

WORDEN WILLIAMS, LLP  
D. WAYNE BRECHTEL, SBN 144844  
462 Stevens Avenue, Suite 100  
Solana Beach, California 92075  
Phone (858) 755-6604; Fax (858) 755-5198

CENTER FOR BIOLOGICAL DIVERSITY  
JONATHAN CARTER EVANS, SBN 247376  
1212 Broadway, Suite 800  
Oakland, CA 94612  
(510) 844-7118; Fax (510) 844-7150

Attorneys for Petitioners and Plaintiffs

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF RIVERSIDE**

SIERRA CLUB, a nonprofit corporation; and  
CENTER FOR BIOLOGICAL DIVERSITY, a  
nonprofit corporation,

Petitioners/Plaintiffs,

v.

CITY OF DESERT HOT SPRINGS, a charter city;  
CITY COUNCIL OF THE CITY OF DESERT HOT  
SPRINGS; and DOES 1-25, inclusive,

Respondents/Defendants.

ADKISON ENGINEERS, INC, a California  
Corporation, doing business as ADKAN ENGINEERS;  
EDY P. ADKISON AND JUDITH ELIZABETH  
ADKISON, TRUSTEES OF THE ADKISON  
FAMILY REVOCABLE LIVING TRUST; AND  
MARTHA RUIZ-SNELL (A.K.A., MARTHA  
MARTELL) an individual; and ROES 26-50, inclusive

Real Parties in Interest.

Petitioners and Plaintiffs Sierra Club and Center for Biological Diversity (collectively  
“Petitioners”), on behalf of themselves and the general public, respectfully allege as follows:

**FILED**  
Superior Court of California  
County of Riverside  
10/18/2018  
I. Siracusa

By Fax

CASE NO. **RIC1821985**

PETITION FOR ADMINISTRATIVE  
AND TRADITIONAL MANDAMUS  
RE: VIOLATIONS OF THE  
SUBDIVISION MAP ACT AND  
CALIFORNIA ENVIRONMENTAL  
QUALITY ACT; COMPLAINT FOR  
DECLARATORY RELIEF; AND  
REQUEST FOR INJUNCTIVE RELIEF

## **INTRODUCTION**

1                   1.       This action challenges approval of a development agreement for a project commonly  
2 known as the Mission Creek Trails Subdivision located within the City of Desert Hot Springs.  
3 Approval of the development agreement was unlawful because 1) it violated the State Subdivision  
4 Map Act by attempting to retroactively revive tentative tract maps that have expired and 2) the  
5 California Environmental Quality Act by relying upon an environmental impact report that is over 25-  
6 years old without undertaking further environmental review to address new impacts related to major  
7 project revisions, changed circumstances, and new information. The development agreement is,  
8 apparently, an attempt by the City of Desert Hot Springs to avoid litigation that has been threatened by  
9 the project proponent who erroneously claims the tentative maps at issue never expired. Instead of  
10 requiring submittal of new tentative tract maps as required by the Subdivision Map Act, the  
11 development agreement treats the maps as if they have not expired and gives them a new 20-year life  
12 span. This is especially egregious in light of the fact that the original environmental review for the  
13 project is already more than 25-years old and does not cover all impacts known today, much less those  
14 that could occur during the next 20-years. This action has been filed to obtain a judicial declaration  
15 that the development agreement is void as a matter of law and for issuance of a writ of mandate that  
16 directs the City to take a step back, start over and require the project proponent to submit new  
17 tentative maps for consideration in full compliance with the Subdivision Map Act and also require  
18 preparation of a supplemental or subsequent environmental impact report that fully addresses the  
19 proposal's potentially significant impacts and includes feasible mitigation measures and alternative to  
20 reduce those impacts to below significance prior to reconsideration of any new approvals.  
21

## **JURISDICTION AND VENUE**

22                   2.       This Court has jurisdiction over this action pursuant to California Code of Civil  
23 Procedure sections 1085 and 1094.5, and California Public Resources Code sections 21168 and  
24 21168.5.  
25

26                   3.       Venue for this action lies properly in the Superior Court for the County of Riverside  
27 because Respondents and the real property that is the subject of the approvals being challenged are  
28 located in the County of Riverside and City of Desert Hot Springs.

## **THE PARTIES**

4. Petitioner and Plaintiff Sierra Club is a national non-profit corporation dedicated to the conservation and preservation of the nation's natural resources and to exploring, enjoying, and protecting the wild places of the earth; to practicing and promoting the responsible use of the earth's ecosystems and resources; and to educating and enlisting humanity to protect and restore the quality of the natural and human environment. Over 150,000 members of Sierra Club reside within California. The San Gorgonio Chapter of Sierra Club focuses on issues within the inland area of Southern California, including the County of Riverside. The Tahquitz Group of the San Gorgonio Chapter of Sierra Club covers the low desert areas of the County of Riverside and focuses primarily on habitat preservation, urban sprawl, off-road vehicle use, renewable energy and water issues. Sierra Club has a direct and substantial beneficial interest in ensuring that the natural, scenic, and biological resources within the Coachella Valley are adequately preserved and protected. The Sierra Club members utilize the natural, scenic and biological resources of the Coachella Valley, including resources within and around Desert Hot Springs, such as the Mission Creek Preserve and the Sand to Snow National Monument, through their corporate and individual activities including scientific research, planning, education, and recreation. The Mission Creek Trails Project will have detrimental impacts on Sierra Club, its members, and the general public in that the Mission Creek Trails Project is likely to significantly impact resources within and around Desert Hot Springs, such as the Mission Creek Preserve and the Sand to Snow National Monument due to Respondents' failure to comply with the Subdivision Map Act and CEQA prior to approving the Development Agreement, and would continue to be prejudiced by Respondents' violations unless and until this Court provides the relief prayed for in this Petition.

5. Petitioner and Plaintiff, Center for Biological Diversity, is a non-profit corporation with over 68,000 members, and offices located in Joshua Tree, Los Angeles, and Oakland, California; Arizona; Colorado; Florida; Hawaii; Minnesota; New York; Oregon; Vermont; Washington; and Washington, D.C. The Center is dedicated to preserving, protecting, and restoring biodiversity, native species, and the ecosystems upon which these species depend. The Center's staff and members regularly use lands throughout California, including the Sonoran and Colorado desert habitats within

1 Riverside County and the Sand to Snow National Monument, for observation, research, aesthetic  
2 enjoyment, and other recreational, scientific, and educational activities. The Center's staff and its  
3 members derive scientific, recreational, conservation, and aesthetic benefits from the Mission Creek  
4 Preserve and Sand to Snow National Monument. The Mission Creek Trails Project will have  
5 detrimental impacts on the Center, its members, and the general public in that the Mission Creek  
6 Trails Project is likely to significantly impact resources within and around Desert Hot Springs, such as  
7 the Mission Creek Preserve and the Sand to Snow National Monument. (Sierra Club and Center are  
8 referred to collectively as "Petitioners").

9         6.       Respondent and Defendant, City of Desert Hot Springs ("City"), is a charter city,  
10 charged with responsibility to regulate land use and development within its territory in compliance  
11 with the provisions of its General Plan, Zoning Ordinances, the Coachella Valley Multi Species  
12 Habitat Conservation Plan, as well as applicable provisions of state law, including the California  
13 Environmental Quality Act, Subdivision Map Act, and California planning and zoning law. Further,  
14 the City is a subdivision of the State of California, and shares responsibility for protecting the natural  
15 resources of the State, including the Sand to Snow National Monument.

16         7.       Respondent and Defendant, City Council of the City of Desert Hot Springs ("City  
17 Council"), is the duly constituted legislative body and highest administrative body in the City and is  
18 charged with the final duty of ensuring that all applicable federal, state and local laws are fully and  
19 faithfully obeyed and implemented. (City and City Council are referred to collectively as "City")

20         8.       The true names and capacities of Respondents and Defendants identified as DOES 1  
21 through 25, inclusive, are unknown to Petitioners. Petitioners are informed and believe and thereon  
22 allege that Respondents DOES 1 through 25, inclusive, are individuals and/or agencies with permit or  
23 other jurisdiction and control over the Mission Creek Trails Project which is the subject matter of this  
24 action. Petitioners will seek leave to add the true names and capacities of said DOE Respondents  
25 when the same are ascertained.

26         9.       Petitioners are informed and believe and thereon allege that Real Party-in-Interest  
27 Adkison Engineers, Inc is a California Corporation doing business as Adkan Engineers ("Adkan  
28 Engineers"). Petitioners are further informed and believe and thereon allege that Adkan Engineers has

1 an interest in the approvals at issue in this action in that, among other things, it was the applicant for  
2 the time extension at issue in this action.

3 10. Petitioners are informed and believe and thereon allege that Real Parties in interest Edy  
4 P. Adkison and Judith Elizabeth Adkison are Trustees of the Adkison Family Revocable Living Trust  
5 (“Adkison Trustees”), and Martha Ruiz-Snell (A.K.A., Martha Martell) (“Martell”) is an individual  
6 that own in fee simple or claim to have an equitable interest in the property that is the subject of this  
7 Petition and or/claim an interest in the Mission Creek Trails Project approvals at issue in this action  
8 and are necessary parties in this action. (Adkison Trustees and Martell are referred to collectively as  
9 “Owners”).

10 11. The true names and capacities of Real Parties-in-Interest identified herein as ROES 26-  
11 50, inclusive, are unknown to Petitioners. Petitioners are informed, believe, and thereon alleges that  
12 Real Parties-in-Interest ROES 26-50, inclusive own or claim an interest in the property that is the  
13 subject of this lawsuit and/or claim an interest in the Mission Creek Trails Project approvals and are  
14 necessary parties in this action. Petitioners will seek leave to amend this Petition to state the true  
15 names and capacities of such ROE Real Parties-in-Interest when the same are ascertained.

### 16 **BACKGROUND FACTS**

#### 17 **The Development Agreement and Mission Creek Trails Subdivision**

18 12. This action challenges the City’s adoption of Ordinance No. 675, which approved  
19 Development Agreement No. 02-18 (“Development Agreement”) by and between the City of Desert  
20 Hot Springs and Edy P. Adkison and Judith Elizabeth Adkison, Trustees of the Adkison family  
21 Revocable Trust, and Martha Ruiz-Snell (a.k.a. Martha Martell) (“collectively “Owners”). The  
22 Development Agreement concerns Tentative Tract Map Nos. 35009 and 35448 9 (collectively  
23 “Tentative Maps”). The Tentative Maps are for a project commonly known as the Mission Creek  
24 Trails Subdivision, which includes construction of 1,126 single-family residential lots, eight (8)  
25 multiple-family residential/recreational commercial lots, which will allow a maximum of 923  
26 residential units, and a 32-acre lot for commercial and residential lots (with 171 residential units)  
27 (“Mission Creek Project” or “Project”). Among other things, the Development Agreement attempts to  
28 resolve a dispute between the City and Owners regarding whether the Tentative Maps have expired by

1 treating them as if the have not expired, allowing them to be amended and giving them a new 20-year  
2 life span.

### 3 **Project Site**

4 13. The Mission Creek Project is located in the City of Desert Hot Springs, which is in the  
5 Coachella Valley on an upper valley and alluvial plain at the foothills of the San Bernardino and Little  
6 San Bernardino Mountains. The extensive alluvial plains formed by drainage from these mountains  
7 form the elevated valley on which most of the City has developed and provide a dramatic and valuable  
8 view shed. The City is a geographically and biologically important location, where significantly  
9 diverse wildlife habitat, landscape and geology meet. Some of the most important community assets  
10 are the scenic resources of the mountain ranges encompassing the City. Preservation of these scenic  
11 vistas has been important to the community. The Project site is located in the northern portion of the  
12 City just west of State Route 62. The site is an irregular shaped property with boundaries adjoining  
13 State Route 62, a California Scenic Highway, on the east, and is otherwise surrounded by vacant land,  
14 some of which has been designated as a conservation area. The property is currently vacant, with  
15 uneven terrain, a few dirt roads, and otherwise intact native vegetation. The Project site is a primary  
16 entrance to the Sand to Snow National Monument established in 2016

17 14. The Project site is situated in an area where a collection of several mountain streams  
18 begin depositing debris, often referred to as a bajada, emanating from the San Bernardino Mountains  
19 to the north and west. The Project site includes ephemeral drainages, which are considered part of the  
20 Mission Creek braided channel system, that create new habitat for plants and opportunities for new  
21 populations. The Project site contains habitat for sensitive plant and animal species including Triple-  
22 ribbed milk-vetch, Coachella Valley milk-vetch, burrowing owl, Le Conte's Thrasher and Palm  
23 Springs Pocket Mouse. The Mission Creek wash system also provides a key wildlife movement  
24 corridor and transports sediments down the valley, ultimately contributing to the wind-blown sand  
25 system for the adopted Coachella Valley fringe-toed lizard HCP. Because of this lands to the west  
26 have been designated for conservation.

### 27 **Prior Project Approvals and Environmental Review**

28 15. The Development Agreement being challenged in this action is part of a project that

1 was first approved in 1993, more than quarter of a century ago. The City Council for the City of  
2 Desert Hot Springs certified the Rancho Royale Specific Plan Final Environmental Impact Report,  
3 (City Council Resolution No. 92-55) ("FEIR") on April 6, 1993 and approved the Rancho Royale  
4 Specific Plan ("Specific Plan"). The Specific Plan covered 2,206 acres, and when fully developed,  
5 was to provide a balanced and functional mix of land uses with residential areas that vary in density  
6 from two dwelling units per acre to 14 dwelling units per acre, accommodating 8,360 total units. The  
7 Specific Plan was to include three 18-hole golf courses, approximately 718 acres of open space, a  
8 regional mall and a variety of resort commercial developments. The project at that time included three  
9 elementary schools, one middle school, police and fire stations, a library and a visitor center  
10 associated with the neighboring Riverside County Conservation Park. In addition to three  
11 neighborhood parks adjacent to the elementary schools, Rancho Royale included a 20-acre sports  
12 park.

13         16. In 1995, the City approved an amendment to the Specific Plan and Addendum No. 1 to  
14 the FEIR. The amendment and Addendum No. 1 addressed the acquisition of right-of-way for a  
15 realignment of Pierson Boulevard and Highland Falls Drive. The latter was proposed as an off-site  
16 connection to SR-62, connecting the southwesterly 970± acres to the highway.

17         17. In 2002, the City amended the Specific Plan again and approved Addendum No. 2 to  
18 the FEIR. This amendment effectively removed 970 acres from the Specific Plan area, which was  
19 almost half of the property within the Specific Plan, and made it subject to an entirely different  
20 Specific Plan entitled Highland Falls. The approvals at this time consisted of a Specific Plan  
21 Amendment, General Plan text and map amendment, Zone Change, Vesting Tentative Tract Map and  
22 Development Agreement affecting the 970± southwesterly acreage. The now separate Highland Falls  
23 Specific Plan allowed for development of 2,145 single family units, 1,342 multi-family units, a hotel  
24 and retail complex, two golf courses and related recreational and retail facilities. The 2002  
25 Amendment left only 1,236 acres within the original Specific Plan area. The 2002 changes also  
26 modified the circulation plan for Pierson Boulevard, removed three of the four planned school sites,  
27 two of the three neighborhood parks and the 20 acre sports park from the original plan.

28         18. In 2007, the City approved Tentative Tract Maps 35009 and 35448 for the Mission

1 Creek Project. The Tentative Maps are partially within two separate Planning Areas of the original  
2 Specific Plan. The Tentative Maps are partially within the Royale Oasis Planning Area and partially  
3 within the Royale Center Villages Planning area. Although no Specific Plan Amendment was  
4 approved, the Tentative Maps proposed development that was different than the original concept of  
5 the Specific Plan. Changes included a reduction in density, reconfiguration of roadways and  
6 elimination of the final golf course from the original Specific Plan, which was replaced by a system of  
7 trails. A portion of a debris basin that was not eliminated by the 2002 Rancho Royale Specific Plan  
8 amendment was eliminated and redistributed along drainage courses.

9 19. The Tentative Maps were originally approved by the Planning Commission on July 10,  
10 2007. The Tentative Maps proceeded to the City Council and were approved on August 7, 2007 by  
11 Resolution No. 2007-71. The City Council also adopted Addendum No. 3 as a “Mitigated Negative  
12 Declaration Addendum.”

### 13 **National Monument Dedication**

14 20. The Sand to Snow national monument was designated by Presidential Proclamation in  
15 February of 2016. The Monument was created due to its biological diversity and spectacular landscape  
16 from desert floor to the mountains:

17 The area includes a portion of the San Bernardino National Forest and connects this area with  
18 Joshua Tree National Park to the east, knitting together a mosaic of spectacular landscapes  
19 stretching over 200 miles... (75 - Proclamation 9396—Establishment of the Sand to Snow  
National Monument February 12, 2016)

20 . . . .

21 The Sand to Snow area encompasses a rich diversity of geological and ecological resources,  
22 including a nearly 10,000-foot elevation gradient from the Sonoran Desert floor to the top of  
23 the 11,500-foot San Geronio Mountain, the highest mountain in southern California. From  
24 the flat desert lowlands, the mountains thrust upward in stark relief, creating indelible beauty  
25 along with a unique diversity of resources and a rich history of human habitation and  
26 movement. Along this remarkable topographic gradient lies an unusually wide range of  
ecosystems, ranging from lowland Mojave and Colorado deserts to scrub and woodlands and  
Mediterranean chaparral to subalpine and alpine conifer forests. (75 - Proclamation 9396—  
Establishment of the Sand to Snow National Monument February 12, 2016)



1           21.     The Monument surrounds the City of Desert Hot Springs on the west and north. A  
2 principal access to the Sand to Snow National Monument is through the Mission Creek Project on  
3 Mission Creek Road.

4           **Tentative Maps Expiration**

5           22.     The Tentative Maps for the Mission Creek Project were first approved in 2007 with a  
6 two-year term. Condition No. 2 of the City Council approval dictated that approval of the tentative  
7 tract maps would expire after 2 years, which would have been August 7, 2009. “This entitlement shall  
8 expire two (2) years from the date of approval, unless extended, pursuant to the City of Desert Hot  
9 Springs Subdivision regulations and the State Subdivision Map Act.”

10          23.     The Tentative Maps were then given five statutory extensions for an additional seven  
11 years. With these extensions, plus the initial two-year term, the Owners had until August 7, 2017, a  
12 total of 9 years to complete the process of finalizing the Tentative Maps.

13          24.     The Owners did not meet the deadline for finalizing the Tentative Maps, and on August  
14 1, 2017, Adkan Engineering, applied to the City of Desert Hot Springs for a three year extension of  
15 time for the Tentative Maps. Plaintiff, Petitioners and others urged the City not to approve the time  
16 extension. Numerous events had occurred since the original approval of the tentative tract maps in  
17 2007, not to mention since the 1993 certification of the EIR for the Rancho Royale Specific Plan. For  
18 example, in 2008, all of the Cities of the Coachella Valley except Desert Hot Springs, along with  
19 Riverside County approved the Coachella Valley Multiple Species Habitat Conservation Plan  
20 (“Habitat Conservation Plan”). In 2016 a Major Amendment to include the City of Desert Hot  
21 Springs and Mission Springs Water District was completed. The entire city is now covered by the  
22 Habitat Conservation Plan. The Habitat Conservation Plan provides a balance for conservation and  
23 development within the City. Growth and development pressures and the housing market in the City  
24 of Desert Hot Springs have changed reducing pressure to annex and develop higher density projects  
25 on the City fringes and instead focus development closer to the town Center. Furthermore, in the  
26 almost 25 years since the Specific Plan was initially approved there have changes in the costs and  
27 needs regarding infrastructure such as water supply availability and groundwater availability,  
28 wastewater treatment, and road and highway needs that have not been assessed to ensure they meet the

1 current resources of the City and County. There are also increased demands to the City and County  
2 regarding fire and public safety services, traffic circulation, and public schools.

3 25. Plaintiffs, Petitioners and others urged the City to prepare an environmental impact  
4 report prior to considering approval of another time extension of the Tentative Tract Maps. The City  
5 instead elected to reconsider Addendum No. 3 to the FEIR certified in 1993. Addendum No. 3 had  
6 previously been prepared for the initial approval of the Project in 2007. On November 22, 2016, the  
7 Planning Commission held a hearing on the Extension. After the hearing, the Planning Commission  
8 denied the Extension. No action was taken by the Planning Commission on the revised Addendum  
9 No. 3.

10 26. On December 6, 2016, Adkon Engineering and/or the Owners filed an appeal of the  
11 Planning Commission denial to the City Council. Plaintiffs, Petitioners and others again urged the  
12 City to prepare a new environmental impact report prior to considering the requested time extension.  
13 On March 21, 2017, after several hearings, the City Council voted 2-2-1 to uphold the Planning  
14 Commission's denial and 2-2-1 to continue the matter. The result of these tie votes is that neither  
15 motion passed and the Planning Commission's denial of the Tentative Map extension remained in  
16 place as a matter of law. No action was taken by the City Council on the revised Addendum No. 3.

17 27. After the March 21, 2017 votes by the Council, a dispute arose between the City and  
18 Owner regarding the status of the Tentative Maps. The City took the position that the Tentative Maps  
19 expired by operation of law, and Owners took the position that the effect of the 2-2 vote was to  
20 automatically approve the request for an extension of time.

21 28. Petitioners are informed and believe and, on that basis, allege that Owners did not file a  
22 legal action challenging expiration of the Tentative Maps.

### 23 **Development Agreement**

24 29. Petitioners are informed and believe and, on that basis, allege that after the automatic  
25 expiration of the Tentative Maps on March 21, 2107, Owners threatened the City with litigation and  
26 that settlement discussions between the City and Owners ensued.

27 30. On or about June 12, 2018 Owners applied for approval of a Development Agreement.

28 31. Almost a year and a half after the automatic expiration of the Tentative Maps, on

1 August 28, 2018, the Planning Commission held a hearing on the Development Agreement at issue in  
2 this case. For unknown reasons, perhaps to thwart public input, the Planning Commission held a  
3 special meeting on a different day than it normally meets in order to consider the Development  
4 Agreement. Notice of the special meeting was published in a small newspaper that is not the regular  
5 newspaper the City uses for publishing Public Notices. There were no public speakers at this unusual  
6 Planning Commission meeting. On August 28, 2018, the Planning Commission recommended  
7 approval of the Development Agreement, which was forwarded to the City Council for final approval.

8 32. The development agreement does not require submittal of new Tentative Maps.  
9 Instead, it provides for the submittal of amended maps and grants them a new twenty-year life span.

10 3.1 Agreement. The term of this Agreement shall . . . continue for a period of twenty (20)  
11 years. . .

12 3.1.1. Amended Tentative Maps. Owner shall processes (sic) and the City shall consider  
13 Amended Tentative Tract Maps 35009 and 35448 within the five years after the  
Commencement Date.

14 33. The City relied upon the original FEIR approved in 1993 for Development Agreement.  
15 Like all other approvals after the initial certification of the FEIR, the City prepared an Addendum  
16 stating no additional environmental review was required, specifically, Addendum No. 4 to the FEIR  
17 for the Rancho Royale Specific Plan (SCH # 92042024).

18 34. On September 18, 2018, the City Council held a public hearing on the draft  
19 Development Agreement. At the City Council meeting, Plaintiffs, Petitioners and others urged the  
20 City yet again to prepare an Environmental Impact Report prior to re-approving the Mission Creek  
21 Project by way of a Development Agreement. Plaintiff's, Petitioners and others also testified as to  
22 the lack of notice regarding the Planning Commission meeting, and requested additional time to  
23 review the CEQA documentation, some of which was not made available to the public prior to the  
24 hearing. The entire 1993 EIR was not made available to the public. The City Council Adopted  
25 Addendum No. 4. to FEIR and introduced Ordinance No. 675 to approve the Development Agreement  
26 No. 02-18 with certain conditions added by the City Council during the hearing.

1           35.     The terms of the Development Agreement expressly state that it “shall be construed as  
2 a good faith negotiated settlement of Legal Issues.”

3           36.     On October 2, 2018 the City Council voted to approve the second reading of Ordinance  
4 No. 675. The Ordinance takes effect 30 days after the second reading.

5           37.     This action seeks a determination that the tie vote of the City Council resulted in the  
6 affirmation of the extension denial by the Planning Commission, and, as a result, the Tentative Maps  
7 expired by operation of law. Because Tentative Maps have expired, the Development Agreement  
8 which seeks to amend the maps, rather than require the filing of entirely new maps, is invalid and void  
9 as a matter of law. If the Court does not invalidate that Development Agreement for violation of the  
10 subdivision map act, the approvals should nevertheless be set aside for violations of CEQA.

11  
12                               **FIRST CAUSE OF ACTION**  
13                               **PETITION FOR TRADITIONAL MANDAMUS**  
14                               **AGAINST ALL RESPONDENTS, DOES 1 THROUGH 25,**  
15                               **ALL REAL PARTIES, AND DOES 26 THROUGH 50**  
16                               **(Violation of the Subdivision Map Act)**

17           38.     Petitioners hereby incorporate by reference each and every allegation set forth above.

18           39.     This cause of action is brought pursuant to Section 1085 of the California Code of Civil  
19 Procedure which applies to challenges to legislative actions and to compel agencies to carry out  
20 mandatory duties. Approval of the Development Agreement was a legislative act that may be set  
21 aside by the Court if it finds the approval to be arbitrary, capricious, entirely lacking in evidentiary  
22 support or where the agency failed to conform to procedures required by law.

23           40.     The Subdivision Map Act (Government Code sections 66410 *et seq.*) is the state law  
24 that governs creation of subdivisions and the division of property in California. All cities are required  
25 to comply the rules and procedures set forth in the Subdivision Map Act. Of importance to this case,  
26 the Subdivision Map Act prohibits a public agency from continuing to process tentative tract maps  
27 that have expired by operation of law. The Subdivision Map Act states that, once a tentative map is  
28 expired, all proceedings must stop.

(d) The expiration of the approved or conditionally approved tentative map shall terminate all  
proceedings and no final map or parcel map of all or any portion of the real property included

1 within the tentative map shall be filed with the legislative body without first processing a new  
2 tentative map. (Government Code, Section 66452.6(d))

3 41. In conformance with the Subdivision Map Act, the City's Municipal Code contains the  
4 same restriction on the processing of expired tentative maps. (Desert Hot Springs Municipal Code  
5 ("DHSMC") section 16.24.160.)

6 42. The Development Agreement approved by the City is subject to the Subdivision Map  
7 Act. Adoption of the Development Agreement was a legislative Action. A city may only approve  
8 legislative actions that are not in conflict with the Constitution and laws of the State Cal. Const., art.  
9 XI, § 7. And Government Code section 37100.

10 43. The Tentative Maps expired by operation of law in 2017 when the Planning  
11 Commission denied the request for a continuance and the appeal to the City Council resulted in a tie  
12 vote that left the denial in place. As a result, all proceedings related to the Tentative Maps were  
13 terminated, and the City was under a mandatory obligation to require the submittal of new tentative  
14 maps for processing and approval.

15 44. In approving the Development Agreement, Respondents committed a prejudicial abuse  
16 of discretion in that the Development Agreement treats the Tentative Maps as if they have not expired,  
17 allows them to be amended and extends their life for an additional 20 years in violation of the  
18 Subdivision Map Act. Under the clear terms of the Subdivision Map Act, the Tentative Maps expired  
19 in 2017, terminating all proceedings related to the expired maps and requiring the processing of new  
20 tentative maps. Rather than terminate the proceedings regarding the expired tentative tract maps, the  
21 City entered into a settlement agreement by way of a Development Agreement that revived the  
22 expired maps in violation of the Subdivision Map Act. This was a prejudicial abuse of discretion.

23 45. The fact that the Development Agreement provides for amendments to the Tentative  
24 Maps does not cure the abuse of discretion. There is a significant difference between amending maps  
25 and filing for new tentative maps. The Desert Hot Springs Municipal Code allows for what are  
26 considered to be minor amendments to maps to be done at the staff level without the public input and  
27 procedural requirements that accompany new map applications. (DHSMC section 16.24.180.) It is  
28

1 not clear from the City Code whether the findings necessary for approval of tentative map are  
2 necessary for approval of an amended map. Furthermore, the Development Agreement itself  
3 contemplates that changes to the Project can be approved at the staff level, namely by the City  
4 Manager and/or City Attorney. There is no formal process for approval of these changes, which can  
5 be made without public notice and environmental review. The terms of the Development Agreement  
6 allowing for amendment of expired maps, rather than requiring the processing of new maps, is an  
7 unlawful attempt to circumvent the mandatory requirements of the Subdivision Map Act.

8 46. The issues regarding the expired maps raised in this cause of action were brought to the  
9 attention of Respondents during the hearing on the Development Agreement. For example,  
10 Councilmember Russell Betts repeatedly clarified with the City Attorney the legal issue of the  
11 expiration of the Tentative Maps. Also, prior to the second reading of the Ordinance approving the  
12 Development Agreement at issue in this litigation, Petitioners submitted a letter to the City Council  
13 advising the Council that the Development Agreement violates the Subdivision Map Act because the  
14 maps have expired. The City Council elected to approve the Development Agreement  
15 notwithstanding its illegality.

16 47. Issuance of a peremptory writ of mandate setting aside the Development Agreement  
17 and requiring the submittal of new tentative maps for processing and approval is warranted. Approval  
18 of the Development Agreement was arbitrary and capricious because it violated the State Subdivision  
19 Map Act. Also, the City failed to carry out its mandatory obligation to require the submittal and  
20 processing of new tentative maps before consideration of the Development Agreement.

21  
22 **SECOND CAUSE OF ACTION**  
23 **PETITION FOR TRADITIONAL AND ADMINISTRATIVE MANDAMUS**  
24 **AGAINST ALL RESPONDENTS, DOES 1 THROUGH 25,**  
25 **ALL REAL PARTIES, AND DOES 26 THROUGH 50**  
26 **(Violation of the California Environmental Quality Act)**

27 48. Petitioners hereby incorporate by reference each and every allegation set forth above.

28 49. Petitioners bring this action pursuant to Section 21168 of the Public Resources Code  
and Section 1094.5 of the Code of Civil Procedure, which require that a public agency's approval of a  
project be set aside if the agency has prejudicially abused its discretion. Prejudicial abuse of discretion

occurs where the agency has failed to proceed in a manner required by law, where the decision is not supported by the findings, or where the findings are not supported by substantial evidence in light of the whole record. In the alternative, to the extent that the approval challenged in this action is reviewable pursuant to Section 21168.5 of the Public Resources Code and Section 1085 of the Code of Civil Procedure, the substantial evidence standard still applies.

50. In 1970, the California Legislature enacted the California Environmental Quality Act (“CEQA”) (Public Resources Code Sections 21000 *et seq.*) as a means of forcing public agencies to consider and document the environmental implications of their actions. CEQA’s main objectives are to fully inform the public and decision makers of the significant adverse environmental effects of projects and develop ways to avoid or reduce such effects by requiring implementation of feasible alternatives and mitigation measures.

51. At all times herein mentioned, Respondents City and City Council were charged with a duty to fully and accurately consider the environmental consequences of the Project approvals through preparation of an EIR that complied with CEQA, to fully disclose, consider and adopt feasible mitigation measures and alternatives that would reduce or eliminate significant environmental impacts and to make lawful findings that supported the decisions made and were supported by substantial evidence in the administrative record.

52. At all times herein mentioned, Respondents were charged with a duty under CEQA to prepare a subsequent or supplemental EIR where substantial evidence in the record showed one or more of the following:

- a. Substantial changes are proposed in the Project which will require major revisions of the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of the previously identified significant effects;
- b. Substantial changes occur with respect to the circumstances under which the Project is undertaken which will require major revisions of the previous EIR or negative declaration due to the involvement of new significant environmental

effects or a substantial increase in the severity of previously identified significant effects; or

c. New information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified as complete or the negative declaration was adopted, shows any of the following:

- i. The Project will have one or more significant effects not discussed in the previous EIR or negative declaration;
- ii. Significant effects previously examined will be substantially more severe than shown in the previous EIR;
- iii. Mitigation measures or alternatives previously found not to be feasible would in fact be feasible, and would substantially reduce one or more significant effects of the Project, but the Project proponents decline to adopt the mitigation measure or alternative; or
- iv. Mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the Project proponents decline to adopt the mitigation measure or alternative.

53. In approving the Development Agreement, the City violated CEQA in that it failed to prepare a subsequent or supplemental EIR analyzing the revised project despite the overwhelming evidence in the record of changes in the Project, changes in circumstances surrounding the project and new information that revealed significant new impacts and a substantial increase in the severity of previously identified impacts, including, inter alia, the following:

**Changes in the Project since 1993**

- a. The Rancho Royale Specific Plan has changed dramatically since 1993. The original plan was for 2,206 acres. When fully developed, the Rancho Royale area was to provide a balanced and functional mix of land uses with residential areas that vary in density from two dwelling units per acre to 14 dwelling units per acre,



1 accommodating 8,360 total units. The project was also to include three 18-hole golf  
2 courses, approximately 718 acres of open space, a regional mall and a variety of  
3 resort commercial developments. The project also was going to provide three  
4 elementary schools, one middle school, police and fire stations, a library and a  
5 visitor center associated with the neighboring Riverside County Conservation Park.  
6 In addition to three neighborhood parks adjacent the elementary schools, Rancho  
7 Royale was to include 20-acre sports park. (Specific Plan, page II-1)

8 b. Since adoption in 1993, 970 acres of the Specific Plan were removed in 2002 and  
9 became a separate Specific Plan, ultimately named “Highland Falls”. The Highland  
10 Falls Specific Plan included development of 2,145 single family units, 1,342 multi-  
11 family units, a hotel and retail complex, two golf courses and related recreational  
12 and retail facilities. Thus, two of the three golf courses were removed from the  
13 Rancho Royale Specific Plan. The 2002 Amendment left only 1,236 acres within  
14 the Rancho Royale Specific Plan. Mission Creek Trails makes up almost half of  
15 that acreage, at 481 acres of the 1,236 remaining acres. The 2002 changes also  
16 modified the circulation plan for Pierson Blvd., removed three of the four planned  
17 school sites, two of the three neighborhood parks and the 20-acre sports park from  
18 the original plan. The 2002 Specific Plan Amendment also modified the circulation  
19 plan for Pierson Boulevard.

20 c. In 2007, when the Tentative Maps for Mission Creek Project were approved, the  
21 final golf course within the Rancho Royale Specific Plan was removed and replaced  
22 by a system of trails. Changes included a reduction in density, reconfiguration of  
23 roadways and elimination of a golf course. A portion of a debris basin that was not  
24 eliminated by the 2002 Rancho Royale Specific Plan amendment was proposed to  
25 be eliminated and redistributed along drainage courses.

26 d. The project changes described above have resulted in a new Project that is  
27 completely different from what was first considered in the FEIR 25 years earlier.  
28 The Master Circulation and Drainage Plans contemplated within the Specific Plan

are no longer applicable. The result was an inability to understand the potential impacts and whether they have been adequately mitigated because of a failure to consider potential impacts of the changes, such as, but not limited to the following:

- i. The elimination of significant Project elements left proposed maps with roadways that no longer reflect reality. Roads end where former project elements were to begin or where no development buffers were established. This means there was insufficient information to reach a conclusion regarding traffic circulation. This lack of information was brought to the attention of the City, and in response, the City concluded traffic impacts related to Project changes would be addressed later. In an instance of candor, a City representative acknowledged that the Owners did not want to do a new traffic study until after the Development Agreement was approved, a clearly unlawful deferral of environmental review;
- ii. Impacts related to the loss of on-site schools was not addressed, i.e. where would the alternative schools to serve children living in the new community be located? Will the remaining school in the plan be adequate? What type of traffic impact could result from off-site school locations?
- iii. Impacts related to drainage system changes and their potential impact on water for habitat areas in the surrounding conservation areas were not considered.

### **Changes in Circumstances since 1993**

- e. The circumstances have changed dramatically since 1993. In 1993, when the Specific Plan FEIR was certified, the Project area was within the City's Sphere of Influence. The Specific Plan was approved concurrently, pending annexation of the property, into the City. In August of 1994, the Local Agency Formation Commission (LAFCO) approved the annexation, and the property was added to the City's corporate limits (LAFCO Resolution 93-09-3 for Annexation 22).

- 1 f. In late 1995 and early 1996, the cities of the Coachella Valley, including Desert Hot  
2 Springs, signed the Planning Agreement to initiate the planning effort for a Habitat  
3 Conservation Plan.
- 4 g. In 2002, the requirement for the preparation of a Water Supply Assessment  
5 (“WSA”) for major developments was enacted.
- 6 h. In June 2006, the City of Desert Hot Springs voted not to approve the Habitat  
7 Conservation Plan. The CVAG Executive Committee then rescinded its approval of  
8 the Habitat Conservation Plan and directed that the Habitat Conservation Plan be  
9 revised to remove Desert Hot Springs as a Permittee and reflect other project  
10 description modifications that had been suggested during public review.

11 **Changes in Circumstances and New Information since 2007**

- 12 i. The circumstances have changed considerably since the last addendum in 2007.  
13 The Final Recirculated Habitat Conservation Plan, which did not include Desert  
14 Hot Springs, received the final state permit on September 9, 2008 and the final  
15 federal permit on October 1, 2008. A Major Amendment to include the City of  
16 Desert Hot Springs and Mission Springs Water District was completed on August  
17 24, 2016. The entire city is now covered by the Plan. The addendum discusses  
18 consistency with the new requirements of the Habitat Conservation Plan, including,  
19 among other things, requirements for land uses approved adjacent to the Habitat  
20 Conservation Plan’s protected areas, but there is no binding obligation to comply  
21 with the Habitat Conservation Plan guidelines in the Development Agreement or  
22 Ordinance approving the Development Agreement.
- 23 j. No alternative designs that could mitigate or avoid potential impacts resulting from  
24 changes in circumstances and new information were considered.
- 25 k. By 2015, the City found that the adjacent Highland Falls subdivision to the south,  
26 that was formerly part of the Rancho Royale Specific Plan, had been unable to  
27 proceed due to the difficulty in obtaining water. This new information was raised  
28 at the hearings for the Mission Creek Trails Development Agreement and provided

1 clear evidence of new and potentially significant impacts related to water supplies,  
2 water usage and impact to habitats that depend upon water resources that would be  
3 depleted by the Mission Creek Project.

- 4 1. The Sand to Snow national monument was designated by Presidential Proclamation  
5 in 2016. A principal access to the Monument from the City is through the Project  
6 site. The severity of any visual impacts the Project will create is now increased,  
7 and visual impacts to the monument, and its access road, not considered in the 1993  
8 EIR because the monument did not exist at that time. The potential impact of the  
9 Project on the Sand to Snow Monument was the subject of comments from several  
10 agencies and organizations. All pointed out the significance of the Mission Creek  
11 Project site due to its proximity to the monument. The potential impact on the  
12 monument was not lost on Respondents, who incorporated a 500-foot buffer into  
13 the Development Agreement approval and concluded it fully mitigated any visual  
14 impacts to the monument. At least one member of the City Council did a tour of  
15 the area that included balloons set up by the developer, apparently, designed to  
16 show Project boundaries and allow the council member to assess visual impacts.  
17 The legal failure of Respondent's efforts was the failure to include the public in the  
18 process by way of an environmental document that considered the potential impacts  
19 of the Project on the new monument and proposed feasible mitigation measures and  
20 alternatives to mitigate those impacts. Instead, Respondents unlawfully failed to  
21 identify and analyze the significance of the impacts before imposing mitigation, and  
22 in doing so, subverted the purposes of CEQA by omitting information necessary to  
23 informed public participation.

24 54. All of the issues presented in this action were brought to the attention of Respondents  
25 during the administrative review process. During the hearings in 2016 and 2017 related to the  
26 potential extension of the tentative tract maps, and on September 18, 2018 Petitioners and others  
27 submitted detailed letters and spoke, presenting factual and scientific evidence of changes in the  
28 project, changed circumstances and new information that would result in significant adverse effects on

1 the environment and how the approval of the Project without the preparation of a new EIR was  
2 contrary to CEQA. Among other things, Petitioners pointed out the City's failure to identify potential  
3 Project impacts to many species, habitats, wildlife corridors and essential ecological processes as well  
4 as impacts to the Sand to Snow National Monument, traffic and water availability. Despite these  
5 protests, Respondents relied upon Addendum No. 4 to the 1993 Rancho Royale Specific Plan EIR and  
6 approved the Project without requiring any additional environmental review.

7 55. Petitioners complied with the requirements of Public Resources Code section 21167.5  
8 by providing Respondents with written notice of this action prior to filing the lawsuit.

9 56. In approving the Development Agreement, Respondents committed a prejudicial abuse  
10 of discretion and failed to fulfill their duties under CEQA, and their approval is invalid under Code of  
11 Civil Procedure section 1094.5, because the City:

- 12 a. Failed to prepare a supplemental or subsequent EIR due to changes in the Project,  
13 changed circumstances and new information.
- 14 b. Failed to evaluate alternatives to avoid or minimize potentially significant impacts.
- 15 c. Failed to identify and analyze potentially significant impacts before adopting  
16 project conditions to mitigate those impacts, precluding informed public  
17 participation in the CEQA process. Although not identified as mitigation, the  
18 proposal to provide a 500-foot buffer between the Project and the National  
19 Monument is clearly intended to mitigate impacts to the new monument.
- 20 d. Failed to adopt findings supported by substantial evidence.

21 57. Approval of the Development Agreement without preparation of a supplemental or  
22 subsequent environmental impact report was a prejudicial abuse of discretion. Accordingly, issuance  
23 of a peremptory writ of mandate setting aside the Development Agreement and requiring preparation  
24 of a supplemental or subsequent environmental impact report before it is considered for approval  
25 again is warranted.

26 ///

27 ///

28 ///

**THIRD CAUSE OF ACTION AGAINST ALL RESPONDENTS,  
DOES 1 THROUGH 25, ALL REAL PARTIES,  
AND ROES 26 THROUGH 50  
(Declaratory Relief)**

58. Petitioners hereby incorporate by reference each and every allegation set forth above.

59. Petitioners allege that an actual controversy now exists between Petitioners, City, City Council, and Real Parties in Interest, concerning the effect of the City Council's tie vote in 2017 regarding the appeal from the Planning Commission's Tentative Map extension denial, and their respective rights, duties and obligations. According to the Development Agreement, Real Parties in Interest and the City disagree as to (1) the legal effect of the Council's March 21, 2017, tie vote and (2) whether the extension of Tentative Tract Maps 35009 and 35448 became effective automatically by operation of the Subdivision Map Act, specifically California Government Code section 66452.5(c)(2), on March 31, 2017.

60. Petitioners allege that the tie vote could not be a "deemed approval" of the extension request because, among other things, there is no statutory "deemed approval" for the appeal proceeding and the required findings for and extension were not made. If an appeal is taken, resulting in a tie-vote, and no findings are made by the appellate body, the map cannot be deemed approved, because the required findings cannot be implied but must be expressly made. Findings must be adopted by affirmative action of the decision-making body. Thus, in the context of an internal appeal (such as an appeal from a planning commission to a city council) the findings cannot be deemed adopted based on denial of the appeal resulting from a tie vote by the board or council. The denial of the extension by the Planning Commission in November of 2016 was final, and the failure of the Council to overturn the denial means that the tentative maps expired by operation of law. A judicial declaration and determination is necessary and appropriate at this time in order to ascertain the true effect of the City Council's tie vote, and the City, City Council, and Real Parties rights, duties, obligations and interests with respect to compliance with Subdivision Map Act.

**CONCLUDING ALLEGATIONS AND REQUEST FOR INJUNCTIVE RELIEF**

61. Respondents abused their discretion by acting arbitrarily and capriciously, failing to proceed in accordance with the law, and lacking substantial evidence to support their findings and

1 decisions. Respondents' Project approvals are, therefore, subject to being set aside by a Writ of  
2 Mandate issued by this Court.

3         62.     Petitioners have a clear, present, and beneficial right to the proper performance by the  
4 Respondents of their duties under the Subdivision Map Act and CEQA. Petitioners are beneficially  
5 interested in the issuance of a Writ of Mandate by virtue of the facts set forth previously, in that  
6 Petitioners and the general public will otherwise be adversely affected by the actions of the  
7 Respondents herein challenged. Petitioners have no plain, speedy, or adequate remedy in the ordinary  
8 course of the law other than the relief herein sought.

9         63.     The issuance of a stay order, temporary restraining order, and preliminary injunction in  
10 this case is in the public interest and is otherwise necessary and appropriate pursuant to Code of Civil  
11 Procedure § 1094.5 to stay the effectiveness of Respondents' approval of the Development Agreement  
12 because, in the absence of injunctive relief, Respondents will proceed forward with the  
13 implementation of the Mission Creek Project causing irreparable damage to resources within and  
14 around Desert Hot Springs, such as the Mission Creek Preserve and the Sand to Snow National  
15 Monument, pending trial on the merits.

16         64.     Unless and until Respondents are enjoined and restrained as herein requested,  
17 Petitioner and the public generally will suffer irreparable injury due to the destruction of the sensitive  
18 resources as herein alleged and due to the irrevocable commitment to a project with significant  
19 impacts prior to consideration of appropriate alternatives and mitigation measures as herein alleged,  
20 none of which can be fully cured after the fact and none of which can be adequately compensated by  
21 money damages.

22         65.     If a temporary restraining order and preliminary injunction are issued as herein  
23 requested, Respondents will not suffer any irreparable injury or harm in that they have known of the  
24 objections of Petitioners and others to the Development Agreement and have determined to proceed  
25 with full knowledge of the risks of such action, and in any event, said parties will only experience  
26 temporary delay if a temporary restraining order and preliminary injunction are issued. Any such  
27 harm can be fully cured after the fact. Accordingly, the balance of hardships is in favor of issuing the  
28 temporary restraining order and preliminary injunction as herein requested.

66. Petitioners are entitled to attorneys' fees pursuant to Code of Civil Procedure § 1021.5 in that:

- a. The successful disposition of this lawsuit will result in the enforcement of important rights affecting the public interest and will confer significant benefits upon the public or large class of persons. Petitioners seek to enforce provisions of important state and local environmental and administrative laws for the benefit of the public, and to rectify certain procedural improprieties which will benefit all the future participants in the decision making process employed by the Respondents; Petitioners also seek to protect the Coachella Valley region's interest in adequate conservation and management of the covered species and natural communities throughout the region. Petitioners also seek to enforce provisions of important state and local environmental and administrative laws for the benefit of the public, and to rectify certain procedural improprieties which will benefit all future participants in the decision making process employed by Respondents; and
- b. The necessity and financial burden of private enforcement is such to make the award appropriate.

67. The actions of Respondents herein complained of were arbitrary and capricious and Petitioners are entitled to recover attorneys' fees pursuant to Government Code § 800.

## PRAYER FOR RELIEF

WHEREFORE, Petitioners pray for judgment as follows:

1. For a temporary stay, temporary restraining order, and preliminary and permanent injunctions restraining Respondents and their agents, servants, employees, and all others acting in concert with them or on their behalf, from taking any action to approve any permits or authorizations regarding the Mission Creek Project or taking any actions to implement the terms of Development 02-18 Agreement pending full compliance with the requirements of Subdivision Map Act and CEQA;

2. For a peremptory writ of mandate directing Respondents to vacate and set aside their approval of Development Agreement 02-18 and adoption of Addendum 4 to the FEIR;



1           3.       For a peremptory writ of mandate directing Respondents to comply with Subdivision  
2 Map Act and CEQA, and to take any other action as required by Public Resources Code section  
3 21168.9;

4           4.       That this Court retain jurisdiction until the Writ of Mandate has been complied with  
5 and such compliance has been approved by the Court;

6           5.       For a judicial declaration that the Planning Commission denial of the Tentative Map  
7 extension request in 2016 was final and resulted in the requirement that the Owners process new  
8 tentative maps for approval.

9           6.       For costs of the suit incurred;

10          7.       For attorneys' fees as authorized by Code of Civil Procedure section 1021.5 and  
11 Government Code section 800; and

12          8.       For such other and further relief as the Court deems just and proper.

13  
14  
15  
16 DATED: October 16, 2018

WORDEN WILLIAMS, LLP

17  
18  
19 By



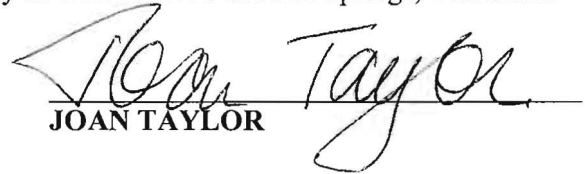
D. WAYNE BRECHTEL, Attorneys for  
Petitioners/Plaintiffs Sierra Club and Center for  
Biological Diversity

**VERIFICATION**

I, Joan Taylor, declare as follows:

I am a member of the Sierra Club. I have read the foregoing Verified Petition for Writ of Administrative and Traditional Mandamus re: Violations of the Subdivision Map Act and California Environmental Quality Act; Complaint for Declaratory Relief; and Request for Injunctive Relief. The same is true of my own knowledge, except as to those matters which are alleged on information and belief, and as to those matters, I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct and that this verification was executed on the 16<sup>th</sup> day of October 2018 at Palm Springs, California.

  
JOAN TAYLOR