

EXHIBIT 3

RECORDING REQUESTED BY AND)
WHEN RECORDED MAIL TO:)

Grantee –
Riverside Land Conservancy
4075 Mission Inn Avenue
Riverside, CA 92501

With a copy to:)
State of California)
Department of Fish and Wildlife)
Attn: Habitat Conservation Planning Branch)
1416 Ninth Street, Room 1266)
Sacramento, CA 95814)

Space Above Line for Recorder's Use Only

CONSERVATION EASEMENT DEED (Including Third-Party Beneficiary)

THIS CONSERVATION EASEMENT DEED ("Conservation Easement") is made as of _____, 2015, by San Bernardino County Flood Control District ("Grantor"), in favor of [insert full legal name of Grantee *Riverside Land Conservancy*] ("Grantee"), with reference to the following facts:

RECITALS

A. Grantor is the sole owner in fee simple of certain real property containing approximately Forty-five (45) acres of land, located in the unincorporated area near the City of San Bernardino, County of San Bernardino, State of California, a portion of designated Assessor's Parcel Number 0262-061-01 ("Property"). The Property is legally described and depicted in Exhibit A attached to this Conservation Easement and incorporated in it by this reference.

B. The Property is in an unimproved natural condition and possesses wildlife and habitat values of great importance to Grantee, the California Department of Fish and Wildlife ("CDFW"), and the people of the State of California. The Property provides high quality habitat, which supports Riverside Alluvial Fan Sage Scrub (RAFSS).

The Property is within a critical habitat unit for, and is known to be occupied by, the federally listed endangered San Bernardino kangaroo rat (*Dipodomys merriami parvus*), SBKR, as designated by the United States Fish and Wildlife Service (USFWS). Additionally, state and federally-listed threatened and endangered species potentially present in this habitat include slender-horned spineflower (*Dodecahema leptoceras*), Santa Ana River woollystar (*Eriastrum densifolium sanctorum*), and coastal California gnatcatcher (*Polioptila californica californica*). Individually and collectively, these wildlife and habitat values comprise the "Conservation Values" of the Property.

C. Grantee represents and warrants that it is authorized to hold conservation easements

pursuant to Civil Code section 815.3. Specifically, Grantee is a tax-exempt nonprofit organization qualified under section 501(c)(3) of the Internal Revenue Code of 1986, as amended, and qualified to do business in California which has as its primary purpose the preservation, protection or enhancement of land in its natural, scenic, historical, agricultural, forested, or open-space condition or use. Grantor enters into this Conservation Easement in reliance on said representations and warranties.

D. CDFW has jurisdiction, pursuant to Fish and Game Code section 1802, over the conservation, protection, and management of fish, wildlife, native plants and the habitat necessary for biologically sustainable populations of those species, and CDFW is authorized to hold conservation easements for these purposes pursuant to Civil Code section 815.3, Fish and Game Code section 1348, and other provisions of California law.

E. This Conservation Easement provides mitigation for certain impacts of the Upper Cactus Basins (3-5) Flood Control System Enhancement Project located within the Upper Cactus Stormwater Detention Basins and Rialto Channel, tributary to the Santa Ana River, Section 34, Township 1N, Range 5W, in the City of Rialto, County of San Bernardino, State of California, pursuant to the *Agreement Regarding Proposed Stream or Lake Alteration (Notification No. 1600-2014-0226-R6 (Revision 3) executed by the San Bernardino County Flood Control District and CDFW, dated June 1, 2015.*

COVENANTS, TERMS, CONDITIONS AND RESTRICTIONS

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and pursuant to California law, including Civil Code section 815, *et seq.*, Grantor hereby voluntarily grants and conveys to Grantee a conservation easement in perpetuity over the Property.

1. **Purposes.** The purposes of this Conservation Easement are to ensure the Property will be retained forever in its natural, restored, or enhanced condition and to prevent any use of the Property that will impair or interfere with the Conservation Values of the Property. Grantor intends that this Conservation Easement will confine the use of the Property to activities that are consistent with such purposes, including, without limitation, those involving the preservation, restoration, and enhancement of native species and their habitats.

2. **Grantee's Rights.** To accomplish the purposes of this Conservation Easement, Grantor hereby grants and conveys the following rights to Grantee and to CDFW as a third-party beneficiary of this Conservation Easement:

- (a) To preserve and protect the Conservation Values of the Property;
- (b) To enter the Property at reasonable times in order to monitor compliance with and otherwise enforce the terms of this Conservation Easement, and for scientific research and interpretive purposes by Grantee or its designees and CDFW or its designees, provided that neither Grantee nor CDFW shall unreasonably interfere with Grantor's authorized use and quiet enjoyment of the Property;
- (c) To prevent any activity on or use of the Property that is inconsistent with the purposes of this Conservation Easement and to require the restoration of such areas or features of the Property that may be damaged by any act, failure to act, or any use or activity that is inconsistent with the purposes of this Conservation Easement;

(d) To require that all mineral, air, and water rights as Grantee or CDFW deems necessary to preserve, protect, and sustain the biological resources and Conservation Values of the Property shall remain a part of and be put to beneficial use upon the Property, consistent with the purposes of this Conservation Easement; and

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

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

- (c) Agricultural activity of any kind;
- (d) Recreational activities including, but not limited to, horseback riding, biking, hunting or fishing;
- (e) Commercial, industrial, institutional, or residential structures or uses;
- (f) Any legal or de facto division, subdivision or partitioning of the Property, including a request for a certificate of compliance pursuant to the Subdivision Map Act (Gov. Code section 66499.35);
- (g) Construction, reconstruction, expansion, location, relocation, installation, or placement of any building, billboard or sign, or any other structure or improvement of any kind;
- (h) Deposit or accumulation of soil, trash, ashes, refuse, waste, bio-solids or any other materials;
- (i) Planting, introduction, or dispersion of non-native or exotic plant or animal species;
- (j) Filling, dumping, excavating, draining, dredging, mining, drilling, removing or exploring for or extracting minerals, loam, soil, sands, gravel, rocks or other material on or below the surface of the Property, or granting or authorizing surface entry for any such purpose;
- (k) Altering the surface or general topography of the Property, including building roads or trails, or paving or otherwise covering any portion of the Property;
- (l) Removing, disturbing, altering, destroying, or cutting of trees, shrubs or other vegetation, except as required by law and in conformance with a management plan approved by Grantee and CDFW for (1) fire breaks, (2) maintenance of existing foot trails or roads, or (3) prevention or treatment of disease;
- (m) Manipulating, impounding or altering any natural water course, body of water or water circulation on the Property, and activities or uses detrimental to water quality, including but not limited to degradation or pollution of any surface or sub-surface waters;
- (n) Without the prior written consent of Grantee and CDFW, which Grantee and CDFW each may withhold, transferring, encumbering, selling, leasing, or otherwise separating the mineral, air, or water rights for the Property; changing the place or purpose of use of the water rights; abandoning or allowing the abandonment of, by action or inaction, any water or water rights, ditch or ditch rights, spring rights, reservoir or storage rights, wells, ground water rights, or other rights in and to the use of water historically used on or otherwise appurtenant to the Property, including but not limited to: (1) riparian water rights; (2) appropriative water rights; (3) rights to waters which are secured under contract with any irrigation or water district, to the extent such waters are

customarily applied to the Property; and (4) any water from wells that are in existence or may be constructed in the future on the Property; and

(o) Any activity or use that may violate or fail to comply with relevant federal, state, or local laws, regulations, or policies applicable to Grantor, the Property, or the activity or use in question.

4. Grantor's Duties. Grantor shall undertake all reasonable actions to prevent the unlawful entry and trespass by persons whose activities may degrade or harm the Conservation Values of the Property. In addition, Grantor shall undertake all necessary actions to perfect the rights of Grantee and CDFW under Section 2 of this Conservation Easement.

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 not expressly prohibited or limited by, and are consistent with the purposes of, this Conservation Easement.

6. Grantee's Remedies.

(a) CDFW, as a third party beneficiary of this Conservation Easement, shall have the same rights and remedies as Grantee under this Section 6. If Grantee determines that a violation of the terms of this Conservation Easement has occurred or is threatened, Grantee shall give written notice to Grantor of such violation and demand in writing the cure of such violation ("Notice of Violation"). At the time of giving any such notice, Grantee shall give a copy of the notice to CDFW (or, if CDFW gives a Notice of Violation it shall also give a copy of the notice to Grantee). Notice shall be provided in accordance with Section 20 of this Conservation Easement.

(b) If Grantor fails to cure the violation within fifteen (30) days after receipt of the Notice of Violation, or if the cure reasonably requires more than fifteen (30) days to complete and Grantor fails to begin the cure within the fifteen (30)-day period or fails to continue diligently to complete the cure, Grantee may bring an action at law or in equity in a court of competent jurisdiction for any or all of the following: to recover any damages to which Grantee may be entitled for violation of the terms of this Conservation Easement or for any injury to the Conservation Values of the Property; to enjoin the violation, *ex parte* as necessary, by temporary or permanent injunction without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies; to pursue any other legal or equitable relief, including, but not limited to, the restoration of the Property to the condition in which it existed prior to any such violation or injury; or to otherwise enforce this Conservation Easement. Without limiting the liability of Grantor, Grantee may apply any damages recovered to the cost of undertaking any corrective action on the Property.

(c) If Grantee, in the reasonable exercise of its discretion, determines that exigent circumstances require immediate action to prevent or mitigate injury to the Conservation Values of the Property, Grantee may pursue its remedies under this Conservation Easement without prior notice to Grantor or without waiting for the period provided for cure to expire. Grantee's rights under this section apply equally to actual or threatened violations of the terms of this Conservation Easement.

(d) If at any time in the future Grantor or any subsequent transferee uses or threatens to use the Property for purposes inconsistent with this Conservation Easement then, despite the provisions of Civil Code section 815.7, the California Attorney General, any person and any entity with a justiciable interest in the preservation of this Conservation Easement has standing as an interested party in any proceeding affecting this Conservation Easement.

7. Costs of Enforcement. Grantor shall bear all costs incurred by Grantee or CDFW, where it is a prevailing party in enforcing the terms of this Conservation Easement against Grantor. These costs include, but are not limited to, the following: reasonable costs of suit and attorneys' and experts' fees, and any costs for restoration necessitated by Grantor's negligence or breach of this Conservation Easement.

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

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

10. CDFW Right of Enforcement. All rights and remedies conveyed to Grantee under this Conservation Easement shall extend to and are enforceable by CDFW. These enforcement rights are in addition to, and do not limit, the rights of enforcement under *Agreement Regarding Proposed Stream or Lake Alteration (Notification No. 1600-2014-0226-R6 (Revision 3) executed by the San Bernardino County Flood Control District and CDFW, dated June 1, 2015*

11. Fence Installation and Maintenance. Grantor shall install and maintain a fence reasonably satisfactory to Grantee and CDFW around the Property to protect the Conservation Values of the Property.

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

13. Costs and Liabilities. Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Property. Grantor agrees that neither Grantee nor CDFW shall have any duty or responsibility for the operation, upkeep, or maintenance of the Property; the monitoring of hazardous conditions thereon; or the protection of Grantor, the public, or any third parties from risks relating to conditions on the Property. Grantor remains solely responsible for obtaining any applicable governmental permits and approvals required for any activity or use permitted by this Conservation Easement, including those required from CDFW acting in its regulatory capacity, and any activity or use shall be undertaken in accordance with all applicable federal, state, local and administrative agency statutes, codes, ordinances, rules, regulations, orders and requirements.

14. Taxes; No Liens. Grantor shall pay before delinquency all taxes, assessments (general and special), fees, and charges of whatever description levied on or assessed against the Property by competent authority (collectively "Taxes"), including any Taxes imposed upon, or incurred as a result of, this Conservation Easement, and shall furnish Grantee and CDFW with satisfactory evidence of payment upon request. Grantor shall keep the Property free from any liens [other than a security interest that is expressly subordinate to this Conservation Easement as provided in Section 22(j)], including those arising out of any obligations incurred by Grantor for any

labor or materials furnished or alleged to have been furnished to or for Grantor at or for use on the Property.

15. Hold Harmless. Grantor agrees to hold harmless, protect, and indemnify Grantee and its directors, officers, employees, agents, contractors, and representatives and the heirs, personal representatives, successors and assigns of each of them (each a "Grantee Indemnified Party" and, collectively, "Grantee's Indemnified Parties") and CDFW and its directors, officers, employees, agents, contractors and representatives, and the heirs, personal representatives, successors and assigns of each of them (each a "CDFW Indemnified Party" and, collectively, "CDFW's 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: (1) 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, except that this indemnification shall be inapplicable (a) to Grantee's Indemnified Parties with respect to any Claim due solely to the negligence of Grantee and (b) to CDFW's Indemnified Parties with respect to any Claim due solely to the negligence of CDFW; (2) the obligations specified in Sections 4, 13, and 14 and (3) the existence or administration of this Conservation Easement. If any action or proceeding is brought against any of the CDFW's Indemnified Parties by reason of any such Claim, Grantor shall, at the election of and upon written notice from CDFW, defend such action or proceeding by counsel reasonably acceptable to the CDFW Indemnified Party or reimburse CDFW for all charges incurred for services of the California Attorney General in defending the action or proceeding

Grantee and CDFW agree to hold harmless, indemnify and protect (with counsel approved by Grantor) the Grantor and its directors, officers, employees, agents, contractors, and representatives and the heirs, personal representatives, successors and assigns of each of them (each a "Grantor Indemnified Party" and, collectively, "Grantor's 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: (1) 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, except that this indemnification shall be inapplicable to Grantor's Indemnified Parties with respect to any Claim due solely to the negligence of Grantor and (2) .

In the event the Grantor, Grantee or CDFW are found to be comparatively at fault for any claim, action, loss or damage which results from their respective obligations under this Easement, the Grantor, Grantee and CDFW shall indemnify each of the others to the extent of their comparative fault.

Furthermore, if the Grantor, Grantee or CDFW attempt to seek recovery from the others' Workers' Compensation benefits paid to any employee, the Grantor, Grantee and CDFW agree that any alleged negligence of the employee shall not be construed against the employer of that employee.

16. Extinguishment. If circumstances arise in the future that render the purposes of this Conservation Easement impossible to accomplish, this Conservation Easement can only be terminated or extinguished, in whole or in part, by judicial proceedings in a court of competent jurisdiction.

17. 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 Code of Civil Procedure. A person authorized to acquire property for public use by eminent domain shall seek to acquire the Property, if at all, *only* as provided in Code of Civil Procedure section 1240.055. CDFW is a public entity that imposed conditions on approval of a project that were satisfied, in whole or in part, by the creation of this Conservation Easement. If any person seeks to acquire the Property for public use, Grantee shall provide notice to CDFW 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 Government Code section 65966(j).

18. Transfer of Easement. This Conservation Easement may be assigned or transferred by Grantee only to CDFW or another entity or organization authorized to acquire and hold conservation easements pursuant to Civil Code section 815.3 and Government Code section 65967 (and any successor or other provisions then applicable) or the laws of the United States. Grantee shall require the assignee to record the assignment in the county where the Property is located. The failure of Grantee to perform any act provided in this section shall not impair the validity of this Conservation Easement or limit its enforcement in any way.

19. Transfer of Property. Grantor agrees to incorporate the terms of this Conservation Easement by reference in any deed or other legal instrument by which Grantor divests itself of any interest in all or any portion of the Property, including, without limitation, a leasehold interest. Grantor further agrees to give written notice to Grantee and CDFW of the intent to transfer any interest at least sixty (60) days prior to the date of such transfer. Grantee or CDFW shall have the right to prevent subsequent transfers in which prospective subsequent claimants or transferees are not given notice of the terms, covenants, conditions and restrictions of this Conservation Easement. The failure of Grantor, Grantee, or CDFW to perform any act provided in this section shall not impair the validity of this Conservation Easement or limit its enforceability in any way.

20. Notices. Any notice, demand, request, consent, approval, or other communication that any party desires or is required to give to the other parties shall be in writing and be served personally or sent by recognized overnight courier that guarantees next-day delivery or by first class United States mail, postage fully prepaid, and addressed as follows:

To Grantor: San Bernardino County Flood Control District
825 E. Third Street
San Bernardino, CA 92415-0835
Attn: Kevin Blakeslee, Deputy Director

Copy to: San Bernardino County Counsel
385 N. Arrowhead, 4th Floor
San Bernardino, CA 92415-0140
Attn: Mitchell Norton

To Grantee: Riverside Land Conservancy
4075 Mission Inn Avenue
Riverside, CA 92501
Attn: Jack Easton, Stewardship Director

To CDFW: Department of Fish and Wildlife
Inland Deserts Region
3602 Inland Empire Blvd., Suite C-220

Ontario, CA 91764
Attn: Regional Manager

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

or to such other address as Grantor, Grantee or CDFW shall designate by written notice to the other parties. Notice shall be deemed effective upon delivery in the case of personal delivery or delivery by overnight courier or, in the case of delivery by first class mail, three (3) days after deposit into the United States mail.

21. Amendment. This Conservation Easement may be amended by Grantor and Grantee only by mutual written agreement and subject to the prior written consent of CDFW. Any such amendment shall be consistent with the purposes of this Conservation Easement and California law governing conservation easements and shall not affect its perpetual duration. Any such amendment shall be recorded in the Official Records of the county in which the Property is located.

22. Additional Provisions.

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

(b) Liberal Construction. Despite any general rule of construction to the contrary, this Conservation Easement shall be liberally construed to accomplish the purposes of this Conservation Easement and the policy and purpose of Civil Code section 815, *et seq.* If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purposes of this Conservation Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

(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 any other persons or circumstances.

(d) Entire Agreement. This instrument and the *Agreement Regarding Proposed Stream or Lake Alteration (Notification No. 1600-2014-0226-R6 (Revision 3) executed by the San Bernardino County Flood Control District and CDFW, dated June 1, 2015* described in Recital E together sets forth the entire agreement of the parties with respect to the Conservation Easement and supersede[s] all prior discussions, negotiations, understandings, or agreements of the parties 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 21.

(e) No Forfeiture. Nothing contained in this Conservation Easement will result in a forfeiture or reversion of Grantor's title in any respect. Notwithstanding the foregoing, if CDFW reasonably determines that this Conservation Easement is not being held, monitored, or stewarded for conservation purposes in accordance with the requirements of Government Code section 65967(e), then pursuant to Government Code section 65967(e) the Conservation Easement shall

revert to CDFW or to another public agency, governmental entity, special district, or nonprofit organization approved in advance in writing by CDFW.

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

(g) Termination of Rights and Obligations. A party's rights and obligations under this Conservation Easement terminate upon transfer of the party's interest in the Conservation Easement or Property, except that liability for acts, omissions, or breaches 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) No Hazardous Materials Liability.

(1) Grantor represents and warrants to Grantee and CDFW that it has no knowledge or notice of any 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 under Section 15 of this Conservation Easement, Grantor hereby releases and agrees to indemnify, protect and hold harmless the Grantee's Indemnified Parties and the CDFW's Indemnified Parties (each as defined in Section 15 from and against any and all Claims arising from or connected with any Hazardous Materials or underground storage tanks present, alleged to be present, released in, from, or about, or otherwise associated with the Property at any time, except that (A) this indemnification shall be inapplicable to the Grantee's Indemnified Parties with respect to any Hazardous Materials placed, disposed, or released by Grantee and (B) this indemnification shall be inapplicable to the CDFW's Indemnified Parties with respect to any Hazardous Materials placed, disposed, or released by CDFW. This release and indemnification includes, without limitation, Claims for injury to or death of any person or physical damage to any property; and the violation or alleged violation of, or other failure to comply with, any Environmental Laws (defined below). If any action or proceeding is brought against any of the CDFW's Indemnified Parties by reason of any such Claim, Grantor shall, at the election of and upon written notice from CDFW, defend such action or proceeding by counsel reasonably acceptable to the CDFW Indemnified Party or reimburse CDFW for all charges incurred for services of the California Attorney General in defending the action or proceeding.

(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 to Grantee or CDFW any of the following:

(A) The obligations or liability 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

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

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

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

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

(4) The term "Hazardous Materials" includes, without limitation, (a) material that is flammable, explosive or radioactive; (b) petroleum products, including by-products and fractions thereof; and (c) hazardous materials, hazardous wastes, hazardous or toxic substances, or related materials defined in CERCLA, the Resource Conservation and Recovery Act of 1976 (42 U.S.C. section 6901, *et seq.*; hereinafter "RCRA"); the Hazardous Materials Transportation Act (49 U.S.C. section 6901, *et seq.*; hereinafter "HTA"); the Hazardous Waste Control Law (Health & Saf. Code section 25100, *et seq.*; hereinafter "HCL"); the Carpenter-Presley-Tanner Hazardous Substance Account Act (Health & Saf. Code section 25300, *et seq.*; hereinafter "HSA"), and in the regulations adopted and publications promulgated pursuant to them, or any other applicable Environmental Laws now in effect or enacted after the date of this Conservation Easement.

(5) The term "Environmental Laws" includes, without limitation, CERCLA, RCRA, HTA, HCL, HSA, and any other federal, state, local or administrative agency statute, code, ordinance, rule, regulation, order or requirement relating to pollution, protection of human health or safety, the environment or Hazardous Materials. Grantor represents, warrants and covenants to Grantee and CDFW that activities upon and use of the Property by Grantor, its agents, employees, invitees and contractors will comply with all Environmental Laws.

(j) Warranty. Grantor represents and warrants that Grantor is the sole owner of fee simple title to the Property; that the Property is not subject to any other conservation easement; and there are no outstanding mortgages, liens, encumbrances or other interests in the Property (including, without limitation, water and mineral interests) that may conflict or are otherwise inconsistent with this Conservation Easement and which have not been expressly subordinated to this Conservation Easement by a written, recorded Subordination Agreement approved by Grantee and CDFW.

(k) Additional Easements. Grantor shall not grant any additional easements, rights of way, or other interests in the Property (other than a security interest that is expressly subordinated to this Conservation Easement), or grant, transfer, abandon, or relinquish (each a "Transfer") any mineral, air, or water right, or any water associated with the Property, without first obtaining the written consent of Grantee and CDFW. Grantee or CDFW may not arbitrarily withhold such consent, and only do so if it determines in the reasonable exercise of its discretion that the proposed interest or Transfer is inconsistent with the purposes of this Conservation Easement or may impair or interfere with the Conservation Values of the Property. This section shall not limit the provisions of Sections 2(d) or 3(n), nor prohibit transfer of a fee or leasehold interest in the Property that is subject to this Conservation Easement and complies with Section 19. Grantor shall provide a certified copy of any recorded or unrecorded grant or Transfer document to Grantee and CDFW.

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

(m) Exhibits. The following Exhibit(s) referenced in this Conservation Easement are attached to and incorporated by reference in this Conservation Easement:

EXHIBIT A – Legal Description and Map of Property

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

GRANTOR:

[Insert full legal name of Grantor] San Bernardino County Flood Control District

BY: _____

NAME: _____

TITLE: _____

DATE: _____

[NOTE: ATTACH EXHIBIT(S) AND FORM OF NOTARY ACKNOWLEDGMENT]

DRAFT