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## Whitney Oaks Community Association Rules for Fence Line Relocations

### RECITALS

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- A. Whitney Oaks Community Association ("Association") is the entity formed to manage and govern the Whitney Oaks development ("Development") in accordance with the *First Restated Master Declaration of Covenants, Conditions and Restrictions for Whitney Oaks*, recorded on March 23, 2015, as Document No. 2015-0021141-00 in the Official Records of Placer County, California ("Declaration" or "CC&Rs").
- B. Pursuant to Section 2.10 of the Declaration, Lots which abut Natural Open Space, as that term is defined in the Declaration, may contain a non-development area extending into the Lot from its boundary with the Natural Open Space. The specific obligations in regards to these areas are defined by the Declaration, Declarations of Annexation, Design Guidelines, Recorded Maps, or as established in rules of the Board.
- C. The Declaration does not define the non-development areas, nor has the Association been able to locate any recorded documentation defining those areas despite diligent attempts to locate such documents.
- D. Pursuant to Section 10.21 of the Declaration, the Board may grant reasonable variances to provisions relating to architectural control, including the Design Guidelines, so long as the Board makes a good faith written determination that: (a) the requested variance does not constitute a material deviation from the overall plan and scheme of the Development or from any restriction contained in the Declaration or that the proposal allows the objectives of the violated restriction(s) to be substantially achieved despite noncompliance; (b) that the variance relates to a restriction or requirement that is unnecessary or burdensome under the circumstances, or (c) that the variance, if granted, will not result in a material detriment, or create an unreasonable nuisance, with respect to any other Lot, Common Area, or Owner in the Development.
- E. The Board has received numerous requests from Owners to place Improvements within areas the Board reasonably believes constitutes non-development areas.
- F. Accordingly, after investigating the matter and consulting with legal counsel and other experts, the Board makes a good faith determination that 1) the allowance of limited Improvements within the non-development areas is in the best interests of the Association and the Owners to allow the full utilization of their property and avoid waste; and 2) the Board has the power to grant variances allowing Owners to install certain improvements in the non-development area.
- G. The following terms and conditions have been put in place to outline the circumstances in which the Board may grant such a variance, including but not limited to extending an Owner's fence line to the border of their Lot abutting the Natural Open Space. All of the following restrictions and requirements must be adhered to in order to approve a variance.
- H. The terms defined in the Declaration shall have the same meaning when used herein unless context clearly indicates a contrary intent. The Board adopted these Rules in accordance with relevant provisions of the Declaration and the California Civil Code.

## RULES

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1. Architectural Application. Detailed plans and specifications showing the location where Owner intends to alter the non-development area, including hillside gradients, shall be submitted as part of an architectural application to the Board. The Board's approval or denial of this application shall be in writing. If an application is not denied in writing within forty-five (45) days from the date the Board receives the application, the application shall be deemed approved unless the delay is the result of the Association's reasonable request for additional information. All work described in Owner's application shall be collectively referred to as "Work."

2. Improvements within Non-Development Area.

2.1 Fence Styles. Any application submitted to extend the fence line shall include plans to install "good neighbor" style fences when those fences abut neighboring Lots. Fence lines abutting the Natural Open Space shall be open fencing as set forth in the Declaration and Architectural Guidelines.

2.2 Excessive Gradients. Only landscaping and retaining walls shall be allowed on hillsides in excess of thirty (30) percent slope gradient. Improvements not consisting of landscaping and retaining walls are discouraged for any hillside in excess of twenty (20) percent slope gradient, and may not be approved.

2.3 Drainage. All drainage in newly fenced areas must be designed so as to not create overflow onto adjacent properties or Common Areas.

3. Compliance with Law. The proposed Work shall comply with all federal, state, and local ordinances; health and safety requirements; and zoning and permit requirements.

4. Licensed Contractor. Owner shall engage a licensed and bonded contractor to perform the proposed Work.

5. Property Survey. Owner must obtain a survey by a licensed surveyor to prove ownership of the area proposed to be fenced, and said survey must be included in the application for the Work. Any application for Work not containing a survey will be denied.

6. Recommended Expert Opinions. Owners should consider retaining a biologist or other expert experienced in Federal and State regulations involving any affected wetlands, endangered species, and related laws and regulations prior to submitting an application for the Work.

7. Recordable Document Reflecting Variance. Owner will agree to the recording of a document reflecting the granting of the variance in the Official Records of Placer County ("Agreement") prior to beginning any of the Work. The Agreement shall include terms requiring the Owner to indemnify, defend, and hold harmless the Association for any legal action arising out of the relocation of the fence, including, but not limited to, any violation of Federal and State wetlands and endangered species laws and regulations relating to the Work and the extension of the fence line. Upon any refusal to sign the Agreement, refusal to allow the Agreement to be recorded, or attempt to negotiate the terms of this Agreement, any approval previously given shall be deemed revoked. The signing and recordation of the Agreement is an express and non-negotiable requirement of the granting of any variance pursuant to these Rules. An example

variance agreement is enclosed as Exhibit A to these Rules, but note that the form and language in this draft variance may change over time.

8. No Deviation. Once approved, the application and specifications contained therein shall not deviate from the plans the Board approved.

9. Commencement and Completion of Approved Work.

9.1 Commencement. Upon receipt of approval pursuant to these Rules, Owner shall, as soon as practicable, satisfy all conditions thereof and diligently proceed with the commencement and completion of the Work pursuant to such approval, commencement to occur within ninety (90) days from the effective date of such approval or upon such later date as the Board may, in its discretion, designate. If Owner fails to comply with this paragraph, any approval previously given shall be deemed revoked unless the Board, upon Owner's written request made prior to the expiration of the time for commencement, extends the time for such commencement.

9.2 Completion. Owner shall diligently and continuously proceed with the completion of all Work, which shall not continue beyond ninety (90) days after commencing construction thereof, except and for as long as such completion is rendered impossible or would result in great hardship to Owner due to strikes, fires, national emergencies, global pandemics, natural calamities, or other supervening forces beyond Owner's control or the control of their agents. The Board may, in its discretion, extend the time to complete the Work. If Owner fails to comply with this Section, the Board shall proceed as though the failure to complete the installation was not in compliance with the approved plans.

10. No Guarantee of Future Improvements. The granting of a variance under these Rules is not a guarantee of future rights to install Improvements in the non-development area. The granting of a variance under these Rules does not change the nature of the non-development area around which the fence line is allowed to extend, and future improvements in that area will require additional applications pursuant to these Rules.Inspection. Association, or its designated agent, retains the right, but not the duty, to inspect the Work while in progress and after completion to confirm that the Work is properly performed and in accordance with the requirements of these Rules. Association may require the Owner to take appropriate corrective steps to bring the Work into compliance within twenty (20) days of mailing the notice of noncompliance from the Association.

Owner is required to notify the Association within twenty (20) days of the Association mailing the notice of noncompliance confirming that corrective steps are being taken to bring the Work into compliance with the approved plans. Owner must take the corrective steps, and the Board and Owner may agree to a timeframe for completion of the corrective work.

If the Association receives no response from the Owner within twenty (20) days of mailing the Owner the notice or if the Owner has taken no action to bring the Work into compliance within the above-referenced timeframe, the Association reserves the right to intervene, remove and store any Work-related property located in the Common Area, and restore Common Area to a condition substantially identical in material, appearance, and condition prior to the performance of the Work. Owner will be responsible for all costs incurred

throughout this process, including, but not limited to, inspections and restoration or repair of any portion of Common Area the Work affected. Any Work performed in a non-compliant manner and which the Association subsequently removed from Common Area may be discarded at Owner's expense no sooner than thirty (30) days immediately following the Association's intervention in the Work.

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CERTIFICATE OF ADOPTION

The undersigned declares that they are the duly elected Secretary of Board of Directors for the Whitney Oaks Community Association and that the foregoing rules were duly approved on \_\_\_\_\_, 2023, by the vote of the Directors at the regular meeting of the Board at which a quorum of the Board was present.

Dated: \_\_\_\_\_, 2023 By: \_\_\_\_\_  
\_\_\_\_\_, Secretary