

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

**City Clerk  
CITY OF ROSEVILLE  
311 Vernon Street  
Roseville, CA 95678**

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· SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

**DECLARATION OF COVENANTS AND RESTRICTIONS**

**Preserve Area: Highland Reserve South**

**THIS DECLARATION OF COVENANTS AND RESTRICTIONS** ("Declaration") is made this \_\_\_ day of \_\_\_\_\_, 20 \_\_, by the City of Roseville, a municipal corporation ("Declarant").

**RECITALS**

WHEREAS, Declarant is the owner of that certain real property commonly referred to as the Highland Reserve South Open Space/Preserve located in the City of Roseville, 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 "Preserve Area"); and

WHEREAS, the Preserve Area was developed as an open space preserve, bike trail, passive use park and wetland mitigation area, and is intended to be held in perpetuity subject to the restrictions set forth herein and in accordance with the provisions of the Federal Clean Water Act Section 404 Permit, Regulatory Branch No. N26-315/199101022/199700450, ("404 Permit"), issued to Roseville Properties Investment Partners and A.G. Spanos Companies by the U.S. Army Corps of Engineers ("USACE") and the Federal Endangered Species Act Section 7 Biological Opinion dated April 6, 1998 (Service File No. 1-1-97-7-142) as amended in July 16, 1999 (Service File NO. 1-99-1-1518) (the "Biological Opinion") prepared by the United States Fish and Wildlife Service ("USFWS"), as they may be amended; and

WHEREAS, on December 17, 1999, Declarant recorded in the Official Records of Placer County a Declaration of Restrictions, identified as DOC-1999-0107442, against the Preserve Area (the "Original Declaration"); and

WHEREAS, Declarant has approved a City of Roseville Open Space Preserve Overarching Management Plan ("Overarching Plan") which will apply to all Declarant owned and managed preserve areas and will supersede all previously adopted operations and management plans for such preserve areas; and

WHEREAS, the appropriate written authorizations (**Exhibits C, D and E**) have been received to allow for the termination of the Original Declaration and the recordation of this Declaration, which will supersede the Original Declaration; and

WHEREAS, this Declaration is intended to implement the provisions of the 404 Permit and the Biological Opinion requiring a binding equitable servitude restricting the Preserve Area, but shall not be construed to impose restrictions on the Preserve Area beyond those in the 404 Permit or otherwise described herein; and

WHEREAS, the Preserve Area is currently in a natural state and is intended to remain undisturbed, except for those allowed uses as provided in the 404 Permit, the Biological Opinion and the Overarching Plan, dated \_\_\_\_\_, a copy of which is attached hereto as **Exhibit G**, and by this reference incorporated herein; and

WHEREAS, the Preserve Area 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 and are of great importance to the Declarant and the people of the United States; and

WHEREAS, this Declaration will maintain the suitability of the vernal pool and swale ecosystem and associated watersheds and uplands within the Preserve Area for vernal pool fairy shrimp and vernal pool tadpole shrimp and will assist in preserving and maintaining open space, wetlands, upland habitats, and endangered species habitat in the Preserve Area; and

WHEREAS, the Preserve Area will be restricted from any development under the terms set forth in the Biological Opinion, the 404 Permit, the Overarching Plan, and this Declaration, and will be managed and monitored in accordance with the Overarching 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 Preserve Area will be retained forever in a condition contemplated by the 404 Permit, the Biological Opinion and the Overarching Plan and to prevent any use of the Preserve Area that will significantly impair or interfere with the Conservation Values of the Preserve Area. Declarant intends that this Declaration will confine the use of the Preserve Area 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 Overarching Plan.

2. 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 Preserve Area as set forth by the establishment of this covenant running with the land in perpetuity.

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

4. Restrictions Concerning the Preserve Area. 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 Preserve Area are expressly prohibited, except as allowed or required by the Overarching Plan.

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

b. Unseasonable irrigation; 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.

c. Grazing and agricultural activity of any kind.

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 Preserve Area, or granting or authorizing entry for any of these purposes.

g. Altering the surface or general topography of the Preserve Area, including building roads, paving or otherwise covering the Preserve Area with concrete, asphalt, or any other impervious material, except as provided in the Overarching Plan and approved by the 404 Permit or subsequently approved by the USFWS and the USACE.

h. Removing, destroying, or cutting trees, shrubs or other vegetation, except as required for: (i) fire protection measures as specified in the Overarching 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 Preserve Area.

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 Preserve Area 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 USACE.

o. Granting any additional interest in the Preserve Area, without the prior written authorization of the USFWS and the USACE.

5. Declarant's Reserved Rights. Declarant reserves to itself, and to its personal representatives, heirs, successors, assigns, transferees, agents and lessees, all rights inuring from ownership of the Preserve Area not otherwise restricted or prohibited by virtue of this Declaration, including but not limited to the right to engage in or permit others to engage in all uses of the Preserve Area that are not expressly prohibited by this Declaration, and are not inconsistent with the purposes of this Declaration. Additionally, Declarant at all times continues to retain legal title to all forms of water and mineral rights it possesses in connection with the lands constituting the Preserve Area, but, as otherwise provided herein, Declarant agrees to use or enforce such rights consistent with this Declaration.

6. Successors and Assigns. Declarant hereby declares, agrees and acknowledges that the Preserve Area shall be held, sold, conveyed, owned and used subject to the applicable terms and conditions of this Declaration relating to the use, maintenance or improvement of the Preserve Area. Such terms and conditions are a burden and restriction on the use of the Preserve Area. All of the provisions of this Declaration shall be enforceable as equitable servitudes and shall be binding on the Declarant and upon each and all of its respective heirs, devisees, transferees, successors and assigns, and each of them, during their respective periods of ownership of the Preserve Area.

7. Enforcement.

a. This Declaration is intended to ensure continued compliance with the authorizations issued by the USACE 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 USACE and the USFWS. The USFWS and the USACE, their employees and agents and successors and assigns, have the right, with reasonable notice, to enter the Preserve Area at reasonable times for the purpose of inspecting the Preserve Area 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 the USACE 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 thirty (30) days after the receipt of written notice and demand, or if the cure reasonably requires more than thirty (30) days to complete and there is failure to begin the cure within the thirty (30) day period or failure to continue diligently to complete the cure, the USFWS or the USACE 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 USACE may be entitled for violation of the terms of this Declaration or for any injury of the Conservation Values of the Preserve Area, or for other equitable relief, including, but not limited to, the restoration of the Preserve Area 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 Preserve Area.

c. The USFWS and the USACE shall have the right to enforce each of the terms of this Declaration. If the USFWS or the USACE determine, in their sole discretion, that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values of the Preserve Area, the USFWS or the USACE 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 Preserve Area 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 the USACE 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 USACE 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 Preserve Area 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 Preserve Area resulting from such causes.

8. Taxes; No Liens. Declarant shall pay before delinquency all taxes, assessments, fees, and charges of whatever description levied on or assessed against the Preserve Area by competent authority (collectively, "taxes"), including any taxes imposed upon, or incurred as a result of, this Declaration, and shall furnish USFWS and the USACE with satisfactory evidence of payment upon request. Declarant shall keep the Preserve Area 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 Preserve Area.

9. Subsequent Preserve Area 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 Preserve Area, including, without limitation, a leasehold interest. Declarant shall give the USFWS and the USACE written notice of an intent to transfer any interest at least thirty (30) days prior to the date of such transfer. The USFWS and the USACE 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.

10. Recordation. Declarant shall promptly record this Declaration in the official records of Placer County, and shall thereafter promptly provide a conformed copy of the recorded Declaration to the USFWS and the USACE.

11. Amendment. This Declaration may not be amended, modified, rescinded, or terminated without the prior written consent of the USFWS and the USACE. Declarant shall promptly record any amended instrument in the official records of Placer County, and shall thereafter promptly provide a conformed copy of the recorded amended Declaration to the USFWS and the USACE. The consent of no other person or agency shall be required for such amendment, modification, rescission, or termination.

12. Management and Funding. Details regarding management of the Preserve Area are included in the Overarching Plan. Such management is to occur in perpetuity. Obligations to manage the property shall be binding upon the Declarant and upon each and all of the Declarant's respective heirs, devisees, and successors and assignees, officers, directors, employees, agents, representatives, executors, trustees, successors, trustees, successors, trustees, and beneficiaries and administrators, and upon future owners of the Preserve Area. Funding adequate to carry out management measures shall be borne by the Declarant and upon each and all of the Declarant's respective heirs, devisees, and successors and assignees, officers, directors, employees, agents, representatives, executors, trustees, successors, trustees, and beneficiaries and administrators, and upon future owners of the Preserve Area.

13. No Other Restrictions. This Declaration imposes no other obligations or restrictions on Declarant, and neither its successors, nor any other person or entity claiming under them, shall be in any way restricted from using the Preserve Area except as provided herein.

14. 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 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. 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 Preserve Area, except that liability for acts, omissions or breaches occurring prior to transfer shall survive transfer.

e. 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.

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

DECLARANT:

CITY OF ROSEVILLE,  
a municipal corporation

BY: \_\_\_\_\_  
RAY KERRIDGE  
City Manager

ATTEST:

BY: \_\_\_\_\_  
SONIA OROZCO  
City Clerk

APPROVED AS TO FORM:

BY: \_\_\_\_\_  
BRITA J. BAYLESS  
City Attorney

(Notarization Required)

APPROVED AS TO SUBSTANCE:

U. S. FISH AND WILDLIFE SERVICE

UNITED STATES ARMY CORPS OF  
ENGINEERS

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

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

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

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

EXHIBITS:

- A. Legal Description
- B. Map
- C. Consent – City of Roseville
- D. Consent – USFWS
- E. Consent – USACE
- F. Overarching Plan