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**COVENANT OF EASEMENT FOR PROTECTION OF ENVIRONMENTALLY SENSITIVE LANDS WITHIN THE MULTIPLE SPECIES CONSERVATION PROGRAM MULTI-HABITAT PLANNING AREA**

I.O. NO: \_\_\_\_\_

Assessor's Parcel No.: \_\_\_\_\_

PTS NO: \_\_\_\_\_

DWG NO: \_\_\_\_\_

NO DOCUMENT TAX DUE  
R & T CODE 11922

NO FEE FOR GOVT. AGENCY  
GOVERNMENT CODE 27383

THIS COVENANT OF EASEMENT is made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by \_\_\_\_\_, ("Grantor"), in favor of THE CITY OF SAN DIEGO ("Grantee"), with reference to the following facts:

**RECITALS**

- A. Grantor is the sole owner in fee simple of certain real property in the County of San Diego, State of California, more particularly described in Exhibit "A" attached hereto and incorporated by this reference (the "Property");
- B. Exhibit "B" depicts the area of the Property that will be developed, and the area that will be preserved under this Covenant of Easement (the "Conserved Property").
- C. The Property contains Environmental Sensitive Lands ("ESL") as defined by San Diego Municipal Code sections 143.0101 et seq. for sensitive biological resources, including upland and/or wetland areas that include lands included in the City of San Diego Multiple Species Conservation Program ("MSCP") Multi-Habitat Planning Area ("MHPA").
- D. The Property possesses open space, wildlife, and habitat values of importance to Grantee as well as the State of California, and the United States;
- E. Grantor has applied to the CITY OF SAN DIEGO and has been granted the right to develop the Property in conformance with the following discretionary land use entitlements

issued by the CITY OF SAN DIEGO: Permit Approval No. \_\_\_\_\_, Project No. \_\_\_\_\_;

F. In connection with development of the Property, Grantor desires to obtain benefits associated with utilizing permits issued to the CITY OF SAN DIEGO by the United States Fish and Wildlife Service and the California Department of Fish and Game in connection with the MSCP and therefore has agreed to design and implement development of the Property in conformance with the MSCP;

G. This Covenant of Easement shall impart notice to all persons to the extent afforded by the recording laws of the state of California regarding the restrictions affecting use of the environmentally sensitive lands preserved by this Covenant of Easement;

H. Because the Property contains sensitive biological resources, including, MHPA lands, this Covenant of Easement shall be enforceable by the City, or jointly and severally by the City, the U.S. Fish and Wildlife Service, and the California Department of Fish and Game.

**[OPTIONAL:]**

I. Development of the Property requires mitigation for impacts to sensitive habitats as further described in \_\_\_\_\_ No. \_\_\_\_\_. The lands within the Property provide for compensatory mitigation for these impacts.

**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 MSCP and other California laws, including, but not limited to, Government Code sections 65870 et seq., and San Diego Municipal Code section 143.0152, Grantor hereby voluntarily conveys to Grantee a Covenant of Easement in perpetuity over the Conserved Property.

1. Purpose. The purpose of this Covenant of Easement is to ensure that the Conserved Property will be retained forever in a natural condition and to prevent any development of the Conserved Property that contains sensitive biological resources, including MHPA lands. Grantor intends that this Covenant of Easement will confine the use of the Conserved Property to such activities, including without limitation, activities that will preserve sensitive biological resources, including MHPA lands, in a manner consistent with the purpose of this Covenant of Easement.

2. Grantee's Rights. To accomplish the purposes of this Covenant of Easement, Grantor hereby grants and conveys the following rights to Grantee by this Covenant of Easement:

(a) To preserve and protect the sensitive biological resources, including MHPA lands of the Conserved Property;

(b) To enter upon the Property at reasonable times in order to monitor Grantor's compliance with and to otherwise enforce the terms of this Covenant of Easement and for scientific research and interpretive purposes by Grantee or its designees, provided that Grantee shall first notify and obtain consent from Grantor, which consent shall not be

unreasonably withheld, and further provided that Grantee shall not unreasonably interfere with Grantor's use and quiet enjoyment of the Property;

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

(d) All mineral, air and water rights necessary to protect and to sustain the environmentally sensitive nature of the sensitive biological resources, including MHPA lands, of the Conserved Property; and

(e) All present and future development rights to the Conserved Property.

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

(a) Any increase in runoff resulting from the development of the property directed toward any steep hillsides;

(b) Un-seasonal watering, use of herbicides, rodenticides, or weed abatement activities, incompatible fire protection activities and any and all other uses which may adversely affect the purposes of this Covenant of Easement;

(c) Use of off-road vehicles;

(d) Grazing or surface entry for exploration or extraction of minerals;

(e) Erecting of any building, billboard or sign;

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

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

(h) Otherwise altering the general topography of the Property, including building of roads;

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

4. Grantor's Duties. Grantor shall execute this Covenant of Easement in favor of the City of San Diego and record this Covenant of Easement against title to the Property with the San Diego County Recorder. In addition, Grantor shall undertake all reasonable actions to prevent the unlawful entry and trespass by persons whose activities may degrade or harm the environmentally sensitive nature of the Conserved Property.

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 Covenant of Easement.

6. Grantee's Remedies. If Grantee determines that Grantor is in violation of the terms of this Covenant of Easement or that a violation is threatened, Grantee shall give written notice to Grantor of such violation and demand in writing the cure of such violation. If Grantor fails to cure the violation within fifteen (15) days after receipt of said written notice and demand from Grantee, or said cure reasonably requires more than fifteen (15) days to complete and Grantor fails to begin the cure within the fifteen (15) 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 Covenant of Easement, to recover any damages to which Grantee may be entitled for violation by Grantor of the terms of this Covenant of Easement, 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 Conserved Property to the condition in which it existed prior to any such violation or injury. Without limiting Grantor's liability therefore, Grantee may apply any damages recovered to the cost of undertaking any corrective action on the Conserved Property.

If Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the environmentally sensitive nature of the Conserved Property, Grantee may pursue its remedies under this paragraph without prior notice to Grantor or without waiting for the period provided for cure to expire. Grantee's rights under this paragraph apply equally to actual or threatened violations of the terms of this Covenant of Easement. Grantor agrees that Grantee's remedies at law for any violation of the terms of this Covenant of Easement 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 Covenant of Easement, 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 California Government Code section 65870, et seq.

If at any time in the future Grantor or any subsequent transferee uses or threatens to use, such lands that contain sensitive biological resources, including MHPA lands, for purposes inconsistent with this Covenant of Easement, notwithstanding Government Code section 65875, the City, the U.S. Fish and Wildlife Service, and the California Department of Fish and Game jointly and severally have standing as interested parties in any proceeding.

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

6.2 Grantee's Discretion. Enforcement of the terms of this Covenant of Easement by Grantee shall be at the discretion of Grantee, and any forbearance by Grantee to exercise its rights under this Covenant of Easement in the event of any breach of any term of this

Covenant of Easement 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 Covenant of Easement or of any of Grantee's rights under this Covenant of Easement. 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 Covenant of Easement shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the Property resulting from causes beyond Grantor's control, including, without limitation, fire, flood, storm, and earth movement, or from any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes.

6.4 Department of Fish and Game Right of Enforcement. All rights and remedies conveyed to Grantee under this Covenant of Easement shall extend to and are enforceable by the California Department of Fish and Game.

6.5 U.S. Fish and Wildlife Service Right of Enforcement. All rights and remedies conveyed to Grantee under this Covenant of Easement shall extend to and are enforceable by the U.S. Fish and Wildlife Service.

7. Access. This Covenant of 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.

8.1 Taxes. 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 Covenant of Easement, and shall furnish Grantee with satisfactory evidence of payment upon request.

8.2 Hold Harmless. Grantor shall hold harmless, indemnify, and defend Grantee and its, directors, officers, employees, agents, contractors, and representatives (collectively "Indemnified Parties") from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including without limitation, reasonable attorneys' fees, arising from or in any way connected with: (1) injury to or the death of any person, or physical damages 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 to the negligence of any of the Indemnified Parties; (2) the obligations specified in Sections 4, 8, and 8.1; and (3) the existence or administration of this Covenant of Easement.

9. Subsequent Transfers. Grantor agrees to incorporate the terms of this Covenant of Easement in any deed or other legal instrument by which Grantor divests itself of any interest in all or a portion of the Property, including, without limitation, a leasehold interest. Grantor further agrees to give written notice to Grantee of the intent to transfer of any interest at least fifteen (15) days prior to the date of such transfer. Grantee 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 Covenant of Easement. The failure of Grantor or Grantee to perform any act provided in this section shall not impair the validity of this Covenant of Easement or limit its enforceability in any way.

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

To Grantor:

To Grantee:                   City of San Diego  
                                      202 C Street  
                                      San Diego, CA 92101

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

11. Release of Covenant. A hearing shall be held to consider any formal, written request directed to the City by any person requesting the release of this Covenant of Easement, whether or not that person has title to the real property involved. The City shall record the release of this Covenant of Easement when it is determined that the restriction ensured by the Covenant of Easement is no longer necessary to achieve the land use goals of the City. A determination by the City to release the Covenant of Easement may be made only with the written concurrence of the U.S. Fish and Wildlife Service and the California Department of Fish and Game.

12. Amendment. This Covenant of Easement may be amended by Grantor and Grantee by mutual written agreement, with the written concurrence of the U.S. Fish and Wildlife Service and the California Department of Fish and Game. Any such amendment shall be consistent with the purpose of this Covenant of Easement and, except as provided in Section 11, shall not affect its perpetual duration. Any such amendment shall be recorded in the Office of the San Diego County Recorder.

13. General Provisions.

(a) Controlling Law. The interpretation and performance of this Covenant of Easement shall be governed by the laws of the State of California.

(b) Liberal Construction. Any general rule of construction to the contrary notwithstanding, this Covenant of Easement shall be liberally construed in favor of the covenant to effect the purpose of this Covenant of Easement and the policy and purpose of the MSCP, Government Code Section 65870, et seq., and San Diego Municipal Code section 143.0152. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the

purposes of this Covenant of 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 Covenant of Easement, such action shall not affect the remainder of this Covenant of Easement. If a court of competent jurisdiction voids or invalidates the application of any provision of this Covenant of 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 sets forth the entire agreement of the parties with respect to the Covenant of Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Covenant of Easement. No alteration or variation of this instrument shall be valid or binding unless contained in an amendment in accordance with Section 12.

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

(f) Successors. The covenants, terms, conditions, and restrictions of this Covenant of 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 continue as a servitude running in perpetuity with the Property.

(g) Termination of Rights and Obligations. A party's rights and obligations under this Covenant of Easement terminate upon transfer of the party's interest in the Covenant of Easement, 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 construction or interpretation.

(i) 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.

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