

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

[Declarant]

[Address]

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SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

**DECLARATION OF COVENANTS AND RESTRICTIONS**

[Preserve Name]

**THIS DECLARATION OF COVENANTS AND RESTRICTIONS** (this "Declaration") is made this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, by [Current Property Owner], (the "Declarant").

**RECITALS**

A. Declarant is a \_\_\_\_\_ and is the sole owner in fee simple of certain real property in the County of Placer, State of California, more particularly described in **Exhibit A**, and depicted in **Exhibit B**, attached hereto and by this reference incorporated herein (the "Property").

B. In consideration for the rights granted to Declarant for the development of the [Project Name], located in the City of Roseville, County of Placer, the Property shall be preserved for habitat conservation purposes consistent with Federal permit requirements and to meet the open space dedication requirements pursuant to the City of Roseville General Plan, Parks and Recreation Element, and shall be dedicated in fee simple to the City of Roseville (the "Dedicatee"). The transfer of ownership shall provide mitigation of certain anticipated impacts resulting from the Project as described in the [date of BO] Biological Opinion for Declarant prepared by the US Fish and Wildlife Service ("USFWS") pursuant to Section 7 of the Federal Endangered Species Act, and as authorized by the Department of the Army Permit No. \_\_\_\_\_ (the "404 Permit") issued by the US Army Corps of Engineers ("Corps").

C. The Property is currently in a natural state and is intended to remain undisturbed, except for those allowed uses as provided in the Operations and Management Plan (the "O&M Plan") for the [Project Name], dated \_\_\_\_\_, a copy of which is attached hereto as **Exhibit C**, and by this reference incorporated herein.

D. The Property provides or is capable of providing significant ecological and habitat values (collectively "Conservation Values") that are of aesthetic, ecological, educational, historical, recreational, and/or scientific value. These Conservation Values include, but are not limited to, the preservation of [list species]. These Conservation Values are of great importance to the Declarant and the people of the United States.

E. The Property will be preserved for habitat conservation purposes and will be restricted from any development under the terms set forth in the Biological Opinion, the 404 Permit, the O&M Plan, and this Declaration. This Property will be managed and monitored in accordance with the O&M Plan.

NOW, THEREFORE, Declarant, on behalf of itself and Declarant's successors and assigns, declares, acknowledges and agrees as follows:

1. Purpose. The purpose of this Declaration is to ensure that the Property will be retained forever in a condition contemplated by the O&M Plan and to prevent any use of the Property that will significantly impair or interfere with the Conservation Values of the Property. Declarant intends that this Declaration will confine the use of the Property to such activities including, without limitation, those involving the preservation and enhancement of native species and their habitats in a manner consistent with the conservation purposes of this Declaration and the O&M Plan.

2. Agreement to Assign. Declarant understands, acknowledges and agrees that, as a condition of the issuance by the USFWS of an incidental take exemption allowing the taking of endangered or threatened species (including the related Biological Opinion), and the 404 Permit, the Property shall be restricted from any development and shall be reserved for use as habitat preservation on the terms set forth in the Biological Opinion, the 404 Permit, and the O&M Plan. Declarant shall offer the Property for dedication in fee to the Dedicatee.

3. Covenants Running with the Land. In consideration of benefits derived from the Biological Opinion and the 404 Permit, the Declarant does hereby covenant and agree to restrict, and by this instrument does restrict, the future use of the Property as set forth by the establishment of this covenant running with the land in perpetuity and shall bind any successors and assigns in interest to the Property in accordance with applicable law.

4. Development Rights. All present and future development rights allocated, implied, reserved, or inherent to the Property are hereby extinguished and may not be used on or transferred to any portion of the Property.

5. Restrictions Concerning the Property. Neither Declarant nor any other person shall engage in any activity that is inconsistent with the purpose of this Declaration. Without limiting the generality of the foregoing, the following activities on the Property are expressly prohibited, except as allowed or required by the O&M Plan.

a. Construction, reconstruction or placement of any building, billboard, sign, structure, or other improvement, except as provided in the O&M Plan or upon approval of the USFWS and the Corps.

b. Unseasonable watering; use of fertilizers, herbicides, pesticides, biocides, or other agricultural chemicals; weed abatement activities; incompatible fire protection activities; and other uses which may adversely affect the conservation purposes of this Declaration.

- O&M Plan.
- c. Grazing and agricultural activity of any kind, except as provided in the O&M Plan.
  - d. Commercial or industrial uses.
  - e. Depositing or accumulating soil, trash, ashes, refuse, waste, bio-solids, or any other material.
  - f. Filling, dumping, excavating, draining, dredging, mining, drilling, removing, exploring for or extracting minerals, loam, gravel, soil, rock, sand, or other material on or below the surface of the Property, or granting or authorizing entry for any of these purposes.
  - g. Altering the surface or general topography of the Property, including building roads, paving or otherwise covering the Property with concrete, asphalt, or any other impervious material, except as provided in the O&M Plan and approved by the 404 Permit or subsequently approved by the USFWS and the Corps.
  - h. Removing, destroying, or cutting trees, shrubs or other vegetation, except as required for: (i) fire protection measures as specified in the O&M Plan; (ii) maintenance of existing trails or roads; (iii) prevention or treatment of disease; (iv) utility line clearance; and (v) flood control/prevention.
  - i. Use of motorized vehicles, including off-road vehicles, except on existing roadways.
  - j. Transferring any water right necessary to maintain or restore the biological resources of the Property.
  - k. Planting, introduction, or dispersal of non-native or exotic plant or animal species.
  - l. Manipulating, impounding, or altering any natural watercourse, body of water or water circulation on the Property and any activities or uses detrimental to water quality including, but not limited to, degradation or pollution of any surface or sub-surface waters unless otherwise required for emergency repairs or maintenance purposes.
  - m. Recreational activities including, but not limited to, horseback riding and hunting.
  - n. Assigning, terminating, or altering any and all mineral, water, or air rights, without the prior written authorization of the USFWS and the Corps.
  - o. Granting any additional interest in the Property, without the prior written authorization of the USFWS and the Corps.

6. Enforcement.

a. This Declaration is intended to ensure continued compliance with the authorizations issued by the Corps and the USFWS and, therefore, may be enforced by the United States of America acting through any of its agencies, including, but not limited to, the Corps and the USFWS. The USFWS and the Corps, their employees and agents and successors and assigns, have the right, with reasonable notice, to enter the Property at reasonable times for the purpose of inspecting the Property to determine whether the Declarant, Declarant's representatives, successors or assigns are complying with the terms, conditions and restrictions of this Declaration.

b. If the USFWS or Corps determine there is a violation of the terms of this Declaration or that a violation is threatened, written notice of such violation and demand for corrective action sufficient to cure the violation shall be given to the Declarant. In any instance, measures to cure the violation shall be reviewed and approved by the USFWS. If a violation is not cured within 30 days after the receipt of written notice and demand, or if the cure reasonably requires more than 30 days to complete and there is failure to begin the cure within the 30-day period or failure to continue diligently to complete the cure, the USFWS or the Corps may bring an action at law or in equity in a court of competent jurisdiction to enforce compliance with the terms of this Declaration, to recover any damages to which the USFWS or the Corps may be entitled for violation of the terms of this Declaration or for any injury of the Conservation Values of the Property, or for other equitable relief, including, but not limited to, the restoration of the Property to the condition in which it existed prior to any violation or injury. Without limiting violator's liability therefore, any damages recovered may be applied to the cost of undertaking any corrective action on the Property.

c. The USFWS and the Corps shall have the right to enforce each of the terms of this Declaration. If the USFWS or Corps determine, in their sole discretion, that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values of the Property, the USFWS or Corps may pursue its remedies under this Section without prior notice or without waiting for the period provided for cure to expire to enjoin the violation, *ex parte* as necessary, by temporary or permanent injunction without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies, and to require the restoration of the Property to the condition that existed prior to any such injury. The remedies described in this Section shall be cumulative and shall be in addition to all remedies existing at law or equity. The failure of the USFWS or Corps to discover a violation or to take immediate legal action shall not bar taking such action at a later time.

d. Enforcement of the terms of this Declaration shall be at the discretion of the USFWS and the Corps and any forbearance to exercise rights of enforcement under this Declaration in the event of any breach of any term of this Declaration shall not be deemed or construed to be a waiver of such term or of any subsequent breach of the same or any other term of this Declaration or of any rights under this Declaration. No delay or omission in the exercise of any right or remedy upon any breach shall impair such right or remedy or be construed as a waiver.

e. Nothing contained in this Declaration shall be construed to entitle the United States to bring any action for any injury to or change in the Property resulting from causes beyond Declarant's control, including, without limitation, fire not caused by Declarant, flood, storm, and earth movement, or from any prudent action taken by Declarant under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes.

7. Taxes; No Liens. Declarant shall pay before delinquency all taxes, assessments, fees, and charges of whatever description levied on or assessed against the Property by competent authority (collectively, "taxes"), including any taxes imposed upon, or incurred as a result of, this Declaration, and shall furnish USFWS and the Corps with satisfactory evidence of payment upon request. Declarant shall keep the Property free from any liens, including those arising out of any obligations incurred by the Declarant for any labor or materials furnished or alleged to have been furnished at or for use on the Property.

8. Subsequent Property Transfer. Declarant agrees to incorporate the terms of this Declaration in any deed or other legal instrument by which the Declarant divests itself of any interest in the Property, including, without limitation, a leasehold interest. Declarant shall give the USFWS, the Corps, Dedicatee, and third party beneficiaries written notice intent to transfer any interest at least 30 days prior to the date of such transfer. The USFWS and the Corps shall have the right to prevent subsequent transfers in which prospective subsequent claimants or transferees are not given notice of the terms, covenants, conditions and restrictions of this Declaration. The failure of Declarant to perform any act required by this section shall not impair the validity of this Declaration or limit its enforcement in any way.

9. Recordation. Declarant shall promptly record this Declaration in the official records of the County in which the Property is located, and shall thereafter promptly provide a conformed copy of the recorded Declaration to the USFWS, the Corps and Dedicatee.

10. Amendment. This Declaration may be amended by Declarant or Dedicatee only by written approval of the USFWS and the Corps. Any such amendment shall be consistent with the purposes of this Declaration and shall not affect its perpetual duration, and Declarant shall promptly record this amended instrument in the official records of the County in which the Property is located, and shall thereafter promptly provide a conformed copy of the recorded amended Declaration to the USFWS, the Corps and Dedicatee.

11. General Provisions.

a. Controlling Law. The interpretation and performance of this Declaration shall be governed by the laws of the State of California and applicable Federal law including the Endangered Species Act.

b. Liberal Construction. Any general rule of construction to the contrary notwithstanding, this Declaration shall be liberally construed in favor of the deed to effect the purposes of this Declaration. If any provision in this Declaration is found to be ambiguous, an

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

c. Severability. If any provision of this Declaration or the application thereof is found to be invalid, the remaining provisions of this Declaration or the application of such provisions other than that found to be invalid shall not be affected thereby.

d. Entire Agreement. This Declaration, the 404 Permit, and the O&M Plan incorporated by reference herein, including all of the exhibits thereto, together set forth the entire agreement of the parties and supersede all prior discussions, negotiations, understandings, or agreements relating to the Declaration, all of which are merged herein. No alteration or variation of this Declaration shall be valid or binding unless contained in an amendment in accordance with the provisions herein.

e. Termination of Rights and Obligations. A party's rights and obligations under this Declaration terminate upon transfer of the party's interest in the Declaration or Property, except that liability for acts, omissions or breaches occurring prior to transfer shall survive transfer.

f. Captions. The captions in this Declaration have been inserted solely for convenience of reference and are not a part of this Declaration and shall have no effect upon its construction or interpretation.

g. Counterparts. The parties may execute this Declaration in two or more counterparts, which shall, in the aggregate, be signed by all parties; each counterpart shall be deemed an original instrument as against any party who has signed it.

IN WITNESS WHEREOF, Declarant has executed and delivered this Declaration as of the day and year first written above.

DECLARANT (PROPERTY OWNER):

DEDICATEE (CITY OF ROSEVILLE):

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

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

Title: \_\_\_\_\_

Title: \_\_\_\_\_

and

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

Title: \_\_\_\_\_

**(Notarization Required)**

APPROVED AS TO SUBSTANCE:

U. S. FISH AND WILDLIFE SERVICE:

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

Title: \_\_\_\_\_

UNITED STATES ARMY CORPS OF  
ENGINEERS:

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

Title: \_\_\_\_\_

EXHIBITS:

- A. Legal Description
- B. Map
- C. O&M Plan