

**RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:**

City of Lake Elsinore
130 S Main Street
Lake Elsinore, CA 92530
Attention: City Clerk

(Space Above Line for Recorder's Use)

DECLARATION OF RESTRICTIVE COVENANTS

This DECLARATION OF RESTRICTIVE COVENANTS ("**Restrictive Covenant**") is made this ____ day of December, 2022 by the City of Lake Elsinore, a municipal corporation (hereinafter "**Declarant**").

RECITALS

A. Declarant is the local agency and owner of real property located in City of Lake Elsinore, County of Riverside, State of California, commonly referred to as the Summerly 71-acre Mitigation Site (the "**Restricted Property**");

B. Declarant is the sole owner in fee simple of those portions of the Restricted Property legally described on **Exhibit "A"** and depicted on **Exhibit "B"** attached hereto and incorporated by this reference, which consists of approximately 66 acres;

C. The Restricted Property possesses wildlife and habitat values (collectively, "**Conservation Values**") of importance to the people of the State of California which are consistent with the habitat conservation purposes of the Multiple Species Habitat Conservation Plan ("**MSHCP**");

D. Declarant is authorized to hold restrictive covenants pursuant to Civil Code Section 815.3. Specifically, Declarant is an entity identified in Civil Code Section 815.3 and otherwise authorized to acquire and hold title to real property; and

E. It is the intention of the Declarant to preserve and protect in perpetuity the Conservation Values of the Restricted Property in accordance with the terms of this Restrictive Covenant.

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.*, Declarant hereby declares the Restricted Property shall be held, transferred, conveyed, leased, occupied or otherwise disposed of, and used subject to the following restrictive covenants (and incorporating the above recitals herein by this reference), which shall run with the land, and be binding on Declarant's heirs, successors in

interest, administrators, assigns, lessees, or other occupiers and users of the Restricted Property, or any portion of it.

1. Purpose.

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

(b) The term “**Natural Condition**,” as referenced in the preceding paragraph and other portions of this Restrictive Covenant, shall mean the condition of the Restricted Property as it exists at the time this Restrictive Covenant is executed, as well as future enhancements or changes to the Restricted Property consistent with the existing requirements on the land, including construction of Cereal Street and Lucerne Street, construction and maintenance of Elsinore Valley Municipal Water District pump station and pumping appurtenances, implementing the April 2019 Water Quality Plan (“**WQP**”) attached hereto and incorporated herein as **Exhibit “C”** and allowing the Rivers and Lands Conservancy (“**RLC**”) invasive species removal as outlined in the January 12, 2021 Adaptive Management Plan (“**AMP**”) and October 29, 2021 Long-term Management Plan (“**LTMP**”) attached hereto and incorporated herein as **Exhibit “D-1”** and **Exhibit “D-2”**, respectively, as may be amended from time to time.

2. Rights Granted to the Western Riverside County Regional Conservation Authority (“RCA”) and the California Department of Fish and Wildlife (“CDFW”). To accomplish the purposes of this Restrictive Covenant, Declarant hereby grants and conveys to the RCA and CDFW, or their designee:

(a) a non-exclusive easement on and over the Restricted Property to preserve and protect the Conservation Values of the Restricted Property; and

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

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

(a) All activities and uses which may adversely affect the purposes of this Restrictive Covenant;

(b) Depositing or accumulation of soil, trash, ashes, refuse, waste, bio solids or any other materials;

- (c) Planting, introduction or dispersal of non-native or exotic plant or animal species;
- (d) All activities and uses that are otherwise inconsistent with the purposes of the MSHCP; and

(e) No use shall be made of the Restricted Property, and no activity thereon shall be permitted that is or is likely to become inconsistent with the Purpose of this Restrictive Covenant.

4. Reserved Rights. Declarant reserves to itself, and to its personal representatives, heirs, successors, and assigns, all rights accruing from its ownership of the Restricted Property, including the right to engage in or to permit or invite others to engage in all uses of the Restricted Property that are not expressly prohibited or limited by, and are consistent with, the Purpose of this Restrictive Covenant, including, but not limited to, the following uses:

(a) Access. Reasonable access through the Restricted Property to adjacent land or to perform obligations or other activities permitted by this Restrictive Covenant. In addition, police and other public safety organizations and their personnel may enter the Restricted Property to address any legitimate public health or safety matter.

(b) Habitat Enhancement Activities. Enhancement of native plant communities, including the right to plant trees and shrubs of the same type as currently existing on the Restricted Property. For purposes of preventing erosion and reestablishing native vegetation, the Declarant shall have the right but not the obligation to revegetate areas that may be damaged by the permitted activities, naturally occurring events or by the acts of persons wrongfully damaging the Natural Condition of the Restricted Property. Habitat enhancement activities shall not be in direct or potential conflict with the preservation of the Natural Condition of the Restricted Property or the Purpose of this Restrictive Covenant and shall be performed in compliance with all applicable laws, 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 Restricted Property or the Purpose of this Restrictive Covenant 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 Restrictive Covenant is intended nor shall be applied to in any way limit Declarant or any of Declarant's successors and assigns from (1) constructing, placing, installing, and/or erecting any improvements upon the portions of the Restricted Property, (2) installing and/or maintaining the subsurface infrastructure improvements, utility lines, landscaping (including irrigation and runoff), landscape mitigation, and/or similar non-structural improvements within the Restricted Property, and/or (3) 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), (2), and (3) neither such activity nor any effect resulting from such activity amounts to a use of the Restricted Property, or has an impact upon the Restricted Property.

(e) Fire Protection. Allow for a 50-foot wide fuel modification zone composed of native vegetation (including the provision of permanent irrigation to this zone and the right to install, maintain and repair a 50-foot wide manufactured slope within this zone). The right, in an emergency situation, 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.

5. No General Public Access. This Restrictive Covenant does not convey a general right of access to the public to the Restricted Property.

6. Condemnation. Pursuant to Code of Civil Procedure section 1240.055, this Restrictive Covenant 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 Restricted Property, if at all, only as provided in Code of Civil Procedure section 1240.055.

7. Assignment. This Restrictive Covenant is transferable by Declarant, but Declarant may assign its rights and obligations under this Restrictive Covenant only to an entity or organization authorized to acquire and hold restrictive covenants pursuant to Civil Code Section 815.3. Declarant shall require the assignee to record the assignment in the county where the Restricted Property is located.

8. Subsequent Transfers.

(a) The covenants, conditions, and restrictions contained in this Restrictive Covenant are intended to and shall run with the land and bind all future owners of any interest in the Restricted Property. Declarant, its successor or assign agrees to (i) incorporate by reference to the title of and the recording information for this Restrictive Covenant in any deed or other legal instrument by which each divests itself of any interest in all or a portion of the Restricted Property, including, without limitation, a leasehold interest and (ii) give actual notice to any such transferee or lessee of the existence of this Restrictive Covenant.

(b) From and after the date of any transfer of all or any portion of the Restricted Property by Declarant and each transfer thereafter, (i) the transferee shall be deemed to have assumed all of the obligations of Declarant as to the portion transferred, as set forth in this Restrictive Covenant, (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, and (iv) all references to Declarant in this Restrictive Covenant shall thereafter be deemed to refer to such transferee.

9. Amendment. Any such amendment shall be consistent with the Purpose of this Restrictive Covenant and shall not affect its perpetual duration. Declarant shall record any amendments to this Restrictive Covenant in the official records of Riverside County, California.

10. Recording. Declarant, its successor or assign shall promptly record this instrument in the official records of Riverside County, California.

11. General Provisions.

(a) Controlling Law. The interpretation and performance of this Restrictive Covenant shall be governed by the laws of the State of California, disregarding the conflicts of law principles of such state.

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

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

(d) Successors and Assigns. The covenants, terms, conditions, and restrictions of this Restrictive Covenant 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 Restricted Property.

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

(f) 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.

(g) Exhibits. All Exhibits referred to in this Restrictive Covenant are attached and incorporated herein by reference.

[Signatures on next page]

IN WITNESS WHEREOF Declarant has executed this Restrictive Covenant the day and year first above written and agrees to be bound by the terms and provisions hereof.

DECLARANT:

CITY OF LAKE ELSINORE, a municipal
corporation

By: _____
Jason Simpson, City Manager

Attest:

Candice Alvarez, CMC
City Clerk

Approved as to Form:

By: _____
Barbara Zeid Leibold
City Attorney

EXHIBIT “A”

Legal Description

EXHIBIT “B”

Legal Depiction

EXHIBIT “C”

Natural Condition

EXHIBIT “D-1”

January 12, 2021 Adaptive Management Plan (“AMP”)

EXHIBIT “D-2”

October 29, 2021 Long-term Management Plan (“LTMP”)