section 5(c).

(b) Restoration Responsibilities. Grantor, Grantee, their successors and assigns shall each individually be obligated to repair, remediate, or restore the Easement Area damaged by any activities prohibited by Section 3 herein for which it is responsible.

(c) Annual Reporting. Grantee, its successors and assigns shall prepare an annual monitoring and maintenance report documenting activities performed under Section 16(a) above, and shall make such report available to the Grantor and ACOE upon request.

(d) Grantor Restoration. When activities are performed pursuant to Section 16(b) for which Grantor is responsible, Grantee, its successors and assigns, shall retain, at Grantor's expense, a qualified Biological Monitor to prepare a Restoration Plan and to oversee/monitor such restoration activities. Grantee shall have its Biological Monitor submit a draft Restoration Plan to Grantor and ACOE for review and for ACOE written approval prior to its implementation. Upon completion of restoration as specified in the approved Restoration Plan, Grantee shall have a Biological Monitor prepare a detailed monitoring report, and Grantee shall make the report available to Grantor and ACOE within thirty (30) days of completion of restoration

activities. Grantee, its successors or assigns and Biological Monitor shall sign the monitoring report, and the report shall document the Biological Monitor's name and affiliation, dates Biological Monitor was present on-site, activities observed and their location, Biological Monitor's observations regarding the adequacy of restoration performance by the Grantee, its successors or assigns, or its contractor in accordance with the approved Restoration Plan, corrections recommended and implemented. Grantor shall be responsible for compensating and/or reimbursing Biological Monitor and Grantee for all reasonable and ordinary expenses incurred by them in discharging their respective responsibilities under this subsection within thirty (30) days of invoice.

(e) Grantee Restoration. When activities are performed pursuant to Section 16(b) for which Grantee is responsible, Grantee shall retain, at Grantee's expense, a qualified Biological Monitor to prepare a Restoration Plan and to oversee/monitor such restoration activities. Grantee shall have a Biological Monitor submit a draft Restoration Plan to ACOE for review and written approval prior to its implementation. Upon completion of restoration as specified in the approved Restoration Plan, Grantee shall have a Biological Monitor prepare a detailed monitoring report, and Grantee shall make the report available to ACOE within thirty (30) days of completion of restoration activities. Grantee, its successors or assigns and Biological Monitor shall sign the monitoring report, and the report shall document the Biological Monitor's name and affiliation, dates Biological Monitor was present on-site, activities observed and their location, Biological Monitor's observations regarding the adequacy of restoration performance by the Grantee, its successors or assigns, or its contractor in accordance with the approved Restoration Plan, corrections recommended and implemented.

17. Funding.

(a) Initial Financing Requirement. Concurrent with recordation of this Conservation Easement, Grantor shall pay to Grantee _____ Dollars (\$_____.00) ("**Initial Financial Requirement**"), which Initial Financial Requirement is for the purpose of reimbursing Grantee for its cost and expenses incurred in connection with its acceptance of the Conservation Easement, and for fulfilling certain of Grantee's obligations hereunder for up to the first three (3) years following the date of this Conservation Easement.

(b) Permanent Endowment. In addition to the Initial Financial Requirement and in accordance with the endowment agreement, concurrent with recordation of this Conservation Easement Grantor shall pay to Grantee an endowment in the amount of Seventy Five Thousand Dollars (\$75,000.00) ("**Maintenance and Monitoring Endowment**"). The Endowment is for the purpose of fulfilling Grantee's obligations under this Conservation Easement.

(c) Legal Enforcement and Defense Endowment. Prior to the recordation of this Conservation Easement, Developer shall pay to Grantee a legal enforcement and defense endowment in the amount of _____ dollars (\$_____.00) ("**Legal Enforcement and Defense Endowment**").

18. Recordation. Grantee shall promptly record this instrument in the official records of Riverside County, California and immediately notify the Grantor and ACOE through the mailing of a conformed copy of the recorded easement.

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

20. General Provisions.

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

(b) Liberal Construction. Any general rule of construction to the contrary notwithstanding, this Conservation Easement shall be liberally construed in favor of and to effect the Purpose of this Conservation Easement and the policy and purpose set forth in California Civil Code Section 815, et seq. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the Purpose of this Conservation Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

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

(d) Entire Agreement. This instrument together with the attached exhibits and any documents referred to herein 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 an amendment in accordance with Section 15.

(e) No Forfeiture. Nothing contained herein will result in a forfeiture or

reversion of Grantor's title in any respect.

(f) Successors and Assigns. The covenants, terms, conditions, and restrictions of this Conservation Easement shall be binding upon, and inure to the benefit of, the parties hereto and their respective personal representatives, heirs, successors, and assigns and shall constitute a servitude running in perpetuity with the Easement Area. The covenants hereunder benefiting Grantee shall also benefit the ACOE as a third party beneficiary.

(g) Termination of Rights and Obligations. Provided the transfer was consistent with the terms of this Conservation Easement, a party's rights and obligations under this Conservation Easement shall terminate upon transfer of the party's interest in the Conservation Easement or Easement Area (respectively), except that liability for acts or omissions occurring prior to transfer shall survive transfer.

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

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

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

(k) No Hazardous Materials Liability.

(1) Grantor represents it is unaware of any release or threatened release of Hazardous Materials (defined below) or underground storage tanks existing, generated, treated, stored, used, released, disposed of, deposited or abandoned in, on, under, or from the Property, or transported to or from or affecting the Property.

(2) Without limiting the obligations of Grantor herein, Grantor hereby releases and agrees to indemnify, protect, defend and hold harmless the Grantee Indemnified Parties and the ACOE Indemnified Parties (defined in Section 9(c)(1) and 9(c)(2)) against any and all Claims (defined in Section 9(c)(1)) arising from or connected with any Hazardous Materials present, alleged to be present, or otherwise associated with the Property at any time, except that this release and indemnification shall be inapplicable to Grantee Indemnified Parties and to the ACOE Indemnified Parties with respect to any Hazardous Materials placed, disposed or released by Grantee Indemnified Parties or ACOE Indemnified Parties. This release and indemnification includes, without limitation, Claims for (i) injury to or death of any person

or physical damage to any property; and (ii) the Grantor's violation or alleged violation of, or other failure to comply with, any Environmental Laws (defined below).

(3) Despite any contrary provision of this Conservation Easement, the parties do not intend this Conservation Easement to be, and this Conservation Easement shall not be, construed such that it creates in or gives Grantee and ACOE any of the following:

(i) The obligations or liabilities of an "owner" or "operator," as those terms are defined and used in Environmental Laws (defined below), including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Section 9601 et seq.; hereinafter, "**CERCLA**"); or

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

(iii) The obligations of a responsible person under any applicable Environmental Laws; or

(iv) The right to investigate and remediate any Hazardous Materials associated with the Property unless said investigation or remediation is related to the investigation or remediation of the Easement Area; or

(v) Any control over Grantor's ability to investigate, remove, remediate or otherwise clean up any Hazardous Materials associated with the Property unless said investigation or remediation by Grantor is related to the Easement Area.

The term "**Hazardous Materials**" includes, without limitation, (a) material that is flammable, explosive or radioactive; (b) petroleum products, including by-products and fractions thereof; and (c) hazardous materials, hazardous wastes, hazardous or toxic substances, or related materials defined in CERCLA; Resource Conservation and Recovery Act (42 U.S.C. 6901 et seq.); the Hazardous Materials Transportation Act (49 U.S.C. Section 5101 et seq.); the Hazardous Waste Control Law (California Health & Safety Code Section 25100 et seq.); the 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.

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

(l) Extinguishment. If circumstances arise in the future that render the Purpose 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.

(m) Warranty. Grantor represents and warrants that there are no outstanding mortgages, liens, deeds of trust, encumbrances or other interests in the Easement Area (including, without limitation, mineral interests) which have not been expressly subordinated to this Conservation Easement, and that the Easement Area is not subject to any other conservation easement.

(n) No Merger. The doctrine of merger shall not operate to extinguish this Conservation Easement if the Conservation Easement and the Easement Area become vested in the same party. If, despite this intent, the doctrine of merger applies to extinguish the Conservation Easement then, unless Grantor, Grantee, and ACOE otherwise agree in writing, a replacement conservation easement containing the same protections embodied in this Conservation Easement shall be recorded against the Easement Area.

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

[REMAINDER LEFT INTENTIONALLY BLANK

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

GRANTOR:

City of Cathedral City
68-700 Avenida Lalo Guerrero
Cathedral City, CA 92234

By:

By: _____
Name: _____
Title: _____

CERTIFICATE OF ACCEPTANCE

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

GRANTEE:

Coachella Valley Conservation Commission
73-710 Fred Waring Drive, Suite 119
Palm Desert, CA 92260

By: _____
Name: _____
Title: _____
Date: _____

Attest:

By: _____
Name: _____
Title: _____
Date: _____

State of California}

County of Riverside }

On _____ before me, _____,
Date Here Insert Name and Title of the Officer

personally appeared _____
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Place Notary Seal Above

Signature _____
Signature of Notary Public

State of California }

County of Riverside}

On _____ before me, _____,
Date Here Insert Name and Title of the Officer

personally appeared _____
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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WITNESS my hand and official seal.

Place Notary Seal Above

Signature _____
Signature of Notary Public

State of California }

County of Riverside }

On _____ before me, _____,
Date Here Insert Name and Title of the Officer

personally appeared _____
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Place Notary Seal Above

Signature _____
Signature of Notary Public

Exhibit A

Legal Description of Property

[See Attached]

Exhibit B

Legal Description of Easement Area

[See Attached]

Exhibit C

Depiction of Easement Area

[See Attached]

Exhibit D

Long-Term Management Plan

[See Attached]

Exhibit E

Title Report

[See Attached]

Exhibits F-1 and F-2

Current Natural Condition of the Easement Area

[See Attached Biological Resources Assessment Report]