

**EXHIBIT 6.26.3**

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

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(Space Above for Recorder's Use)

**DECLARATION OF COVENANTS, CONDITIONS & RESTRICTIONS  
(WATER ALLOCATION RESULTING FROM TRANSFER OF ALL OR A PORTION  
OF BPA FOR USE ON OTHER LAND)**

This DECLARATION OF COVENANTS, CONDITIONS & RESTRICTIONS (WATER ALLOCATION RESULTING FROM TRANSFER OF ALL OR A PORTION OF BPA FOR USE ON OTHER LAND) ("**Restrictive Covenant**") is made this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, by \_\_\_\_\_ [Name of Declarant - Use Complete Name as Specified in Judgment] ("**Declarant**").

**RECITALS**

WHEREAS, Declarant is the sole owner in fee simple of certain real property legally described on Exhibit "A" and depicted on Exhibit "B" attached hereto and incorporated herein by this reference (the "**Restricted Property**"), which consists of approximately \_\_\_\_\_ acres in the County of San Diego, State of California.

WHEREAS, Declarant is a party to that certain judgment comprehensively adjudicating all rights to extract water from, or store water within, the Borrego Springs Subbasin entered in \_\_\_\_\_ v. \_\_\_\_\_, Borrego Water District vs. All Persons Who Claim a Right to Extract Groundwater in the Borrego Valley Groundwater Subbasin No. 7.024-01 San Diego County Superior Court Case No. \_\_\_\_\_ 37-2020-00005776 recorded as Document No. \_\_\_\_\_ in the Official Records of the Office of the County Recorder, County of San Diego ("**Official Records**") ("**Judgment**").

WHEREAS, pursuant to the Judgment, Declarant owns a Baseline Production Allocation, as defined in the Judgment, of \_\_\_ acre-feet ~~per year~~ ("**Declarant's Existing BPA**") for use on the Restricted Property, ~~which is Declarant's initial allowed total annual extraction quantity of water from the Borrego Springs Subbasin.~~

WHEREAS, following recordation of this Restrictive Covenant, Declarant intends to retain fee title to the Restricted Property subject to the covenants, conditions and restrictions described below and to transfer ~~[all]~~ [\_\_\_ acre-feet ~~per year~~] of the BPA ("**Transferred BPA**") to \_\_\_\_\_ [Name of Transferee - Use Complete Name as Specified in Judgment]

("Transferee") and be assigned to the Benefited Property (defined below) overlying the Borrego Springs Subbasin, as described below.

WHEREAS, upon conveyance of the Transferred BPA to Transferee and notice to the Watermaster pursuant to the Judgment, the Transferred BPA shall be severed from the Restricted Property and ownership of the Transferred BPA shall transfer to Transferee and be assigned to the Benefited Property overlying the Borrego Springs Subbasin, as described below.

WHEREAS, Declarant is recording this Restrictive Covenant against the Restricted Property to restrict pumping of groundwater from the Restricted Property consistent with the terms of the Judgment [and as set forth in this Restrictive Covenant](#).

## RESTRICTIONS

NOW THEREFORE, in consideration of the above recitals which are incorporated herein by this reference, Declarant hereby covenants, agrees and declares that the Restricted Property shall be held, transferred, conveyed, leased, occupied, used or otherwise disposed subject to the following covenants, conditions and restrictions, which shall run with the Restricted Property or any portions into which it may be divided, and shall be binding upon and burden the Restricted Property, successor owners, administrators, assigns, lessees and other occupiers and users of the Restricted Property, or any portion thereof, and all parties having or acquiring any right, title or interest in the Restricted Property, or any portion thereof, and their successors and assigns, and shall inure to the benefit of the Transferee, its successors and assigns, and the Benefited Property (defined below). The following covenants, conditions and restrictions are imposed upon the Restricted Property and every part thereof as a servitude in favor of Transferee, its successors and assigns, and the Benefited Property and every portion thereof as the dominant tenement or tenements. Declarant, and all parties having or acquiring any right, title or interest in the Restricted Property, or any portion thereof, and their successors and assigns, by accepting title to the Restricted Property shall be deemed to acknowledge and agree to all of the covenants, conditions and restrictions as set forth in this Restrictive Covenant.

1. Upon the transfer of the Transferred BPA to Transferee and notice to the Watermaster pursuant to the Judgment:

A. ~~The Declarant's Existing~~ BPA retained for the benefit of the Restricted Property (i.e., not transferred to Transferee for the benefit of the Benefitted Property) is \_\_\_ acre-feet ~~per year~~ ("~~Remaining~~" "Retained BPA"). "Pumping" of "Groundwater", as defined in the Judgment, from the Restricted Property is limited to the ~~Remaining~~ Retained BPA, except for Pumping as a "De Minimis Pumper", as defined in the Judgment. Except for Pumping of Groundwater as a De Minimis Pumper, any Pumping of Groundwater from the Restricted Property in excess of the ~~Remaining~~ Retained BPA is prohibited unless an allocation of water is subsequently acquired for the benefit of the Restricted Property by way of lease or permanent transfer of Groundwater allocation approved in accordance with the terms of the Judgment. Except as specifically allowed in this Section 1(A), or under a duly approved lease or permanent transfer of water allocation approved in accordance with the Judgment, the following uses are expressly prohibited on the Restricted Property:

- (i) Pumping, producing, extracting and/or using Groundwater located in or under the Restricted Property or any portion thereof in excess of the ~~Remaining~~Retained BPA, or
- (ii) installing, maintaining, using, repairing, relocating or replacing any Groundwater production well(s) in or on the Restricted Property except for the purpose of Pumping as a De Minimis Pumper, Pumping the ~~remaining~~Retained BPA or Pumping Groundwater allocation acquired for the Restricted Property by way of lease or permanent transfer in accordance with the terms of the Judgment.

B. Transferee will be the owner of the Transferred BPA assigned to the Benefited Property.

2. This Restrictive Covenant is for the benefit of Transferee, its successors and assigns, and of the real property legally described on Exhibit "C" and depicted on Exhibit "D", attached hereto and incorporated by this reference (the "**Benefited Property**"). The wells that will be used to Pump the Transferred BPA are identified as [ENTER STATE WELL NUMBERS], which wells may be replaced from time to time with notice to the Watermaster. This Restrictive Covenant may be enforced only in accordance with Section VII.A(1) of the Judgment by Transferee, its successors and assigns, by any Party to the Judgment having or acquiring any right, title or interest in the Transferred BPA or in the Benefited Property, by the Watermaster appointed under the Judgment (the "**Watermaster**"), or by the Court maintaining continuing jurisdiction over the Judgment upon a motion of any party to the Judgment. Transferee, its successors and assigns, may assign any of its rights and powers under this Restrictive Covenant to any Party to the Judgment having or acquiring any right, title or interest in the Transferred BPA or in the Benefited Property. Upon the recordation of such assignment in the Official Records ~~of the Office of the County Recorder, County of San Diego~~ ("**Official Records**"), such assignee, to the extent of such assignment, shall have the same rights and powers as are given to Transferee herein and under the deed to be recorded for conveyance of the Transferred BPA.

4. This Restrictive Covenant may not be modified, terminated or rescinded, in whole or in part, except by a written instrument duly executed and acknowledged by the Transferee with the approval of the Watermaster, and recorded in the Official Records.

5. This Restrictive Covenant shall become effective upon its recordation in the Official Records. Within thirty (30) days of the date of recordation, Transferee shall provide written notice to the Watermaster of such recordation and the transfer of the Transferred BPA to the Benefited Property.

6. In the event any action shall be instituted in connection with this Restrictive Covenant, the party prevailing in such action shall be entitled to recover from the other parties all of its costs and expenses incurred therein, including without limitation reasonable attorneys' fees as finally determined by a court of competent jurisdiction.

7. In the event that any portion of this Restrictive Covenant shall become illegal, null or void or against public policy, for any reason, or shall be held by any court of competent jurisdiction to be illegal, null or void or against public policy, the remaining portions of this Restrictive Covenant shall not be affected thereby and shall remain in force and effect to the full extent permissible by law.

8. This Restrictive Covenant shall be given a fair and reasonable construction in accordance with the intentions of the parties and without regard for or aid from any canons requiring construction against the party drawing this Restrictive Covenant.

9. The breach of any covenants, conditions or restrictions herein contained shall not defeat, invalidate nor impair the obligation or priority of any mortgage or deed of trust now or hereafter executed and constituting a lien upon the Restricted Property or any portion thereof, which is made in good faith and for value; provided, however, that any party, including the holder of the mortgage or deed of trust, who acquires title through private or judicial foreclosure, trustee's sale or deed in lieu of foreclosure (a "**Foreclosure-Purchaser**") and all successors and assigns of such Foreclosure-Purchaser shall take title subject to all of the covenants, conditions and restrictions contained in this Restrictive Covenant.

*[Signatures on the following page]*

**Signature Page to  
DECLARATION OF COVENANTS, CONDITIONS & RESTRICTIONS  
(WATER ALLOCATION RESULTING FROM TRANSFER OF ALL OR A PORTION  
OF BPA FOR USE ON OTHER LAND)**

Dated: \_\_\_\_\_

DECLARANT

\_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

ACKNOWLEDGED BY WATERMASTER:

Dated: \_\_\_\_\_

\_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

A notary public or other officer completing this certificate verified 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                    )  
  )        ss.  
COUNTY OF \_\_\_\_\_)

On \_\_\_\_\_, 2020, before me, \_\_\_\_\_, Notary Public, personally appeared \_\_\_\_\_, 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.

\_\_\_\_\_  
Notary Public

**Exhibit "A"**  
**Legal Description of Restricted Property**

Exhibit "B"  
Plat of Restricted Property



**Exhibit “C”**  
**Legal Description of Benefited Property**

**Exhibit “D”**  
**Plat of Benefited Property**