

**RECORDING REQUESTED BY, AND
WHEN RECORDED, MAIL TO:**

**WHITNEY OAKS COMMUNITY
ASSOCIATION
c/o Baydaline & Jacobsen LLP
895 University Avenue
Sacramento, CA 95825
Attn: Jennifer M. Jacobsen, Esq.**

(Space Above For Recorder's Use)

**AGREEMENT AFFECTING REAL PROPERTY
TO GRANT VARIANCE**

THIS AGREEMENT AFFECTING REAL PROPERTY TO GRANT VARIANCE ("Variance") is entered into between Whitney Oaks Community Association, a California nonprofit mutual benefit corporation ("Association"), and [LEGAL NAME ON DEED] ("Owners").

A. Owners are the owners of residential real property commonly known as [ADDRESS], Rocklin, CA 95765, and more particularly described in Exhibit "A" ("Lot").

B. The Lot is part of the planned development commonly known as Whitney Oaks ("Development"), and is subject to the "First Restated Master Declaration of Covenants, Conditions and Restrictions for Whitney Oaks", recorded on March 23, 2015, as Document Number 2015-0021141-00, in the Official Records of Placer County, California ("Declaration").

C. The Association is formed to manage the Development in accordance with the provisions of the Declaration and other governing documents.

D. Section 10.1 of the Declaration states that all Improvements, including but not limited to the modification of fences on lots, must receive prior written approval from the Association's Architectural Review Committee ("ARC") prior to work commencing on the Improvement.

E. Section 2.10 of the Declaration provides as follows:

Lots that abut Natural Open Space may contain a non-development area extending into the Lot from its boundary with the Natural Open Space, and shall contain such a buffer area as may be required by the Open Space Management Plan in effect at the time of Recordation of the final map creating such Lot. Such areas shall primarily serve to buffer Natural Open Space from development and provide a fire break between wooded areas and structure. Where such non-development area exists, it will be owned by the Owner of the Lot in question, but

it shall be subject to restrictions prohibiting structural Improvements (including fences) and other uses or activities that would interfere with the visual or practical advantage of the designated buffer areas.

F. The Lot abuts Natural Open Space as defined by the Declaration.

G. Section 10.21 of the Declaration allows the Association to grant reasonable variances in any procedures specified in Article 10 in order to overcome practical difficulties, avoid unnecessary expense, or prevent unnecessary hardship. As improvements which are the subject of this Variance require approval under Section 10.1 of the Declaration, the Association may exercise the discretion granted by Section 10.21 to grant this Variance.

H. Owners have sought and Association has agreed to extend a variance, under the authority provided to them by Section 10.21 of the Declaration, all as described further herein.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, and other valuable consideration, receipt of which is hereby acknowledged, the Association and the Owners hereby agree as follows:

1. Items Approved as Part of Variance. Association has agreed to extend a variance, under the authority provided to them by Section 10.21 of the Declaration, to permit Owners to: (a) extend their backyard fence to the end of their Property line abutting Natural Open Space; and (b) [ADDITIONAL IMPROVEMENTS APPROVED BY BOARD] ("Variance Improvements").

2. Variance Considerations. Owners are aware that the Association has exercised its power to grant this Variance under Section 10.21 of the Declaration based upon the following considerations: (a) the Variance does not constitute a material deviation from the overall plan and scheme of the Development or from any restriction contained in the Declaration (b) the Variance allows the objectives of the violated restriction(s) to be substantially achieved despite noncompliance; (c) the Variance relates to a restriction or requirement that is unnecessary or burdensome under the circumstances; and (d) the Variance will not result in a material detriment, or create an unreasonable nuisance, with respect to any other Lot, Common Area, or Owner. The Board has reached this determination in good faith as required under Section 10.21.1 of the Declaration.

3. Compliance with Declaration. Except for the Variance Improvements, Owners understand that no other variances are granted and agree to comply with all remaining requirements of the Association's governing documents including the Declaration. Without limiting the generality of the foregoing, Owners understand that other than the Variance Improvements, no other improvements may be made within the extended fence area without further approval from the ARC.

4. Additional Improvements. Owners understand and agree that the Association's approval granted hereunder is for the Variance Improvements and does not extend to any additional Improvements made to the Lot or any future installations or modifications on the Lot

without prior written approval of the ARC. If any of the Variance Improvements are destroyed or otherwise removed, Owners on behalf of themselves and their successors and assigns, agree to replace the same only upon prior written approval of the ARC in accordance with architectural standards in effect at the time.

4. Maintenance and Insurance Obligations. The Variance Improvements shall be maintained, repaired, and replaced by the Owner in good condition and repair. The area containing the Variance Improvements shall be fully insured by the Owner with proof of insurance provided to the Association upon request of the Association. The Association shall not be responsible for any maintenance, repair, replacement or insurance of the Variance Improvements.

5. Removal or Modification by Owners. Prior to the removal or modification of the Variance Improvements, Owners or their successors and assigns, shall submit an application to the ARC. Upon receiving the approval of the ARC for replacement or modification of the Variance Improvements, as applicable, Owners shall install the same in accordance with the terms and conditions set forth in the Association's governing documents, including without limitation the Declaration.

6. Indemnity. Owners acknowledge and agree to indemnify, defend, and hold harmless Association, its officers, directors, committee members, agents, personnel, and insurers from any and all claims, lawsuits, demands, or causes of action, including, without limitation, claims and/or damages arising out of or relating to personal injury, wrongful death, nuisance, actions filed under the Declaration, or property damage arising out of, or relating to the Variance Improvements which are the subject of the Variance herein. Owners' indemnification obligations hereunder shall extend to and include all costs, attorneys' fees, expenses, and liabilities incurred by Association, its directors, officers, agents, and insurers in the defense of any such claim, suits, or demands.

7. Enforcement. All of the provisions of this Variance shall be enforceable as equitable servitudes and constitute covenants running with the land pursuant to applicable law, including, but not limited to, California Civil Code Section 1468. It is expressly agreed that each covenant to do or refrain from doing some act on a parcel owned by the covenantor: (a) is for the benefit of the land of the covenantees, (b) runs with both the land owned by the covenantors and covenantees and (c) shall benefit and be binding upon each successive owner of the lands of the covenantors and covenantees during such owner's ownership of any portion of the land affected hereby and upon each person having any interest herein derived through any owner of the land affected hereby.

8. Governing Law. The rights and obligations of the parties and the interpretation and performance of this Variance shall be governed by the law of California.

9. Entire Agreement. This Variance constitutes the entire agreement between the Association and Owners relating to the subject matter of this Variance, with all oral agreements being merged herein, and this Variance supersedes all prior representations. There are no

representations, agreements, arrangements, or understandings, oral or written, between or among the parties relating to the subject matter of this Variance that are not fully expressed herein.

10. Successors and Assigns. This Variance shall be binding on and shall inure to the benefit of the grantees, heirs, executors, administrators, successors and assigns of the Association and Owners.

11. Separate Legal Counsel. This Variance has been drafted by legal counsel for the Association. By their signatures below, Owners acknowledge that they have been advised to seek separate legal counsel to review this Variance, if they so choose, to represent their individual interests in this matter.

12. Amendment or Removal. This Variance may only be amended or removed from title to the Lot by a writing executed and recorded by the Association and the Owners or their successors and assigns.

13. Attorneys' Fees and Costs. In the event a dispute arises under, or is related to, this Variance, and whether or not a lawsuit is filed or commenced, the prevailing party shall be entitled to all fees and costs, including attorneys' fees, incurred to enforce the terms of this Variance.

14. Effective Date. This Variance has been executed to be effective upon its recordation in the Official Records of Placer County, California.

WHITNEY OAKS COMMUNITY ASSOCIATION, a California nonprofit mutual benefit corporation By: _____ _____, Director Date: _____	OWNERS By: _____ [LEGAL NAME HERE] Date: _____ By: _____ [LEGAL NAME OF CO-OWNER] Date: _____
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(Notary Acknowledgment Attached)

Exhibit "A"

[LEGAL DESCRIPTION AS APPEARING ON GRANT DEED]

DRAFT