

AGREEMENT REGARDING CULTURAL CONSERVATION EASEMENT

THIS AGREEMENT REGARDING CULTURAL CONSERVATION EASEMENT (this "Agreement") is made and entered into as of July 8, 2020, by and between GARDEN OF CHAMPIONS LLC, a California limited liability company ("GOC"), and the AGUA CALIENTE BAND OF CAHUILLA INDIANS, a federally recognized Indian tribe ("Tribe").

A. GOC and the Housing Authority of the City of Indian Wells, a public body, corporate and public ("City"), entered into that certain Purchase and Sale Agreement and Joint Escrow Instructions dated May 17, 2018 (as same may have been or will be amended, the "Purchase Agreement"), pursuant to which City agreed to sell to GOC, and GOC agreed to purchase from City, certain real property located on Miles Avenue in Indian Wells, California, as more specifically described in the Purchase Agreement (the "Property").

B. The Property includes land that may have cultural significance to Tribe (the "Conservation Area"), and is legally described/depicted on Exhibit A hereto. The portion of the Property exclusive of the Conservation Area is referred to herein as the "GOC Property".

C. If GOC acquires the Property from City pursuant to the Purchase Agreement, GOC and Tribe desire that the Conservation Area be left in its undeveloped state and maintained and protected as provided in this Agreement and the Conservation Easement Agreement (defined below).

NOW, THEREFORE, in consideration of the foregoing recitals, the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, GOC and Tribe agree as follows:

1. Recitals. The recitals set forth above are not merely recitals, but form an integral part of this Agreement.

2. Cultural Conservation Easement. Subject to GOC's acquisition of the Property from City pursuant to the Purchase Agreement, and subject to all other terms and conditions set forth herein and in the Cultural Conservation Easement Agreement to be executed and recorded in the Official Records of Riverside County, California (the "Official Records") pursuant to the terms hereof (the "Conservation Easement Agreement"), GOC agrees, for the benefit of Tribe, to perform all of its obligations under the Conservation Easement Agreement and this Agreement and Tribe agrees, for the benefit of GOC, to perform all of its obligations under the Conservation Easement Agreement and this Agreement. The Conservation Easement Agreement shall be in the form attached hereto as Exhibit B and shall be recorded by GOC in the Official Records immediately after acquisition of the Property by GOC. GOC shall provide Tribe a copy of the executed and recorded Conservation Easement Agreement within thirty calendar (30) days of recordation.

3. GOC's Covenants. In consideration of Tribe's agreement to execute, record, and adhere to the Conservation Easement Agreement and this Agreement in respect to the

Conservation Area and development of the GOC Property, GOC hereby agrees on its own behalf and on behalf of its constituents, affiliates, and agents as follows:

a. Prior to any ground disturbing activity on the Property, GOC shall (i) ensure that a Qualified Archaeologist conducts Cultural Item (defined below) sensitivity training for all construction personnel; and (ii) ensure that such personnel be informed of the proper procedures to be enacted in the event of an inadvertent discovery of Cultural Items.

b. During any ground disturbing activities on the Property, including grading, fence, and/or wall construction by GOC or by its agents, employees, or contractors, GOC shall permit an Agua Caliente Native American Cultural Resource Monitor ("**Monitor**"), and an archeologist meeting the United States Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation ("**Qualified Archeologist**"), and, if circumstances dictate, an osteologist, to be present on the Property.

c. In the event human remains, associated funerary objects, sacred objects, or objects of cultural patrimony (individually a "**Cultural Item**" and collectively "**Cultural Items**") are discovered on the Property during any ground disturbing activity, GOC shall suspend such ground disturbing activity until GOC retains a Qualified Archaeologist that completes an investigation of the discovered Cultural Items and, if necessary, prepares a mitigation plan for submission to the California State Historic Preservation Officer and to the Agua Caliente Tribal Historic Preservation Office. The mitigation plan shall be consistent with Paragraph 4 e. below.

d. GOC shall prepare a Cultural Item management/discovery plan in consultation with Tribe's Tribal Historical Preservation Office (the "**THPO**"), which shall include a process for addressing inadvertent discovery of Cultural Items and shall include a research design and a thorough review of previous literature. The Cultural Item management/discovery plan shall be consistent with Paragraph 4 e. below.

e. GOC shall ensure that archaeological reports on monitoring and discoveries are consistent with the California Office of Historic Preservation's (OHP) *Archaeological Resources Management Report*, Recommended Contents and Formats (1989), and the Guidelines for Archaeological Research Design (1991).

f. At its sole cost, GOC shall construct and maintain a fence around the Conservation Area that generally conforms to the fencing elements, access gate, and locations as described on **Exhibit D** hereto (the "**Fence Design and Materials**").

g. GOC shall prepare a landscaping plan in consultation with the THPO to deter vandalism and entry to the Conservation Area. Because the Fence Design and Materials are designed as a deterrent to vandalism and entry (and is used for those purposes by railroads and schools, for example), landscaping will be minimal and essentially limited to the GOC Property along southeast and eastern portions of the Conservation Area.

h. Respecting the GOC Property:

(I) Prior to grading of the GOC Property, GOC shall enter into a curation agreement with a curation facility that provides curatorial services in accordance with the procedures set forth in 36 CFR Part 79;

(II) Prior to grading of the GOC Property, GOC's collection of surface Cultural Items outside of the Conservation Area shall be performed in accordance with Paragraphs 3 c. and 3 d. above;

(III) GOC shall transfer the Cultural Items so collected, and all associated records, to the curation facility identified in the curation agreement. Transfer of said Cultural Items to the curation facility shall be accompanied by payment of the fees necessary for permanent curation;

(IV) GOC shall ensure that title to such Cultural Items be transferred to Tribe; and

(V) Evidence of compliance with this Paragraph 3 h. shall be in the form of a letter from the curation facility identifying and confirming the Cultural Items received and confirming that all fees have been paid.

i. Respecting the Conservation Area:

(I) GOC shall undertake reasonable actions to prevent the unlawful entry and trespass by persons whose activities may degrade or harm the Cultural Items located within the Conservation Area. Tribe shall assist GOC in these efforts by locking the access gate to the Conservation Area after Tribe's use and by reporting to GOC any evidence of unlawful entry and trespass it has observed.

(II) GOC shall keep the Conservation Area free of liens arising out of any work performed for, materials furnished to, or obligations incurred by GOC.

(III) GOC shall maintain adequate comprehensive general liability insurance with respect to the Conservation Area.

4. Tribe's Covenants. In consideration of GOC's agreement to execute, record, and adhere to the Conservation Easement Agreement and this Agreement in respect to the Conservation Area and development of the GOC Property, Tribe hereby agrees on its own behalf and on behalf of its constituents, affiliates, and agents as follows:

a. In addition to its obligations under the Conservation Easement Agreement, Tribe shall not directly or indirectly oppose, object to, or otherwise interfere with the acquisition of the Property by GOC or by any of its affiliates or assigns. Tribe's obligations shall include, without limitation, (i) not filing (directly or indirectly) any lawsuits or complaints opposing GOC's acquisition of the Property and not encouraging or soliciting others to do so on Tribe's behalf, and (ii) not opposing, objecting to, or interfering with GOC's proposed acquisition of the Property (whether in writing or in person, whether in a formal or informal manner including, without

limitation, filing or voicing any objection or opposition with any governmental, quasi-governmental, tribal, or neighborhood agency, association, or group).

b. Tribe hereby acknowledges and agrees that the conceptual grading plan attached hereto as Exhibit C (the "Grading Plan"), was previously submitted to Tribe for its review and approval and is hereby approved by Tribe.

c. Tribe acknowledges that it has reviewed and has no objection to the Fence Design and Materials.

d. Tribe shall work with the Qualified Archeologist, and the osteologist, if applicable, in the preparation and implementation of any mitigation plan to ensure that their work is performed as expeditiously as possible and in a manner so as to cause little interruption and delay of GOC's development work. Tribe shall cause the Monitor to take all reasonable steps necessary to ensure that its presence does not unreasonably interfere with or delay GOC's development activity on the GOC Property.

e. In the event that during the course of development of the GOC Property any Cultural Items (as defined in the Conservation Easement Agreement) are found, Tribe and its agents shall cooperate with GOC to ensure they are removed and/or relocated to the Conservation Area or as otherwise selected by Tribe in a manner so as to minimize any delay of, or interference with, the development of the GOC Property. The Cultural Items shall be removed and/or relocated from the GOC Property rather than keeping them in place and providing fencing or other means for their protection that will interfere with GOC's use and development of the GOC Property; provided, in the case of a mass grave site, Tribe and GOC will confer and reasonably agree on a course of action that will adversely affect GOC's development and use of the GOC Property as little as reasonably possible.

f. Tribe acknowledges and agrees that its visitation, exploration, collection, and removal of Cultural Items to, on, and from the Conservation Area must be approved in advance by GOC in writing, such approval not to be unreasonably withheld, conditioned, or delayed.

g. At GOC's request, and at no cost to Tribe, Tribe shall reasonably cooperate with GOC so that GOC may retain, receive, and obtain any and all favorable income and/or real property tax treatment, development rights, and credits or other benefits which may be available in connection with the Conservation Area.

h. Tribe shall assist GOC in its efforts to prevent the unlawful entry and trespass by persons whose activities may degrade or harm the Cultural Items located within the Conservation Area by locking the access gate to the Conservation Area after Tribe's use and by reporting to GOC any evidence of unlawful entry and trespass it has observed.

i. Tribe shall keep the Conservation Area free of liens arising out of any work performed for, materials furnished to, or obligations incurred by Tribe.

j. Tribe shall maintain adequate comprehensive general liability insurance with respect to the Conservation Area.

5. Costs.

a. Subject to Sections 6 and 10 below, each party shall pay its own costs and professional fees in the negotiation and documentation of this Agreement and the documents contemplated hereby.

b. GOC is responsible for costs related to the routine maintenance of the Conservation Area under the Maintenance Plan (as defined in Conservation Easement Agreement) and for installation and maintenance of the Fencing and for any damages GOC causes to the Conservation Area.

c. Tribe is responsible for costs related to Tribe's activities on the Conservation Area, including without limitation, removal, and/or repatriation of Cultural Items, and for any damages Tribe causes to the Conservation Area.

d. Tribe and GOC will split on a 50/50 basis, the cost of restoration work done for damage to the Conservation Area or exposure of Cultural Items as a result of effects of nature or natural causes as described in Section 10 d. below.

6. Indemnification. GOC shall protect, defend (with counsel reasonably acceptable to Tribe), indemnify, and hold Tribe harmless from and against any and all Claims (as defined below) in any way related to the breach of any of the terms hereof by GOC or the failure of any of the representation made herein by GOC to be true and correct. Tribe shall protect, defend (with counsel reasonably acceptable to GOC), indemnify, and hold GOC and the Property harmless from and against any and all Claims in any way related to the breach of any of the terms hereof by Tribe or the failure of any of the representation made herein by Tribe to be true and correct. As used herein, "Claims" means any claims, demands, obligations, liabilities, liens, encumbrances, losses, damages, costs, fees, or expenses (including, without limitation, any reasonable attorneys' fees). All warranties and representations shall be effective as of the date made regardless of any investigation made or which could have been made.

7. Representations and Warranties.

a. GOC Represents and warrants to Tribe that (i) GOC is duly organized, validly existing, and in good standing under the laws of the State of California, has full authority to enter into and perform this Agreement, and the person or persons signing this Agreement and any documents executed pursuant hereto on GOC's behalf have full power and authority to bind GOC, and (ii) this Agreement is enforceable against GOC in accordance with its terms and the execution, delivery, and performance of this Agreement do not, and the consummation of the transaction contemplated hereby will not, violate the organizational documents or other agreements made by, or binding upon, GOC.

b. Tribe represents and warrants to GOC that (i) Tribe is a federally recognized Indian tribe with full authority to enter into and perform this Agreement and has obtained all necessary approvals and authorizations of Tribe including, without limitation, approvals required in accordance with Tribal law, to enter into and perform Tribe's obligations hereunder, (ii) the person or persons signing this Agreement and any documents executed pursuant hereto on Tribe's behalf have full power and authority to bind Tribe, and (iii) this Agreement is enforceable against Tribe in accordance with its terms and the execution, delivery, and performance of this Agreement do not, and the consummation of the transaction contemplated hereby will not, violate the organizational documents or other agreements made by, or binding upon, Tribe.

8. Termination of Agreement. GOC shall have the right to terminate this Agreement and not record the Conservation Easement Agreement in the event of any termination of the Purchase Agreement, and in the event of any such termination, neither party hereto shall have any further obligations hereunder or under the Conservation Easement Agreement, other than those applicable provisions that expressly survive a termination hereof. In addition, this Agreement automatically terminates upon termination of the Conservation Easement Agreement and termination of the Easement.

9. Limited Waiver of Sovereign Immunity. By this provision, Tribe does not waive, limit, or modify its sovereign immunity against contested suit except as specifically provided herein. Tribe hereby agrees to waive its sovereign immunity solely for the limited purpose of authorizing only GOC to enforce this Agreement and only after GOC and Tribe have complied with the requirements of subsection 10 a.(I) below, or Tribe has refused to comply with subsection 10 a.(I) below. In the event the parties to this Agreement have a need to seek remedies and are unable to do so without litigation, the only jurisdiction and venue for such litigation shall be either the United States District Court, Central District of California, Riverside Branch, or the Superior Court of the State of California, County of Riverside.

10. Enforcement.

a. (I) If either party to this Agreement determines that the other party is in material violation of the terms of this Agreement, the enforcing party shall give written notice to the party in violation and specify the corrective action sufficient to cure the violation. If the party in violation fails to cure the violation within thirty (30) days after receipt of notice thereof from the enforcing party, or under circumstances where the violation cannot reasonably be cured within a thirty (30) day period fails to begin curing such violation within the thirty (30) day period, or fails to continue diligently to cure such violation until finally cured, the enforcing party may commence an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Agreement, to recover any actual and reasonable damages for violation of the terms of this Agreement, including without limitation for any injury to such party's rights in the natural, cultural, historic, scenic, aesthetic, environmental or other values of the Conservation Area or GOC Property, as applicable, to enjoin the violation, or for other equitable relief, including, but

not limited to, the restoration of the Conservation Area to the condition in which it existed prior to any such violation or injury.

(II) The rights under this subsection apply equally to actual or threatened violations of the terms of this Agreement. The parties hereto agree that remedies at law for any violation of the terms of this Agreement are inadequate and that the enforcing party shall be entitled to the injunctive relief described in this subsection, both prohibitive and mandatory, in addition to such other relief to which the enforcing party may be entitled, including specific performance of the terms of this Agreement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Notwithstanding the foregoing, neither party shall be permitted to pursue a claim for punitive, special, consequential, incidental, or pecuniary damages. The remedies described in this subsection shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity, including but not limited to, the remedies set forth in Civil Code sections 815 et seq., inclusive. Failure to discover a violation or to take immediate legal action shall not bar such action at a later time.

b. Enforcement of the terms of this Agreement by either party hereto shall be at the discretion of the such party, and any forbearance by such party to exercise its rights under the Easement in the event of any breach of any term of this Agreement shall not be deemed or construed to be a waiver by such party of such term or of any subsequent breach of the same or any other term of this Agreement or of any of such party's rights under this Agreement. No delay or omission by such party in the exercise of any right or remedy shall impair such right or remedy or be construed as a waiver

c. If either party to this Agreement initiates a proceeding to enforce its rights hereunder or to interpret this Agreement, the prevailing party shall be entitled to recover all of its costs and expenses, including, without limitation, legal interest thereon and all of its reasonable attorney's fees and arbitration costs incurred in connection with such action.

d. Nothing contained in this Agreement shall be construed to entitle a party to bring any action against the other party for any injury to or change in the Property or Cultural Items resulting from causes beyond the other party's control, including, without limitation, acts of God; acts of civil or military authority; war; acts of terrorism; riots, civil unrest, or insurrection; sabotage; local, state, Tribal, or national emergencies or disasters; loss or malfunction of utility, computer (hardware or software), or communication service; any lack or failure of transportation facilities; any lack or failure of supply of raw materials; any strike or labor disturbance; epidemics; and pandemics. For purposes of this Agreement, the term "acts of God" shall mean cataclysmic events which are caused solely by the effects of nature or natural causes, without interference by any person, including, without limitation, insect infestations, floods, earthquakes, tornados, hurricanes, fires, lightening, wind and rain.

11. Miscellaneous.

a. Notices. Whenever any party hereto desires or is required to give any notice, demand, or request with respect to this Agreement (or any Exhibit hereto), each such communication shall be in writing and shall be deemed to have been validly served, given, or delivered at the time stated below if deposited in the United States mail, registered or certified and return receipt requested, with proper postage prepaid, or upon actual delivery if delivered by Federal Express or other private messenger, courier or other delivery service, facsimile transmission or other similar electronic medium and addressed as indicated as follows:

To GOC:

Garden of Champions LLC
78-200 Miles Avenue
Indian Wells, California 92210
Phone: (760) 200-8427
Email: sbirdwell@desertchampions.com
Attention: Steve Birdwell, Chief Operating Officer

To Tribe:

Agua Caliente Band of Cahuilla Indians
5401 Dinah Shore Drive
Palm Springs, California 92264
Phone: (760) 699-6837
Email: jplata@aguacaliente.net
Attention: John T. Plata, General Counsel

If sent by facsimile or email, a confirmed copy of such facsimile or emailed notice shall promptly be sent by mail or by other service (in the manner provided above) to the addressee. Service of any such communication made only by mail shall be deemed complete on the date of actual delivery as indicated by the addressee's registry or certification receipt or at the expiration of the third (3rd) business day after the date of mailing, whichever is earlier in time. Either party may from time to time, by notice in writing served upon the other, designate a different mailing address or a different person to which such notices or demands are thereafter to be addressed or delivered. Nothing contained in this Agreement shall excuse either party from giving oral notice to the other when prompt notification is appropriate, but any oral notice given shall not satisfy the requirements provided in this Section.

b. Controlling Law. The interpretation and performance of this Agreement shall be governed by the laws of the State of California.

c. Liberal Construction. Any general rule of construction to the contrary notwithstanding, this Agreement shall be liberally construed in favor of the grant to effect the purpose of this Agreement. If any provision in this Agreement is found to be ambiguous, an

interpretation consistent with the purpose of this Agreement that would render the provision valid shall be favored over any interpretation that would render it invalid.

d. Waiver. No waiver of any term, provision, or condition of this Agreement, whether by conduct or otherwise, in any one or more instances, shall be deemed to be, or be construed as, a further or continuing waiver of any such term, provision or condition or as a waiver of any other term, provision or condition of this Agreement.

e. Severability/Survival. If any provision of this Agreement, or the application thereof to any person, place, or circumstance, shall be held by a court of competent jurisdiction to be invalid, unenforceable, or void, the remainder of this Agreement and such provisions as applied to other persons, places and circumstances shall remain in full force and effect. The parties' indemnity obligations and representations and warranties shall survive the termination of this Agreement.

f. Time of the Essence. Time is of the essence of each provision of this Agreement in which time is an element

g. Successors and Assigns. The Easement is transferable, but Tribe may only assign its rights and obligations under this Agreement to an organization that is a qualified organization at the time of transfer, under Section 170(h) of the Internal Revenue Code of 1954, as amended, and the applicable regulations promulgated thereunder, and authorized to acquire and hold cultural conservation easements under Civil Code sections 815 et seq., or successor provision. Tribe shall require that any assignee continue to carry out the purposes for which this Agreement is intended to advance. Prior to any assignment, Tribe shall provide GOC written notice of the proposed assignment for GOC's approval, which shall not be unreasonably conditioned, delayed, or withheld.

h. No Third Party Rights. This instrument is made and entered into for the sole benefit and protection of GOC and Tribe and their respective heirs, successors, and assigns. No person or entity other than the parties hereto and their respective heirs, successors, and assigns shall have any right of action under this Agreement or any right to enforce the terms and provisions hereof.

i. Termination of Rights and Obligations. A party's rights and obligations under this Agreement terminate upon transfer of the party's interest in the Easement or property encumbered hereby, except that liability for acts or omissions occurring prior to the transfer shall survive transfer.

j. 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.

k. Counterparts/Facsimile/PDF Signatures. This Agreement may be executed in counterparts and when so executed by the parties, each of which shall be deemed an original,

but all of which together shall constitute one and the same instrument that shall be binding upon the parties, notwithstanding that the parties may not be signatories to the same counterpart or counterparts. The parties may integrate their respective counterparts by attaching the signature pages of each separate counterpart to a single counterpart. In order to expedite the transaction contemplated herein, facsimile or .pdf signatures may be used in place of original signatures on this Agreement. GOC and Tribe intend to be bound by the signatures on the facsimile or .pdf document, are aware that the other party will rely on the facsimile or .pdf signatures, and hereby waive any defenses to the enforcement of the terms of this Agreement based on the form of signature.

l. Further Documents and Acts. Each of the parties agrees to execute and deliver such further documents and perform such other acts as may be reasonably necessary or appropriate to consummate and carry into effect the transactions described and contemplated under this Agreement.

m. Enforceability/Authority. GOC and Tribe both represent and warrant that each has the full right, power, and authority to enter into this Agreement and to perform the transactions contemplated hereunder. The person or persons executing this Agreement on behalf of GOC and Tribe respectively represent and warrant that he or she has the authority to bind GOC or Tribe, as applicable.

n. Entire Agreement. This Agreement and the exhibits attached hereto constitute the entire agreement between the parties and supersede all prior agreements and understandings between the parties relating to the subject matter hereof, including without limitation, any letters of intent and correspondence previously executed or submitted by either or both of the parties hereto, which shall be of no further force or effect upon execution of this Agreement. No alteration or variation of this Agreement shall be valid or binding unless contained in an amendment signed by the parties hereto.

o. No Joint Venture. This Agreement shall not create a partnership or joint venture relationship between GOC and Tribe.

p. Interpretation. This Agreement has been negotiated at arm's length and between persons (or their representatives) sophisticated and knowledgeable in the matters dealt with in this Agreement. Accordingly, any rule of law (including California Civil Code § 1654 and any successor statute) or legal decision that would require interpretation of any ambiguities against the party that has drafted it is not applicable and is waived. The provisions of this Agreement shall be interpreted in a reasonable manner to effect the purpose of the parties and this Agreement.

q. Exhibits. All exhibits attached hereto and referred to herein are incorporated herein as though set forth at length.

[Signatures on following page]

SIGNATURE PAGE
TO
AGREEMENT REGARDING CULTURAL CONSERVATION EASEMENT

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

GOC:

GARDEN OF CHAMPIONS LLC,
a California limited liability company

By:  _____
Name: Steve Birdwell
Its: Chief Operating Officer

TRIBE:

AGUA CALIENTE BAND OF CAHUILLA INDIANS, a
federally recognized Indian tribe


By:  _____
Name: REID D. MILANOVIICH
Its: VICE-CHAIRMAN

EXHIBIT A

CONSERVATION AREA

LEGAL DESCRIPTION

IN THE CITY OF INDIAN WELLS, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, A PORTION OF PARCEL "B" AS SHOWN ON CERTIFICATE OF COMPLIANCE, RECORDED OCTOBER 04, 2017 AS DOCUMENT NO. 2017-0411339, RECORDS OF SAID COUNTY, LOCATED IN A PORTION OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 24, TOWNSHIP 5 SOUTH, RANGE 6 EAST, SAN BERNARDINO MERIDIAN, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SAID PARCEL "B", SAID POINT ALSO BEING A POINT ON A CURVE, CONCAVE NORTHERLY, HAVING A RADIUS OF 5050.00 FEET, A RADIAL LINE TO SAID POINT BEARS SOUTH 05°21'06" WEST;

THENCE ALONG THE NORTHERLY LINE OF SAID PARCEL "B" AND EASTERLY ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 01°11'13", AN ARC DISTANCE OF 104.62 FEET, A RADIAL LINE TO SAID POINT BEARS SOUTH 04°09'53" WEST;

THENCE NON-TANGENT TO SAID CURVE SOUTH 76°59'30" EAST, A DISTANCE OF 88.48 FEET TO THE BEGINNING OF A TANGENT CURVE, CONCAVE SOUTHWESTERLY, HAVING A RADIUS OF 175.00 FEET;

THENCE SOUTHEASTERLY ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 104°28'51", AN ARC DISTANCE OF 319.12 FEET;

THENCE SOUTH 27°29'21" WEST, A DISTANCE OF 89.77 FEET TO A POINT ON THE SOUTHWESTERLY LINE OF SAID PARCEL "B", SAID POINT ALSO BEING THE NORTHEASTERLY LINE OF WHITEWATER FLOOD CHANNEL AS SHOWN ON SAID CERTIFICATE OF COMPLIANCE;

THENCE NORTH 59°03'12" WEST, ALONG SAID NORTHEASTERLY LINE AND SOUTHWESTERLY LINE OF SAID PARCEL "B", A DISTANCE OF 129.36 FEET TO THE BEGINNING OF A TANGENT CURVE, CONCAVE SOUTHWESTERLY, HAVING A RADIUS OF 4500.00 FEET;

THENCE CONTINUING ALONG SAID NORTHEASTERLY LINE AND SOUTHWESTERLY LINE OF SAID PARCEL "B", NORTHWESTERLY ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 02°15'12", AN ARC DISTANCE OF 176.98 FEET TO A POINT ON THE WESTERLY LINE OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 24 AND THE SOUTHWEST CORNER OF SAID PARCEL "B";

1 OF 2

LEGAL DESCRIPTION

THENCE LEAVING SAID NORTHEASTERLY LINE OF WHITEWATER FLOOD CHANNEL AND THE SOUTHWESTERLY LINE OF SAID PARCEL "B" NORTH 00°08'53" WEST, ALONG SAID WESTERLY LINE A DISTANCE OF 205.00 FEET, TO THE POINT OF BEGINNING;

SUBJECT TO EXISTING EASEMENTS, COVENANTS, RIGHTS AND RIGHTS-OF-WAY OF RECORD.

CONTAINING 80,761 SQUARE FEET OR 1.854 ACRES MORE OR LESS.

AS DEPICTED ON **EXHIBIT "B"** ATTACHED HERETO AND MADE A PART HEREOF.

PREPARED BY OR UNDER THE DIRECTION OF:



CHARLES R. HARRIS P.L.S. 4989



DATED: 1/27/2020

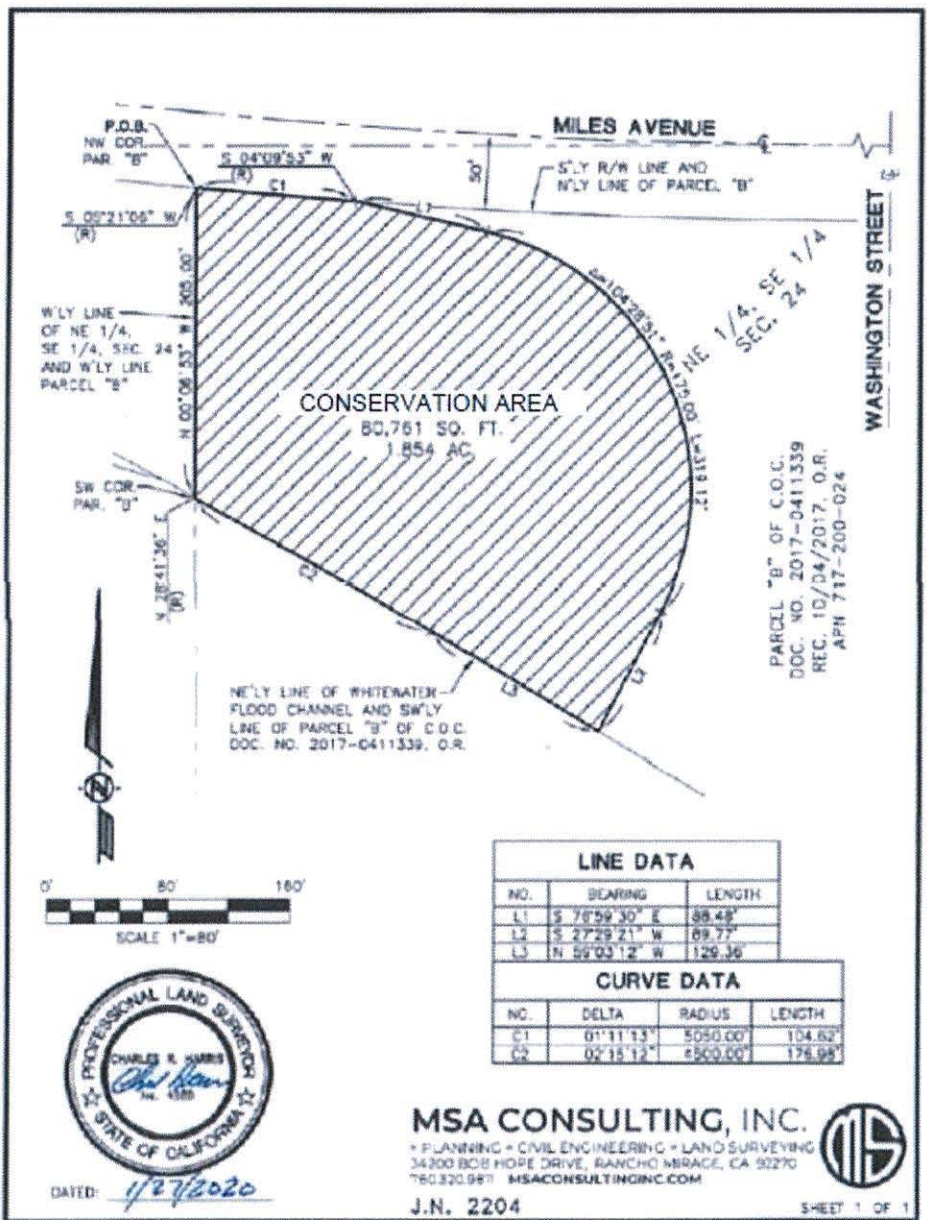


EXHIBIT B

FORM OF CONSERVATION EASEMENT AGREEMENT

RECORDING REQUESTED BY AND WHEN
RECORDED MAIL TO:

Agua Caliente Band of Cahuilla Indians
5401 Dinah Shore Drive
Palm Springs, California 92264
Attention: General Counsel

APN No.: [_____]

SPACE ABOVE THIS LINE FOR RECORDER'S USE

CULTURAL CONSERVATION EASEMENT AGREEMENT

THIS CULTURAL CONSERVATION EASEMENT AGREEMENT (this "**Agreement**") by and between Garden of Champions LLC, a California limited liability company ("**Grantor**") and the Agua Caliente Band of Cahuilla Indians, a federally recognized Indian tribe ("**Grantee**") is dated July __, 2020 (the "**Effective Date**"). Grantor and Grantee are sometimes herein referred to as a "**Party**" and collectively as the "**Parties**."

RECITALS

A. Grantor is the sole owner in fee simple of certain real property located in the City of Indian Wells, State of California, more particularly described in **Exhibit A** attached hereto and incorporated herein by this reference, together with all improvements and appurtenances thereto (the "**Property**").

B. Grantee has a cultural and historic interest in the Conservation Area (defined below) and in the human remains, associated funerary objects, sacred objects, and objects of cultural patrimony (individually a "**Cultural Item**" and collectively the "**Cultural Items**") of the Agua Caliente Band of Cahuilla Indians which do or may exist on a portion of the Property as shown on **Exhibit B**, which is attached hereto and incorporated herein by this reference (the "**Conservation Area**"). The remainder of the Property is referred to as the "**Grantor Property**."

C. Grantee believes that the Conservation Area meets the National Register Criteria for Evaluation in 36 CFR 60.4.

D. Civil Code sections 815 *et seq.* authorize the creation of conservation easements for the purpose of retaining land predominately in its natural, scenic, historical, agricultural, forested, or open-space condition.

E. Grantor desires to convey to Grantee an easement (the "**Easement**") for the purpose of preserving, protecting, maintaining, and restoring the Conservation Area and certain Cultural Items within the Conservation Area, which are culturally and historically significant to Grantee, and Grantee has

determined that it is authorized to hold conservation easements for these purposes pursuant to Civil Code sections 815 et seq. and other provisions of California law.

NOW, THEREFORE, for good and valuable consideration, and in consideration of the mutual covenants, terms, conditions, and restrictions contained herein, and pursuant to the laws of the State of California including, inter-alia, Civil Code sections 815 et seq., Grantor does hereby convey to Grantee the Easement in perpetuity over the Conservation Area of the nature and character and to the extent hereinafter set forth.

1. **Purpose.** The purpose of the Easement is to forever preserve, protect, maintain, and restore: (i) the Conservation Area, which constitutes a historically important land area for purposes of 26 U.S.C. § 170(h) and an area that is culturally and historically significant to Grantee; and (ii) all Cultural Items of Grantee located within the Conservation Area. Grantor and Grantee intend that this Agreement will confine the use of the Conservation Area to those activities that are consistent with this purpose.

2. **Affirmative Rights and Interests Conveyed.** To accomplish the purpose of this Agreement, the following rights and interests are hereby conveyed to Grantee by this Agreement:

a. To reasonably enter and exit the Conservation Area through the access gate on the north side of the Conservation Area as shown on **Exhibit B.**

b. To preserve, protect, maintain, and restore in perpetuity the Conservation Area and all Cultural Items located within the Conservation Area and to repatriate within the Conservation Area Cultural Items from other locations. However, neither Grantor nor Grantee shall have any right to construct any improvements on or under the Conservation Area.

c. To enter upon, inspect, observe, study, and use the Conservation Area for the purpose of (i) identifying the current uses and activities within the Conservation Area; (ii) monitoring the uses and activities within the Conservation Area to determine whether they are consistent with the purpose of this Agreement; (iii) ensuring that restoration and maintenance activities do not damage the Conservation Area or any Cultural Item located therein; and (iv) carrying out the traditional cultural practices of Grantee consistent with the purpose of this Agreement.

d. To prevent any use of or activity within the Conservation Area that is inconsistent with the purpose of the Easement and to cause the restoration of such areas or features of the Conservation Area that may be damaged by any inconsistent use or activity. However, it is not the intention of this Agreement to limit Grantor's discretion to employ uses and activities on the Grantor Property so long as said uses and activities do not impair any affirmative rights or interests conveyed through this Agreement.

e. Grantee will not conduct any of the foregoing activities in a manner that will interfere with Grantor's use of other portions of the Property or the conduct of the BNP

Paribas Open (as such tennis tournament may be renamed) or other events at the Indian Wells Tennis Garden for which the Grantor Property and adjacent property owned by Grantor are used.

3. Permitted Uses and Activities. Grantor and Grantee intend that the Conservation Area subject to the Easement shall remain as conservation land in perpetuity. Examples of uses and activities which are consistent with the purpose of the Easement are set forth below, and include, without limitation, those uses and activities which are employed in connection with the preservation, protection, maintenance, and restoration of the Conservation Area and any Cultural Item located therein. Without limiting the generality of the foregoing, the following uses and activities are expressly permitted:

a. The installation of barrier fencing (the "**Fencing**") at Grantor's cost that allows public visual access from the exterior boundaries of the Conservation Area. The Fencing has been approved by Grantee prior to the date hereof.

b. The routine maintenance of the Conservation Area at Grantor's cost to remove surface trash and overgrown vegetation in accordance with a maintenance plan approved by Grantor and Grantee (the "**Maintenance Plan**"). Any other maintenance that Grantor does under the Maintenance Plan and which disturbs the surface of the Conservation Area will require the presence of a cultural monitor reasonably acceptable to Grantee.

4. Prohibited Uses and Activities. Any use of or activity within the Conservation Area that is inconsistent with the purpose of the Easement is prohibited, except as otherwise provided in Sections 3 and 6. Without limiting the generality of the foregoing, the following uses and activities are expressly prohibited, except as otherwise provided in this Agreement:

a. Use of off-road vehicles and the use of any other motorized vehicle.

b. Agricultural activity of any kind, except for vegetation clearing activities specifically provided in the Maintenance Plan.

c. Recreational activities, including, but not limited to, horseback riding, biking, hunting, or fishing.

d. Commercial, industrial, residential, or institutional structures or uses.

e. Any legal or de facto division, subdivision, or partitioning of the Conservation Area; provided, however, Grantor shall have the right, in its sole discretion, to establish the Conservation Area as a separate, legal lot or parcel.

f. Construction, reconstruction, expansion, location, relocation, installation, or placement of any building, billboard, monument, sign, or any other structure or improvement of any kind or excavating or digging which could adversely affect the Grantor Property, including diminishing lateral support for the Fencing.

g. Deposit or accumulation of soil, trash, ashes, refuse, waste, bio-solids, or any other materials.

h. Filling, dumping, excavating, draining, dredging, mining, drilling, removing, or exploring for or extracting minerals, loam, soil, sand, gravel, rocks, or other material on the surface of the Conservation Area, or granting or authorizing surface entry for any of these purposes.

i. Altering the surface or general topography of the Conservation Area through any ground disturbing activity; provided, however, Grantor may engage in any ground disturbing activity on the Grantor Property upon prior notice to Grantee if a cultural monitor of Grantee is present to observe and monitor said activity. For purposes of the Easement, a “**ground disturbing activity**” shall mean any activity that results in movement of earth, or a change in the existing soil cover (both vegetative and non-vegetative) and/or the existing soil topography. A ground disturbing activity includes, but is not limited to, demolition, reconstruction, construction, clearing, grading, filling, excavation, and related activities. Compaction that is associated with stabilization of structures and road construction shall also be considered a ground disturbing activity. Vegetation clearing and maintenance activities on the Conservation Area shall not be considered a ground disturbing activity as long as Grantor or Grantee complies with the Maintenance Plan.

j. Removing, disturbing, altering, destroying, damaging, or compromising any Cultural Item.

k. Manipulating, impounding, or altering any natural water course, body of water, or water circulation within the Conservation Area if said activity is inconsistent with the purpose of the Easement.

l. Other than Grantor, Grantee, and their respective officials, officers, employees, personnel, agents, volunteers, and contractors, authorizing any person or entity to use or access the Conservation Area; provided that this prohibition shall not prohibit visual public access to the Conservation Area, and the public shall be given the opportunity on a regular basis to view the characteristics and features of the Conservation Area, from any adjacent public right-of-way.

m. Any use or activity that may violate, or fail to comply with, relevant federal, state, or local laws, regulations, or policies applicable to Grantor, Grantee, the Conservation Area, this Agreement, or the use or activity in question.

5. **Grantor’s Reserved Rights.** Grantor reserves to itself, and to its personal representatives, heirs, successors, and assigns, all rights accruing from their ownership of the Conservation Area, including the right to engage in all uses of the Conservation Area that are not expressly prohibited herein and are not inconsistent with the purpose of the Easement. Without limiting the generality of the foregoing, the following rights are expressly reserved: (i) all right, title, and interest in and to all tributary and non-tributary water, water rights, and related

interests in, on, under, or appurtenant to the Conservation Area so long as Grantor's exercise of its rights does not damage, impair, or endanger the Conservation Area or the Cultural Items within the Conservation Area; and (ii) all right, title, and interest in subsurface oil, gas, and minerals; provided that the manner of exploration for, and extraction of any oil, gas, or minerals shall be only by a subsurface method, and shall not damage, impair, or endanger the Conservation Area or the Cultural Items within the Conservation Area.

6. Enforcement of Easement.

a. Remedies.

(I) If either Party to this Agreement determines that the other Party is in material violation of the terms of this Agreement, the enforcing Party shall give written notice to the Party in violation and specify the corrective action sufficient to cure the violation. If the Party in violation fails to cure the violation within thirty (30) days after receipt of notice thereof from the enforcing Party, or under circumstances where the violation cannot reasonably be cured within a thirty (30) day period fails to begin curing such violation within the thirty (30) day period, or fails to continue diligently to cure such violation until finally cured, the enforcing Party may commence an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Agreement, to recover any actual and reasonable damages for violation of the terms of this Agreement, including, without limitation, for any injury to such Party's rights in the natural, cultural, historic, scenic, aesthetic, environmental or other values of the Conservation Area or Grantor Property, as applicable, to enjoin the violation, or for other equitable relief, including, but not limited to, the restoration of the Conservation Area to the condition in which it existed prior to any such violation or injury.

(II) The rights under this subsection apply equally to actual or threatened violations of the terms of this Agreement. The Parties hereto agree that remedies at law for any violation of the terms of this Agreement are inadequate and that the enforcing Party shall be entitled to the injunctive relief described in this subsection, both prohibitive and mandatory, in addition to such other relief to which the enforcing Party may be entitled, including specific performance of the terms of this Agreement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Notwithstanding the foregoing, neither Party shall be permitted to pursue a claim for punitive, special, consequential, incidental, or pecuniary damages. The remedies described in this subsection shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity, including but not limited to, the remedies set forth in Civil Code sections 815 et seq., inclusive. Failure to discover a violation or to take immediate legal action shall not bar such action at a later time.

b. Discretion of the Enforcing Party. Enforcement of the terms of this Agreement by either Party hereto shall be at the discretion of the such Party, and any forbearance by such Party to exercise its rights under the Easement in the event of any breach of any term of this Agreement shall not be deemed or construed to be a waiver by such Party of such term or of any subsequent breach of the same or any other term of this Agreement or of any of such Party's

rights under this Agreement. No delay or omission by such Party in the exercise of any right or remedy shall impair such right or remedy or be construed as a waiver.

c. **Costs of Enforcement.** If either Party to this Agreement initiates a proceeding to enforce its rights hereunder or to interpret this Agreement, the prevailing Party shall be entitled to recover all of its costs and expenses, including, without limitation, legal interest thereon and all of its reasonable attorney's fees and arbitration costs incurred in connection with such action.

d. **Acts Beyond a Party's Control.** Nothing contained in this Agreement shall be construed to entitle a Party to bring any action against the other Party for any injury to or change in the Property or Cultural Items resulting from causes beyond the other Party's control, including, without limitation, acts of God; acts of civil or military authority; war; acts of terrorism; riots, civil unrest, or insurrection; sabotage; local, state, Tribal, or national emergencies or disasters; loss or malfunction of utility, computer (hardware or software), or communication service; any lack or failure of transportation facilities; any lack or failure of supply of raw materials; any strike or labor disturbance; epidemics; and pandemics. For purposes of this Agreement, the term "**acts of God**" shall mean cataclysmic events which are caused solely by the effects of nature or natural causes, without interference by any person, including, without limitation, insect infestations, floods, earthquakes, tornados, hurricanes, fires, lightening, wind, and rain.

e. **Limited Waiver of Sovereign Immunity.** By this provision, Grantee does not waive, limit, or modify its sovereign immunity against contested suit except as specifically provided herein. Grantee hereby agrees to waive its sovereign immunity solely for the limited purpose of authorizing only Grantor to enforce this Agreement and only after Grantor and Grantee have complied with the requirements of subsection 6 a.(1) above, or Grantee has refused to comply with subsection 6 a.(1) above. In the event the Parties to this Agreement have a need to seek remedies and are unable to do so without litigation, the only jurisdiction and venue for such litigation shall be either the United States District Court, Central District of California, Riverside Branch, or the Superior Court of the State of California, County of Riverside.

f. **Indemnification; Hold Harmless.** Each Party shall be responsible for, indemnify, and hold harmless the other Party, its officers, directors, agents, guests, invitees, contractors, and employees from any and all liabilities, claims, demands, damages, or costs caused by that Party's or such Party's officers, directors, representatives, agents, guests, invitees, contractors or employees acts or omissions directly causing: injury to, or death of, any person, or physical damage to the Property, except to the extent arising out of the negligence or intentional misconduct of the other Party, its officers, directors, agents, guests, invitees, contractors, and employees. The duty of one Party to indemnify and hold harmless the other Party includes the duty to defend as set forth in Civil Code section 2778, with counsel reasonably acceptable to the indemnified Party, or to reimburse the indemnified Party for all legal costs incurred by such indemnified Party.

7. **Access.** No right of access by the general public to any portion of the Conservation Area is conveyed by this Agreement or the Easement granted hereby, nor shall same be authorized by either Party hereto.

8. **Taxes.** Grantor shall pay before delinquency all taxes, assessments, fees, and charges 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 the Easement, and shall furnish Grantee with satisfactory evidence of payment, upon request. It is intended that the Easement constitutes an enforceable restriction within the meaning of Article XIII, Section 8 of the California Constitution and that the Easement qualifies as an enforceable restriction under the provisions of California Revenue and Taxation Code section 402.1 or successor statute.

9. **Amendment.** No subsequent change, amendment, or addition to this Agreement shall be binding unless in writing and signed by Grantor and Grantee. If circumstances arise under which an amendment to or modification of this Agreement would be appropriate, Grantor and Grantee may jointly amend this Agreement, provided that no amendment shall be allowed that will affect the qualification of the Easement or the status of Grantee under any applicable laws, including Sections 815 et seq. of the Civil Code, and any amendment shall be consistent with the purpose of the Easement. Any such amendment shall be in writing, shall refer to this Agreement by reference to its recordation data, and shall be recorded in the Official Records of Riverside County, California.

10. **Assignment.** The Easement is transferable, but Grantee may only assign its rights and obligations under this Agreement to an organization that is a qualified organization at the time of transfer, under Section 170(h) of the Internal Revenue Code of 1954, as amended, and the applicable regulations promulgated thereunder, and authorized to acquire and hold cultural conservation easements under Civil Code sections 815 et seq., or successor provision. Grantee shall require that any assignee continue to carry out the purposes for which this Agreement is intended to advance. Prior to any assignment, Grantee shall provide Grantor written notice of the proposed assignment for Grantor's approval, which shall not be unreasonably conditioned, delayed, or withheld.

11. **Estoppel Certificates.** Upon request by one Party or the other, such Party shall within thirty (30) days execute and deliver to the other an estoppel certificate, which certifies such certifying Party's compliance with its obligations contained in this Agreement and otherwise evidences the status of the Easement and this Agreement as may be so requested by the requesting Party.

12. **Notices.** Whenever any Party hereto desires or is required to give any notice, demand, or request with respect to this Agreement (or any Exhibit hereto), each such communication shall be in writing and shall be deemed to have been validly served, given, or delivered at the time stated below if deposited in the United States mail, registered or certified and return receipt requested, with proper postage prepaid, or upon actual delivery if delivered

by Federal Express or other private messenger, courier or other delivery service, facsimile transmission or other similar electronic medium and addressed as indicated as follows:

To Grantor:

Garden of Champions LLC
78-200 Miles Avenue
Indian Wells, California 92210
Phone: (760) 200-8427
Email: sbirdwell@desertchampions.com
Attention: Steve Birdwell, Chief Operating Officer

To Grantee:

Agua Caliente Band of Cahuilla Indians
5401 Dinah Shore Drive
Palm Springs, California 92264
Phone: (760) 699-6837
Email: jplata@aguacaliente.net
Attention: John T. Plata, General Counsel

If sent by facsimile or email, a confirmed copy of such facsimile or emailed notice shall promptly be sent by mail or by other service (in the manner provided above) to the addressee. Service of any such communication made only by mail shall be deemed complete on the date of actual delivery as indicated by the addressee's registry or certification receipt or at the expiration of the third (3rd) business day after the date of mailing, whichever is earlier in time. Either Party may from time to time, by notice in writing served upon the other, designate a different mailing address or a different person to which such notices or demands are thereafter to be addressed or delivered. Nothing contained in this Agreement shall excuse either Party from giving oral notice to the other when prompt notification is appropriate, but any oral notice given shall not satisfy the requirements provided in this Section.

13. Recordation. Grantor shall record this instrument in a timely fashion in the Official Records of Riverside County, California, and Grantee may re-record it at any time as may be required to preserve rights in the Easement.

14. Executory Limitation. If Grantee shall cease to exist or cease to qualify or to be authorized to acquire and hold conservation easements under Civil Code sections 815 et seq. and a prior assignment is not made pursuant to Section 10 above, or a new assignee refuses to assume the rights or obligations under this Agreement, then the rights and obligations under this Agreement shall vest in such organization as a court of competent jurisdiction shall direct pursuant to California law and with due regard to the requirements for an assignment pursuant to Section 10, especially to the unique and significant character of the Cultural Items involved. Grantor may request relief from the court, in an action under this Section to void the Easement if Grantee or their assignee cease to be a qualified organization or refuse their rights and obligations under this Agreement. Grantor agrees to give Grantee sixty (60) days prior written notice of any intention to seek relief under this Section.

15. Representations and Warranties

a. Grantor Represents and warrants to Grantee that (i) Grantor is duly organized, validly existing, and in good standing under the laws of the State of California, has full authority to enter into and perform this Agreement, and the person or persons signing this Agreement and any documents executed pursuant hereto on Grantor's behalf have full power and authority to bind Grantor, and (ii) this Agreement is enforceable against Grantor in accordance with its terms and the execution, delivery, and performance of this Agreement do not, and the consummation of the transaction contemplated hereby will not, violate the organizational documents or other agreements made by, or binding upon, Grantor.

b. Grantee represents and warrants to Grantor that (i) Grantee is a federally recognized Indian tribe with full authority to enter into and perform this Agreement and has obtained all necessary approvals and authorizations of Grantee including, without limitation, approvals required in accordance with Tribal law, to enter into and perform Grantee's obligations hereunder, (ii) the person or persons signing this Agreement and any documents executed pursuant hereto on Grantee's behalf have full power and authority to bind Grantee, and (iii) this Agreement is enforceable against Grantee in accordance with its terms and the execution, delivery, and performance of this Agreement do not, and the consummation of the transaction contemplated hereby will not, violate the organizational documents or other agreements made by, or binding upon, Grantee.

16. Miscellaneous Provisions.

a. **Controlling Law.** The interpretation and performance of this Agreement shall be governed by the laws of the State of California.

b. **Liberal Construction.** Any general rule of construction to the contrary notwithstanding, this Agreement shall be liberally construed in favor of the grant to effect the purpose of this Agreement and the policy and purpose of Civil Code sections 815 et seq. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purpose of this Agreement that would render the provision valid shall be favored over any interpretation that would render it invalid.

c. **Waiver.** No waiver of any term, provision, or condition of this Agreement, whether by conduct or otherwise, in any one or more instances, shall be deemed to be, or be construed as, a further or continuing waiver of any such term, provision or condition or as a waiver of any other term, provision or condition of this Agreement.

d. **Severability/Survival.** If any provision of this Agreement, or the application thereof to any person, place, or circumstance, shall be held by a court of competent jurisdiction to be invalid, unenforceable, or void, the remainder of this Agreement and such provisions as applied to other persons, places and circumstances shall remain in full force and effect. The Parties' representations and warranties shall survive the termination of this Agreement.

e. **Time of the Essence.** Time is of the essence of each provision of this Agreement in which time is an element.

f. **No Forfeiture.** Nothing contained herein is intended to result in a forfeiture or reversion of Grantor's fee title in any respect. Grantor specifically reserves the right to convey fee title to the property subject to the Easement, subject to the terms and conditions of the Easement.

g. **Successors and Assigns.** Grantor shall have the right to assign this Agreement, provided any such assignee shall assume all obligations of Grantor hereunder. Grantee shall have no right to assign this Agreement. Except as otherwise permitted by this Section, neither this Agreement nor the rights of either Party hereunder may be assigned by either Party. This Agreement shall continue as a servitude running in perpetuity with the property encumbered hereby.

h. **No Third Party Rights.** This instrument is made and entered into for the sole benefit and protection of Grantor and Grantee and their respective heirs, successors, and assigns. No person or entity other than the Parties hereto and their respective heirs, successors, and assigns shall have any right of action under this Agreement or any right to enforce the terms and provisions hereof.

i. **Termination of Rights and Obligations.** A Party's rights and obligations under this Agreement terminate upon transfer of the Party's interest in the Easement or property encumbered hereby, except that liability for acts or omissions occurring prior to the transfer shall survive transfer.

j. **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.

k. **Subordination.** If Grantor encumbers the Property or any portion thereof prior to granting the Easement to Grantee, Grantor shall deliver an executed consent of lienholder/mortgagor in which any lienholder or mortgagor agrees to subordinate its rights in the Property or any portions thereof to the extent necessary to prevent any modification or extinguishment of the Easement by the exercise of any rights by any mortgage holder or lienholder.

l. **Counterparts.** This Agreement may be executed in counterparts and when so executed by the Parties, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument that shall be binding upon the Parties, notwithstanding that the Parties may not be signatories to the same counterpart or counterparts. The Parties may integrate their respective counterparts by attaching the signature pages of each separate counterpart to a single counterpart. In the event of any disparity between the counterparts produced, the recorded counterparts shall be controlling.

m. **Further Documents and Acts.** Each of the Parties agrees to execute and deliver such further documents and perform such other acts as may be reasonably necessary or appropriate to consummate and carry into effect the transactions described and contemplated under this Agreement.

n. **Enforceability/Authority.** Grantor and Grantee both represent and warrant that each has the full right, power, and authority to enter into this Agreement and to perform the transactions contemplated hereunder. The person or persons executing this Agreement on behalf of Grantor and Grantee respectively represent and warrant that he or she has the authority to bind Grantor or Grantee, as applicable.

o. **Entire Agreement.** This Agreement and the exhibits attached hereto constitute the entire agreement between the Parties and supersede all prior agreements and understandings between the Parties relating to the subject matter hereof, including without limitation, any letters of intent and correspondence previously executed or submitted by either or both of the Parties hereto, which shall be of no further force or effect upon execution of this Agreement. No alteration or variation of this Agreement shall be valid or binding unless contained in an amendment that complies with Section 9 hereof.

p. **No Joint Venture.** This Agreement shall not create a partnership or joint venture relationship between Grantor and Grantee.


q. **Interpretation.** This Agreement has been negotiated at arm's length and between persons (or their representatives) sophisticated and knowledgeable in the matters dealt with in this Agreement. Accordingly, any rule of law (including California Civil Code § 1654 and any successor statute) or legal decision that would require interpretation of any ambiguities against the Party that has drafted it is not applicable and is waived. The provisions of this Agreement shall be interpreted in a reasonable manner to effect the purpose of the Parties and this Agreement.

r. **Exhibits.** All exhibits attached hereto and referred to herein are incorporated herein as though set forth at length.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date first written above.

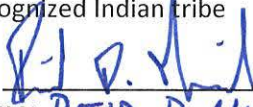
GRANTOR

Garden of Champions LLC, a California limited liability company

By: 
Name: STEVE BIRDWELL
Its: CHIEF OPERATING OFFICER

GRANTEE

Agua Caliente Band of Cahuilla Indians, a federally recognized Indian tribe

By: 
Name: REID D. MILANOVICH
Its: VICE-CHAIRMAN

This Notary Acknowledgement is attached to a document titled
CULTURAL CONSERVATION EASEMENT AGREEMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

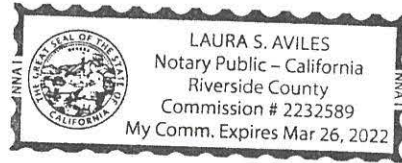
State of California
County of RIVERSIDE)

On July 8, 2020, before me, LAURA S. AVILES, NOTARY PUBLIC (here insert name and title of the officer), personally appeared REID D. MILANOJICH, 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.

Laura S. Aviles
Signature of Notary



This Notary Acknowledgement is attached to a document titled
CULTURAL CONSERVATION EASEMENT AGREEMENT

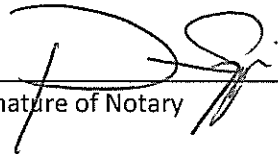
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of SAN BERNARDINO)

On JULY 10, 2020, before me, P. SCOGGINS, NOTARY PUBLIC (here insert name and title of the officer), personally appeared STEVE BIRDWELL, 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.



Signature of Notary

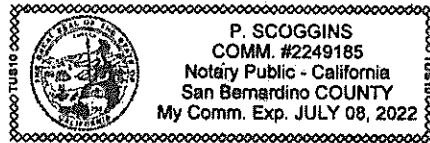


EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

PARCEL "B"

COMMENCING AT THE NORTHWEST CORNER OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SAID SECTION 24;

THENCE SOUTH 00°06'53" EAST, ALONG THE WESTERLY LINE OF SAID NORTHEAST QUARTER, A DISTANCE OF 27.81 FEET TO A POINT ON THE SOUTHERLY RIGHT-OF-WAY OF MILES AVENUES, 50.00 FEET SOUTHERLY HALF-WIDTH, ALSO BEING THE NORTHWEST CORNER OF PARCEL "A" OF SAID LOT LINE ADJUSTMENT, AND THE BEGINNING OF A CURVE, CONCAVE NORTHERLY, HAVING A RADIUS OF 5050.00 FEET, A RADIAL LINE TO SAID POINT BEARS SOUTH 05°21'06" WEST AND THE TRUE POINT OF BEGINNING;

THENCE EASTERLY ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE AND THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 05°22'28", AN ARC DISTANCE OF 473.70 FEET, A RADIAL LINE TO SAID POINT BEARS SOUTH 00°01'22" EAST;

THENCE NORTH 89°58'38" EAST, CONTINUING ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE A DISTANCE OF 856.57 FEET, TO A POINT ON THE EASTERLY LINE OF SAID SECTION 24, SAID POINT HEREINAFTER REFERRED TO AS POINT "A";

THENCE SOUTH 00°09'06" EAST, ALONG SAID EASTERLY LINE A DISTANCE OF 849.77 FEET TO THE NORTHERLY LINE OF SAID EASEMENT IN FAVOR OF COACHELLA VALLEY WATER DISTRICT AS DESCRIBED ON INSTRUMENT NO. 120089, RECORDED DECEMBER 28, 1962, ALSO BEING THE BEGINNING OF A NON-TANGENT CURVE, CONCAVE NORTHEASTERLY, HAVING A RADIUS OF 3500.00 FEET, A RADIAL LINE TO SAID POINT BEARS SOUTH 16°34'07" WEST;

THENCE ALONG THE NORTHERLY LINE OF SAID EASEMENT IN FAVOR OF COACHELLA VALLEY WATER DISTRICT, THROUGH THE FOLLOWING THREE (3) COURSES:

(1) THENCE NORTHWESTERLY ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 14°22'41", AN ARC DISTANCE OF 878.31 FEET;

(2) THENCE NORTH 59°03'12" WEST, A DISTANCE OF 438.57 FEET TO THE BEGINNING OF A TANGENT CURVE, CONCAVE SOUTHWESTERLY, HAVING A RADIUS OF 4500.00 FEET;

(3) THENCE NORTHWESTERLY ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 02°15'12", AN ARC DISTANCE OF 176.98 FEET, A RADIAL LINE TO SAID POINT BEARS NORTH 28°41' 36" EAST;

THENCE NON-TANGENT TO SAID CURVE AND LEAVING THE NORTHERLY LINE OF SAID EASEMENT NORTH 00°06'53" WEST, A DISTANCE OF 205.00 FEET, TO THE **TRUE POINT OF BEGINNING**;

SUBJECT TO EXISTING EASEMENTS, COVENANTS, RIGHTS AND RIGHTS-OF-WAY OF RECORD.

PARCEL "B" CONTAINING 737,402.58 SQUARE FEET OR 16.928 ACRES MORE OR LESS.

EXHIBIT B

DEPICTION OF CONSERVATION AREA

[To be inserted behind this cover sheet]

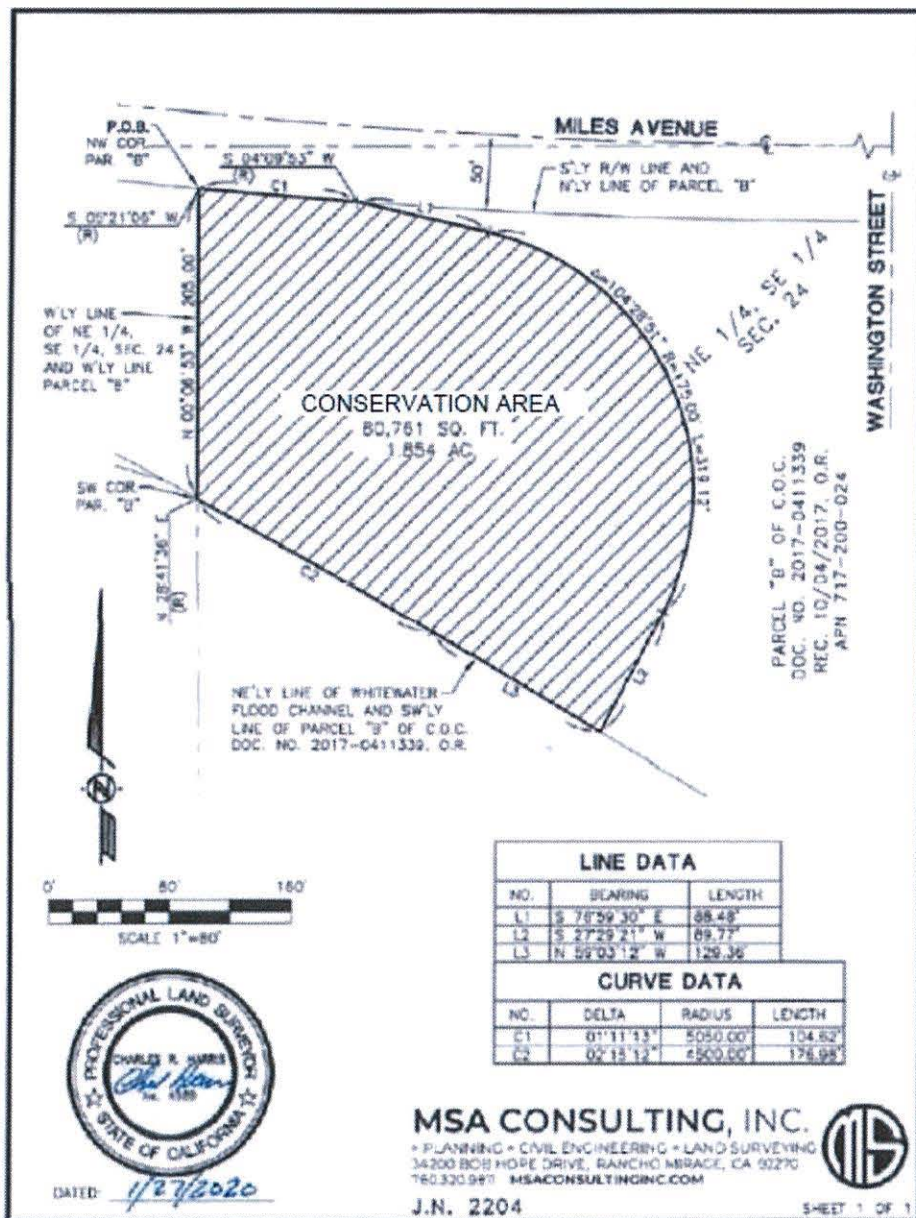
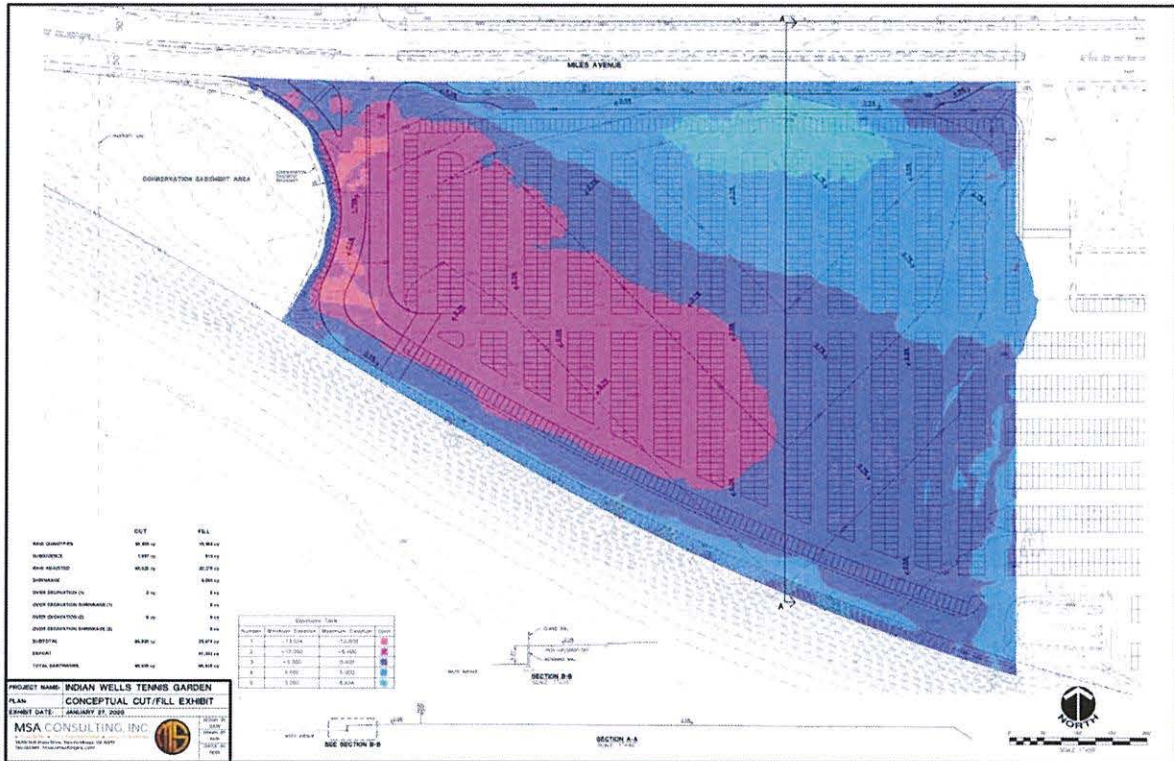


EXHIBIT C
GRADING PLAN



CONCEPTUAL GRADING PLAN

EXHIBIT D

FENCE DESIGN AND MATERIALS



The Strong and Affordable Alternative to Chain Link



THE GLOBAL STANDARD

The Prism 3-D Fence System is the global standard for mesh panel fencing, and is now manufactured in the United States, providing a high value, attractive security fence solution.

Recommended for:

- Public Buildings
- Industrial Facilities
- Airports
- Schools
- Parks
- Playgrounds
- Ball Fields
- Sports Stadiums

BENEFITS

Rigidity

Heavy welded security mesh panels with rectangular meshes and horizontal reinforcement ribs guarantee strength and rigidity.

Complete System

The system consists of high-quality panels available in various heights, secured to high-strength steel posts. Swing, sliding and cantilever gates are available for the Prism 3-D Fence System.

Long Service Life

Betafence USA's exclusive super-durable powder coating assures a long service life for this fence system. This coating is applied over galvanization to ensure total protection of panels and gates.

Fast Installation

All components have been developed to provide a professional product of high quality that can be installed efficiently and rapidly.





The original 3-D fence, developed by Betafence, made in the U.S.A.



Panels

The panels have a width of 8.2 feet and heights ranging from 2 to 8 feet. The panels have vertical bars of 1.2 inches on one side and are reversible (barbs at top or at bottom). Mesh sizes are 7 7/8" x 2", and 4" x 2" for the beam sections. The heavy wires guarantee strength and rigidity.

Posts

The panels are attached with high strength steel brackets to the front side of galvanized steel square tubular posts (2" x 2").

Gates

The Prism 3-D Fence System includes the availability of swing, slide and cantilever gates.

Coating

The welded mesh panels are manufactured using galvanized steel wire, coated with Betafence USA's exclusive Architectural Grade Powder Coat. This coating, used exclusively by Betafence Products, is super-durable and environmentally sound. Our powder coating provides the industry's Highest Weatherability and Gloss Retention in U.V. exposure – up to 5 times longer than competitors' powder coatings!



Colors

Betafence 3D is standard available in black. Custom colors are available.

Warranty

The Prism 3-D Fence System is produced using the highest quality material and equipment – and is backed by our 10-year Manufacturer's Warranty.



Prism 3-D Specifications

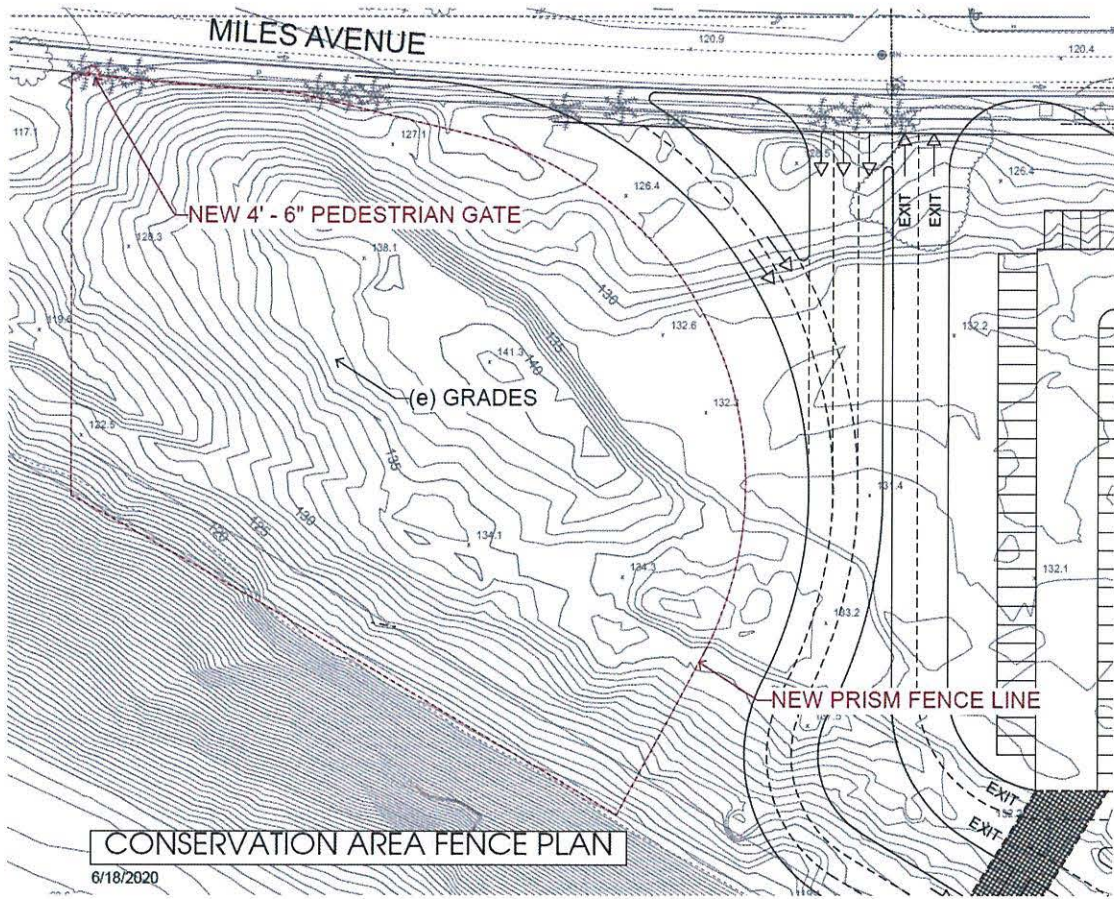
Additional mech configurations (wire gauge, mech openings) are available upon request.

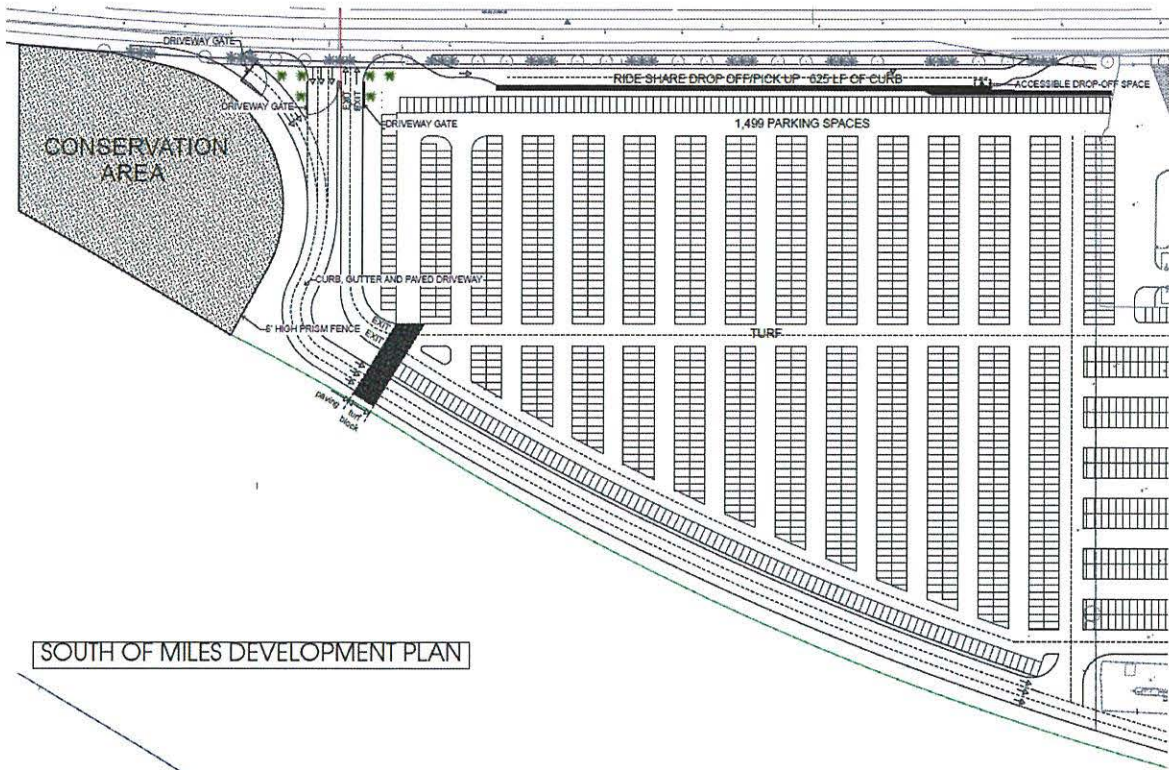
Mesh Openings in.	Wire Diameter – H gauge	Wire Diameter – Y gauge	Panel Width ft.	Panel Height ft (Number of Panels)	Brackets Per Post
6 x 2.0	6 ga.	6 ga.	8.20	4 (2)	4 – 4
7.87 x 2.0				5 (3)	5 – 4
				6 (3)	6 – 5
				7 (4)	7 – 6
				8 (4)	8 – 7

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Securing what matters



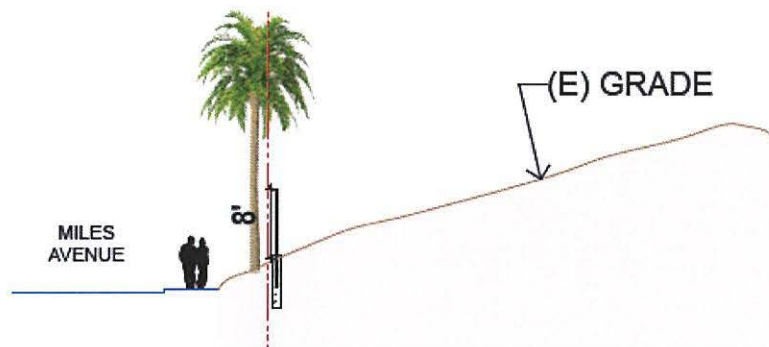


SOUTH OF MILES DEVELOPMENT PLAN

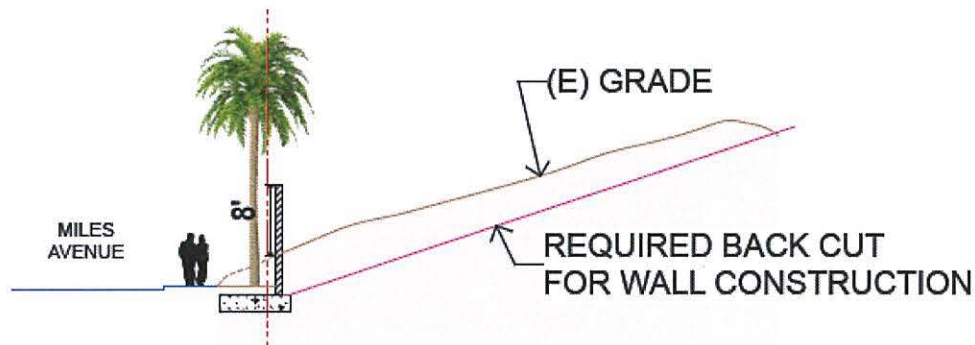
Enclosure Design

An enclosure is required to protect the Conservation Area. The options are a slump block wall, as is seen along Miles Avenue, or a fence. When investigating these options, it was determined that the construction of the block wall and the required footings would cause most of the conservation area to be disturbed by the required lay back of the grade for the excavation. This is counter intuitive to the reason for the enclosure.

A fence alternative was investigated and determined to be the best choice. The installation will require drilling a footing at each fence post, inserting a Sonotube concrete form and pouring a caisson style concrete footing. This disturbs about 1 square foot of land per fence post. The selection of the fence is also important, and the proposed fence is a heavy, welded wire fence that is powder coated. The Prism fence provides security, visibility and a stylish design designed for long life and aesthetics. The sections below depict the fence and wall installations and the difference in the protection of the Conservation Area after installation.



PRISM FENCE INSTALLATION



BLOCK WALL INSTALLATION