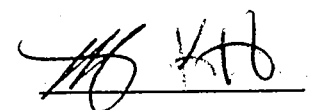


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**DECLARATIONS OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
BLACK DIAMOND ESTATES  
AT MOTT CREEK**

**COOPER**



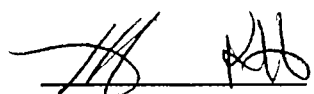
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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

FOR

BLACK DIAMOND ESTATES AT MOTT CREEK

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS IS MADE THIS 19<sup>th</sup> DAY OF June, 2000 by Howard W. Herz and Kregg L. Herz and their successors and assigns (hereinafter referred to as "Declarant").

RECITALS:

Declarant is the owner of that certain real property located in Douglas County, Nevada, more particularly described in a private development map as Exhibit A attached hereto and incorporated herein by this reference, and which is hereinafter referred to as the ESTATES.

The ESTATES consists of a maximum of four (4) newly developed Lots and is located along the Kingsbury Grade (Highway 207) in the Carson Valley along the foothills of the Sierra Nevada mountains. The ESTATE is part of a development which is surrounded by rural ranches as well as significant residential estates.

The Declarant intends by this Declaration to impose upon the ESTATE mutually beneficial conditions and restrictions for the benefit of all Owners of Lots within the ESTATE and to create a community and environment in which the aesthetic features and beauty of the property and surrounding area will be substantially preserved for the enjoyment and benefit of all persons living within the ESTATE.

All Owners in the ESTATE acknowledge and understand that the ESTATE is located in an agricultural and open space area of Douglas County, Nevada, and that there are ongoing preexisting agricultural practices which have occurred and will continue to occur in the area within the Development. The Owners further understand, accept and acknowledge that this Declaration applies to the residential parcels, improvements and activities on Lots only and does not apply to any property that is designated as Open Space or ESTATE uses.

In furtherance of such intent, Declarant declares that all Lots described on a final subdivision map or maps recorded on the real property referred to in Exhibit A, whether or not created through a record of survey or a phasing of development by the recording of more than one final map, are and shall be owned, held, conveyed, encumbered, leased, improved, used, occupied and enjoyed subject to the following covenants, conditions and restrictions, and equitable servitudes and the same shall constitute a general plan for the ownership, improvement, sale, use and occupancy of the ESTATE and to enhance the value, desirability and quality of the ESTATE.

This Declaration shall run with the real property described in Exhibit A and shall be binding on all parties having any right, title or interest in the Exhibit A property and their heirs, successors, successors-in-title, and assigns and shall inure to the benefit of each Owner or member thereof. Each, all and every one of the

limitations, easements, uses, obligations, covenants, conditions and restrictions herein imposed shall be construed as equitable servitudes enforceable by the Declarant or any of the Owners of any portion of the property subject to this Declaration against any other Owner, tenant or occupant or said property or portion thereof similarly restricted by this Declaration. The recording of a final subdivision map or maps or a record of survey creating one or more lots is a condition precedent to encumbering any of the land with the application of provisions of this Declaration.

## ARTICLE 1

### PERMITTED USES AND GENERAL RESTRICTIONS

All Lots shall be owned, held, conveyed, encumbered, leased, used, occupied and enjoyed subject to the Design Guidelines, and the following limitations and restrictions:

1.01 Design Control. No construction, alteration, repairs, excavation, grading, landscaping or other work on a Lot shall be made or done without the prior written approval of the Architectural and Landscape Committee (hereinafter "ALC").

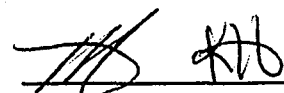
1.02 Residential Use. All Lots within the ESTATE shall be improved and used solely for Single Family residential use.

1.03 Improvements and Use.

A. Residences constructed on all Lots must contain at least two thousand five hundred (2,500) square feet of interior living space, exclusive of decks, basements, patios, covered walkways and the like, together with an attached garage. The ALC may grant a variance of up to twenty percent (20%) of the minimum required square footage if in the opinion of the ALC, the quality of design and materials of the Improvements is not diminished, the intent of this Declaration is not impaired and other compelling reasons exist for the variance.

B. Improvements as are necessary or customarily incident to a single family residence including but not limited to guest facilities, employee' quarters, exercise areas, pool houses, recreational areas, workshops or storage structures may be erected on any Lot provided there is a single visually connecting architectural element or component combining the residence and all units of the improvement and approved by the ALC in accordance with the Architectural Design Guidelines, No detached, separate structures are permitted unless specifically granted in the individual additions and exceptions for individual lots.

C. Provision for Individual Water supply: Each lot owner shall be responsible for his own domestic water supply. Each individual well is to be wired separately from the house. Any use of agricultural water rights will be the responsibility of the individual property owner of the rights. The declarant of the





property does not guarantee that agricultural water rights are available nor does the declarant warrant or guarantee any wells on the lots.

D. Provision for Individual Septic Service: Each owner of a lot shall be responsible for regularly maintaining their own septic tank. Such maintenance shall occur at least once every three (3) years. If a public sewer system becomes available within three hundred thirty feet (330) of the development, each individual lot will be required to connect to such system as stated in the conditions for development approved by Douglas county. Such connection to a public sewer system will be the cost and responsibility of each individual lot owner.

E. Requirement for Underground Utilities: All utility connections and service lines installed to each individual lot, dwelling unit or outbuilding will be installed underground, including electric service, water service, gas service, community antenna cable and telephone cable, in accordance with accepted construction and utility standards and shall constitute easements and equitable servitudes for the benefit of all lots. Underground utilities within a Lot will be constructed by the Lot Owner.

1.04 Building Setback and Building Envelopes. All structures and Improvements on every Lot shall be placed within a designated building envelop on the Lot. No residence or other improvements constructed on a Lot will exceed thirty-five feet (35') in height from the average natural ground level of the building site.

1.05 Maintenance of Lawns, Plantings and Landscape.

A. Continuity is established and maintained by the type and kind of landscaping and vegetation approved by the ALC. If not otherwise delineated on a Lot, each Owner shall designate a twenty-five (25) foot perimeter around the building envelope of his Lot for garden and flower cultivation of his choice. Areas outside of the identified or intended building envelope and beyond the twenty-five (25) foot garden perimeter is reserved for the planting, cultivating, landscaping, maintaining and irrigating of transitional vegetation approved by the ALC. Plantings which are low in maintenance and low in water consumption are encouraged.

B. Each Owner shall be responsible for the maintenance of all planted vegetation on his Lot from the date of close of escrow and shall install additional landscaping on his Lot if required by the ALC, including planting lawn, shrubs, trees or ground cover, within on (1) year of the date of close of escrow to mitigate and eliminate dust, weeds and unsightly yard areas. Thereafter, within one (1) year of completion of construction as evidenced by a certificate of occupancy, final landscaping shall be completed. Each Owner shall keep all shrubs, trees, grass and plantings on his lot neatly trimmed, properly cultivated and free from trash, weeds and other unsightly material. Each Owner shall maintain all plantings and shall replace any that die or become diseased. No Owner shall remove, alter or injure any tree of shrub placed in any area by Declarant or any tree on the Lot at the dated of close of escrow

without the prior written approval of the ALC. Declarant or his agent shall have the right (without the duty) to enter upon any Lot at any reasonable time for the purpose of planting, replacing, maintaining or cultivating trees and shrubs with any easement created therefore for fire protection as determined by the ALC.

C. A private landscaping envelope will be construed to be the area that is within 25 feet of the outside of the building envelope but still within the boundary of the property. Any area outside the private landscaping envelope shall be limited in landscaping to the maintenance of the natural vegetation of the area with consideration to fire prevention. Native plants and shrubs will predominate in the natural vegetation areas.

D. Fire break areas: Each owner of a lot shall at all times maintain such Owner's lot in accordance with the recommendations and requirements of the local fire district, including, but not limited to, those pertaining to the clearance of brush and weeds, and other fire prevention measures. The provisions of this paragraph shall apply to all lots, whether or not it is improved with a residence. All brush or other combustible materials, to a distance of twenty-five (25) feet from the perimeter of the building envelope shall be cleared and the area suitably landscaped. Wherever possible, native ground cover shall be retained and maintained, however if (and when) brush is removed appropriate replacement ground cover will be installed immediately.

E. Preservation of Existing Trees: Excavation for necessary construction purposes shall be conducted in such a manner so as to preserve conifers and without removing any conifers with a trunk diameter greater than six inches (6"). All landscaping and plants and trees must be comprised of those specific plants indigenous to the Douglas County area. The only exception thereto will be by the express written permission of the ALC. Flowers, gardens and other landscaping within 25 feet of the building envelope will be permitted provided that it does not violate the provisions of Fire break area as noted above. Beyond the fire break area prescribed, the natural vegetation will be maintained. Dead limbs will be removed from trees for fire prevention.

1.06 Fences; Easements Over Certain Lots. The Declarant hereby reserves a ten foot (10') easement along those Lots wherein the property line abuts the roadway, for the construction, maintenance and repair of fences. This easement is reserved regardless of whether or not the Declarant constructs the fence, and whether the Owner is responsible for the maintenance and repair of the fence. Throughout the subdivision, all fences authorized by Declarant shall be of a construction and design approved by the ALC. Declarant reserves for the purpose of installing and maintaining public utility facilities, drainage facilities, and for such other purpose incident to the development of the subject property, certain easements, all of which are shown on the recorded maps of said property. Declarant also reserves the right to create easements and rights-of-way for public utility use, drainage purpose, television cables, or any one or more of the same across any lot, provided, however, that said easements and rights-



of-way shall be located along one or more of the property lines and extending not more than ten (10) feet therefrom and the exercise of the rights thereunder do not interfere with any of the buildings or improvement located on the property. No chain link fence which is visible beyond the boundary of the Lot shall be installed on any lot. All fences must be approved by the ALC.

**1.07 Unsightly Articles.** No unsightly article shall be permitted to remain on any Lot to be visible from neighboring property or public or private thoroughfares. No portion of a Lot shall be used for the drying or hanging area for laundry of any kind if visible from neighboring property. No outdoor clothes lines will be permitted that are visible beyond the boundary of the lot. Without limiting the generality of the foregoing, vehicles being stored, or not capable of daily use shall be kept in an enclosed structure or screen. Refuse, garbage and trash shall be kept at all times in a covered container and any such container shall be kept within an area so as not to be visible from neighboring property. Trash collection locations may be designated by the ALC and lot owners provided that they are not located in an offensive manner and will accommodate the scheduled pick-up by a trash service. Service areas, storage areas, compost piles shall be appropriately screened from view; no lumber, grass, plant waste, shrub or tree clippings, metals, bulk materials or scrap or refuse or trash shall be kept, stored or allowed to accumulate on any Lot except within an enclosed structure or kept so as not to be visible from neighboring property. All such containers, areas, screens or structures must be approved by the ALC and none shall be erected unless construction of the primary residential improvement has been commenced. No noxious, offensive or disturbing activity of any kind shall be permitted within any structure or upon any lot within the subdivision.

**1.08 Parking Restrictions; Use of Garage; Use of Vehicles.** No vehicle shall be stored other than within an enclosed structure or screened area or upon the immediate approach to a garage. Parking by commercial vehicles for the purpose of making deliveries shall be permitted. No on-street parking by any Owner, occupant, their family, guests or invitees, is permitted, other than for parties and special events. No garages shall be used for or converted to living quarters or recreational areas without the prior review and approval of the ALC.

**1.09 Restricted Use of Recreational Vehicles.** No vehicle, tent or other similar item shall be used as a living area. Recreational vehicles will be stored in an enclosed structure.

**1.10 No Temporary Structures.** No tent, shack, motor home, camper, trailer, vehicle or other building, improvements or structure shall be placed upon any property as temporary living quarters or temporary improvements. Temporary structures necessary for storage of tools, equipment and supplies and for office space for architects, builders and foremen during actual construction may be approved by the

ALC, such approval to include the nature, size, location and duration of such structure.

**1.11 Antennas.** Except for any which may, at Declarant's option, be approved by Declarant or Declarant's designated representative, no exterior radio or television antenna or aerial shall be erected or maintained without the prior written approval of the ALC. All devices for the reception of electronic signals from satellite, off-site antennas or other off-property transmitters will not be visible beyond the property lines of the property upon which they are installed.

**1.12 Signs.** Except such signs as may be used by Declarant, no sign of any kind shall be displayed on any Lot to the public view without the approval of the ALC except such signs as may be required by legal proceedings or the prohibitions of which is precluded by law. No flashing or moving signs shall be permitted on any Lot or common area. All signage shall be of a natural architectural style in harmony with the improvements on a Lot as prescribed by the Design Guidelines and approved in writing by the ALC. Other than during construction of homes, no billboards or signs of any character shall be permitted on a lot except a sign not larger than ten by twenty (10 x 20) inches, setting forth the name of the owner or occupant of a lot and with the exception of one only "For Rent" or "For Sale" sign not larger than two hundred (200) square inches. No sign of a commercial nature shall be erected at any time. All signs must be professionally or commercially lettered. The only exception thereto will be by the express written permission of the Architectural Committee in the manner described hereinbelow. Signage during construction will be limited to parcel identification for purposes of locating sites for material and work related delivery.

**1.13 Lights.** No spotlights, flood lights or other high intensity lighting shall be placed or utilized upon any Lot which, in any manner, will allow light to be directed or reflected on any other Lot. All exterior lighting shall in "indirect." No tennis courts may be lighted except as may be permitted by the Design Guidelines and approved by the ALC. No utility "night lights" shall be installed, other than decorative driveway light not exceeding ten (10) feet in height; overhead downward directed area lights shielded upward from thirty (30) degrees below the horizon; and ground-level horizontally shielded vertical lighting of trees. In general, exterior lighting shall be permitted so long as it is installed in such a manner so as not to present an annoyance to neighbors.

**1.14 Roofing.** The roofing material placed upon any improvement within the ESTATE must be fire retardant. Dense, high definition, bulk material which is fire retardant, slate, concrete tile or other tile or composition meeting the standards set by Douglas County and any regulation of the local fire protection agency is appropriate. Dark colors and non-reflectivity shall be established in the Design Guidelines.

**1.15 Animals.** No animals, including but not limited to horses, swine, sheep, bovine, llamas, or other domestic farm or agricultural animals, fowl, or reptiles of any kind, except a reasonable number of commonly accepted household pets shall be kept on any Lot with the exception noted below. No kennel or other facility for raising or boarding dogs, cats or other animals for commercial purposes shall be kept on any Lot. All pets shall be restrained or confined to the Lot and not allowed to run at large. No dog shall be allowed to create an annoyance by loud or incessant barking. As a suggestion, the "invisible fence" may be used to restrain pets.

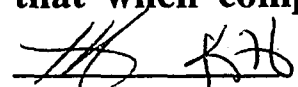
**1.16 Nuisances.** No rubbish or debris of any kind shall be placed or permitted to accumulate upon any Lot and no odors shall be permitted to arise therefrom so as to render any such property or any portion thereof unsanitary, unsightly, offensive or detrimental to any other lot. No noises or other nuisance shall be permitted to exist or operate upon any Lot so as to be offensive or detrimental to any other property or to its occupants. Without limiting the generality of any of the foregoing provisions, no exterior speakers, horns, whistles, lights, bells or other sound devices (other than security devices used exclusively for security purposes) shall be located, used or placed on any Lot without the prior written approval of the ALC.

**1.17 No Hazardous Activities.** No activities shall be conducted on any Lot and no improvements constructed on any Lot which are or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms shall be discharged on any Lot, and no open fires shall be lit or permitted on any Lot except in a contained barbecue unit while attended and in use for cooking purposes. No burning is allowed except by permit of Douglas County and the East Fork Fire Prevention District.

**1.18 No Dumping.** No owner shall dump any rubbish or refuse on any Lot in the ESTATE.

**1.19 No Mining and Drilling** No Lot shall be used for the purpose of mining, quarrying, drilling, boring or exploring for or removing water, oil, gas or other hydrocarbons, minerals of any kind, rocks, stones, sand, gravel, aggregate or earth other than excavation for necessary construction purposes relating to main dwelling units, retaining and court walls, utility services, drainage lines, grading and preparation of building sites, and the construction of dwellings and appurtenant structures. These provisions shall not be interpreted to preclude the drilling of a domestic well as allowed by the State of Nevada. The drilling of an agricultural well for purposes of irrigation or fire prevention shall be allowed provided that the water will be used on the ESTATES.

**1.20 Construction Activities.** This declaration shall not be construed so as to unreasonably interfere with or prevent normal construction activities during the construction of improvements by any Owner upon a Lot; provided that when completed





such improvements shall in all ways conform to this Declaration and the Design Guidelines. Construction activities should be pursued to completion with reasonable diligence, be in compliance with applicable federal, state and local laws and ordinances and any rules and regulations adopted pursuant thereto, conform to usual construction practices in the area and conform to the construction rules adopted by the ALC. Any contractor providing construction shall provide both performance and completion bonds in the full amount of the construction estimated cost.

**1.21 Building Permits.** Building permits for any structures on a Lot which is subject to this Declaration shall only be issued in accordance with the Douglas County Code and the Design Guidelines and following prior written approval of the Plans and Specifications by the ALC.

**1.22 Repair of Building.** No improvements upon any Lot shall be permitted to fall into disrepair, and each such improvement shall at all times be kept in good condition and repair and adequately painted or otherwise finished by the Owner thereof.

**1.23 Improvements and Alterations.** Except for normal and ordinary maintenance and repair, there shall be no modification to improvements which substantially alters the exterior appearance of any improvement, or the removal of any improvement without the prior approval of the ALC. Notwithstanding this or any provision of this Declaration, in the event of an emergency or the sudden occurrence of unanticipated conditions which threaten the health, safety or physical well-being of persons or property, the ALC or the Declarant shall have the authority, without prior approvals described above, to take whatever remedial action as may be necessary to protect persons and property until such time as applicable approval procedures provided herein can be reasonably utilized.

**1.24 No Obstruction to Drainage.** No owner shall erect, construct, maintain, permit or allow any fence or other improvement or obstruction which would interrupt or alter the normal drainage of the land or the Lot within any drainage easement as shown on the recorded subdivision plat or plats. There shall be no interference with the established drainage patterns over any property, except by Declarant, unless adequate provision is made for proper drainage and approved by the ALC. This shall include the provision of culverts of suitable size and other means of accommodating runoff when constructing a driveway connecting with a roadway. Each property owner shall maintain adequate drainage and water run-off facilities to prevent erosion or property damage.

**1.25 Provision for Drainage for Road Intersections:** All private driveway encroachments connecting with the main private drive or roads of the development shall be provided where necessary with culverts of a suitable size or other

approved means of accommodating run-off and drainage as approved by the County Engineer and Public works departments and will conform to the drainage engineering of the private development as approved by Douglas county.

1.26 Removal of Sight Barriers and Driving Obstructions: Nothing which constitutes a barrier to safe driving sight distances, particularly at street and road intersections may be erected or allowed to grow.

1.27 Declaration of Private Roadway and Public Dedication: In compliance with the conditions set forth by Douglas County in the approval of the private development, Tambourine Ranch Road is a public easement not offered for dedication or accepted for maintenance by Douglas County. Should Douglas County choose to accept a dedication of Tambourine Ranch Road, the owners of the parcels of this private development shall not oppose, object to or contest dedication of Tambourine Ranch Road to Douglas County. The roadway within the boundary of the private development will be considered as a private road shared by all of the property owners of the development. Use of the private roadway by adjacent properties may only be authorized by the ALC and any compensation for use will be applied to maintenance costs of the private roadway.

1.28 Road and Drainage Maintenance: Unless the access road and the the private drive serving the lots becomes a public dedicated road, the ALC may levy an assessment against each lot owner, as hereinbelow described, for the purpose of maintaining and repairing the common area private drive , easements and drainage facilities within the development.

1.29 Guest Houses: Guest houses will be allowed provided they conform to Douglas County regulations and are located within a building envelope.

1.30 Rental of Lots. Any Owner who leases or otherwise grants occupancy rights to his Lot shall be responsible for assuring compliance by any occupant with all the provisions of this Declaration, the Rules and Design Guidelines and shall be jointly and severally responsible for any violations by the occupant thereof. No commune, co-operative or similar type living arrangement shall be permitted. No Owner shall rent his Lot or its improvements without first obtaining evidence that the renter has secured Renters insurance in an amount approved by the ALC.

1.31 No Further Subdividing. No Lot as shown on a final subdivision map or maps and subject to these covenants shall be further divided or subdivided. However, nothing herein shall be deemed to require the approval of the ALC for the transfer or sale of any Lot, including improvements thereon, to more than one (1) person to be held by them as tenants in common or joint tenants, or for the granting of any mortgage or deed of trust. No lot line will be adjusted between lots without the approval of the ALC and the owners involved. There shall be no deed, conveyance,



agreement or other document executed, the terms of which separate surface or sub-surface rights into different ownerships.

**1.32 Exemptions from Restrictions or Additional Restrictions:**

Exemptions or specific restrictions specified in the individual deeds for each property will take precedent to the general CC&R's of the development with respect to the specific lot that contains the deed restrictions.

**1.33 Deed Restrictions Required by Douglas County** The following deed restrictions are a requirement of Douglas County, Nevada and will not be subject to modification without the approval of the Board of County Commissioners of Douglas County.

A. Each owner of a parcel or other private entity shall be responsible for the maintenance of drainage channel(s) and easements(s). Obstructing of flow or altering the course of a drainage channel within a drainage easement is prohibited.

B. All construction, development, or grading within the drainage and open space conservation easement is prohibited, except for maintenance of the existing bridge / access and routine maintenance of Mott Creek channel for irrigation purposes.

C. Access to Mott Creek by the downstream water users shall be allowed for irrigation inspection and maintenance purposes only as defined in the recorded agreement.

D. All work on slopes equal to or exceeding 15% shall comply with Section 20.690.030 (Hillside Grading) of Douglas County Code.

E. Tambourine Ranch Road has not been offered to Douglas County and is not maintained by Douglas County. This statement shall not prejudice or limit the rights of right-of-way as stated in a deed recorded on January 9, 1990, document 217902-3 in Book 190 Page 1622 of Douglas County Records or any other subsequent statements of recorded right-of-way.

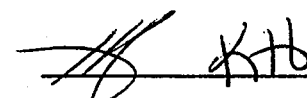
F. Douglas County does not insure the development of any lot where wells and septic systems are required for water and sewer service.

G. The use of individual sewage disposal systems is for temporary use only. The parcels shall connect to a community sewer system when such system is within 330 feet of the nearest property line.

**ARTICLE II**

**PERMITTED USES AND RESTRICTION**

**2.01 Lakes, Water Bodies and Wetlands.** No lakes, pond, stream or other body of water within the ESTATE are common area unless so designated by Declarant or its successors or assigns. No Owner, occupant, or person shall use any lake, pond, stream or other body of water, for any purpose, including, without limitation, fishing, swimming, motorized boating, playing or use of personal flotation



devices. All water rights appurtenant to the ESTATE are those of the Declarant or its successors or assigns. No dredging or filling shall be undertaken on any lake, pond, stream, drainage or other body of water on any Lot except by the Declarant, its successors or assigns. The declarant reserved the right (but not the obligation) to maintain all areas of the Mott Creek Channel.

**2.02 Definition of Common Open Space:** Areas designated as Common Open Space will be designated on the parcel map and will be available to all of the owners of the private development for purposes of recreational hiking, beautification of the area and a common natural park.

**2.03 Restricted Open Space:** Areas designated as Restricted Open Space will be designated on the plot map and will not be available to all owners in the private development area except as conditioned herein. Access will be limited to trails and designated access points determined by the ALC.

**2.04 Drainage and Open Space Conservation Easement** Areas of the Mott Creek Channel designated as Mott Creek Drainage and Open Space Conservation Easement will be accessible only on the designated trails in the channel. Access to the Mott Creek Designated Open Space Area is available to only those owners of property in the Private Development on the designated trails and to the authorized inspectors of the owners of water rights on Mott creek as specified in the recorded access agreement. Maintenance of the Mott Creek Channel will be the responsibility of the owner of the parcel in which the creek traverses.

**2.05 Mott Canyon Hiking and Trail Easement and Rights:** The rights, privileges and easements of the agreement dated November 4, 1986 and described in Book 1186 Pages 482-563 as recorded in the Douglas County Nevada recorder's office shall be the sole rights and privileges of parcel Z as shown on the parcel map recorded for the private development.

**2.06 Individual Lot Restrictions and Exemptions:** The following restrictions and exemptions shall apply to the individual lots as designated on the recorded record of survey for the private development.

**Lot W & Lot Y: Lot W/Y Line Adjustment:** With the approval of the ALC and Douglas County, the lot line between Lot W and Lot Y can be adjusted provided that a domestic well for parcel Y is provided on parcel Y as well as a separate well for parcel W.

**Lot X: Lot X Livestock exemption:** Agricultural or domestic farm animals not exceeding two (2) in total number and limited to horses, sheep, bovine or llamas can be maintained on lot X.

**Lot X: Access and Easement area:** Areas outside of the building envelope may be used for access and easement purposes without restriction.

**Lot X: Out Building:** A single structure for the weather protection of permitted livestock can be constructed on Lot X provided that the design and location are approved by the ALC.

**Lot Y: Lot Y Guest House:** A separate building envelope shown to the west of the house on Lot Y can be used for a detached Garage, Guest House, pool area, or other recreational facility including a support building within the bounds of the building envelope.

**Lot Z: Exemption from Building Envelope:** Lot Z will not require a building envelope for the existing house at the time of the recordation of the development. Any additional building will be confined to the area south of the Mott Creek chanel and will not require a building envelope unless specified by the ALC. The ALC may create building envelopes as necessary in the future for Lot Z.

### **ARTICLE III**

#### **ARCHITECTURAL AND LANDSCAPE CONTROL COMMITTEE**

**3.01 Members of Committee.** there shall be an Architectural and Landscape Committee ("ALC") which shall consist of the (2) members, which shall initially be designated by Declarant. There may also be two (2) alternate members, either of whom may be designated by the Committee to act as substitute on the Committee in the event of absence or disability of either member. Each member of the ALC shall hold office until such time as he has resigned or has been removed or his successor has been appointed, as provided herein. Members of the ALC may be removed at any time without cause.

**3.02 Declarant's Rights of Appointment.** The Declarant, its heirs, successors, and assigns, shall have the sole right to appoint and remove all members of the ALC, including alternates.

**3.03 Review of Proposed Construction.** Whenever in this Declaration the approval of this ALC is required, it shall have the right to consider all of the plans and specifications for the improvement or proposal in question and all other facts which in its sole discretion are relevant. Except as provided above, prior to commencement of any construction of any improvement, the plans and specification therefore shall be submitted to the ALC, and construction thereof may not commence unless and until the ALC has approved such plans and specifications in writing. The ALC shall consider and act upon any and all plans and specifications submitted for its approval pursuant to this Declaration including the inspection of construction in progress to assure its conformance with plans and specifications approved by the ALC.

The ALC shall approve plans and specifications submitted for its approval only if it deems that the construction, alterations, or additions contemplated thereby in the locations indicated will not be detrimental to the surrounding area, and that the

appearance of any structure affected thereby will be in harmony with the surrounding structures. The ALC may condition its approval of plans and specifications on such changes therein as it deems appropriate, and may require submission of additional plans and specifications or other information prior to approving or disapproving the material submitted. Until receipt by the ALC of all required plans and specifications and other information, the ALC may postpone review or anything submitted for approval. *No construction shall commence without the contractor first providing to the satisfaction of the ALC bonds for both performance and completion of construction.*

**3.04 Architectural Design Guidelines.** The ALC shall from time to time, and in its sole discretion, adopt, amend and repeal by unanimous vote rules and regulations to be known as "Architectural Design Guidelines" interpreting and implementing the provisions of this Declaration, setting procedures for submittal and design and construction criteria to be followed in submitting proposals to the ALC.

**3.05 Meetings of the ALC.** The ALC shall meet from time to time as necessary to perform its duties hereunder. The ALC may, from time to time by resolution unanimously adopted in writing, designate one of its members to take any action or perform any duties for and on behalf of the ALC, by unanimously adopting written resolutions. In the absence of such designation, the vote or written consent of a majority of all of the members of the ALC shall constitute an act of the ALC as to all matters except the adoption, amendment or repeal of Design Guidelines.

**3.06 No Waiver of Future Approvals.** An approval or consent of the ALC shall not be deemed a waiver of any right to withhold future approval or consent on any other matter whatsoever subsequently or additionally submitted for approval or consent by the same or a different person.

**3.07 Inspection of Work.**

**A. Completed Work.** Inspection of completed work and correction of defects therein shall proceed as follows:

(i) Upon the completion of any improvements for which approved plans or specifications are required under this Declaration, the Owner shall give written notice of completion to the ALC of any improvement for which approval of plans and specifications are required.

(ii) Within the time period set forth in its Rules but not to exceed fifteen (15) days thereafter, the ALC or its duly authorized representative may inspect such improvement. If the ALC finds that such work was not done in strict compliance with all approved plans and specifications submitted or required to be submitted for its prior approval, it shall notify the Owner in writing of such noncompliance within the above period, specifying in reasonable detail the particulars of noncompliance, and shall require the Owner to remedy the same.

(iii) If the Owner fails to remedy such noncompliance

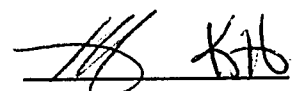


within thirty (30) days from such notification, the ALC shall notify the Owner in writing of such failure. Upon notice and hearing, the ALC shall issue a ruling determining whether there is a noncompliance and, if so, the nature thereof and the estimated cost of correcting or removing the same. The Owner shall remedy or remove the noncomplying improvement within forty-five (45) days from the date of announcement of the ALC's ruling. If the Owner does not timely comply with the ALC's ruling, the ALC, at its option, may either remove the noncomplying improvement or remedy the noncompliance, and the Owner shall reimburse ALC upon demand for all expenses incurred in connection therewith. If such expenses are not promptly repaid by the Owner, legal enforcement may be sought and Owner shall also pay all costs and fees of enforcement.

B. Work in Progress. The ALC may inspect all work in progress and give notice of noncompliance as provided above in subparagraph (ii) of Section 3.07.A. If Owner denies that such noncompliance exists, the procedures set out in subparagraph (iii) of Section 3.07.A shall be followed, except that no further work shall be done, pending resolution of the dispute.

3.08 Non liability of ALC Members. Neither the ALC nor any member thereof shall be liable to any Owner or to any other person for any loss, damage or injury arising out of or in any way connected with the performance of the ALC's respective duties under this Declaration unless due to the willful misconduct or bad faith of the ALC or its members. Except as provided in this Declaration, the ALC shall review and approve or disapprove all plans and specifications submitted to it for any proposed improvement, including the construction of, alteration or addition to improvements, solely on the basis of aesthetic considerations and the overall benefit or detriment which would result to the surrounding area. The ALC shall take into consideration the aesthetic aspects of the architectural designs, placement or buildings, landscaping, color schemes, exterior finishes and materials and similar features, but shall not be responsible for reviewing, nor shall its approval of any plans or specifications be deemed approval thereof, from the standpoint of structural safety, engineering soundness, or conformance with building or other codes which may be applicable to the planned construction.

3.09 Variances. The ALC may authorize variances from compliance with any of the architectural provisions of this Declaration or any supplemental declaration, including restrictions upon height, bulk, size, shape, floor area, land area, placement of structures, setbacks, building envelopes, colors, materials, or similar restrictions, when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations may, in its sole and absolute discretion, warrant. Such variances must be evidenced in writing and must be signed by at least a majority of all of the members of the ALC. If such a variance is granted, no violation of the covenants, conditions or restrictions contained in this Declaration or any





supplemental declaration shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of such a variance shall not operate to waive any of the terms and provisions of this Declaration, the Architectural Design Guidelines or any supplemental declaration for any purpose except as to the particular property and particular provision and in the particular instance covered by the variance.

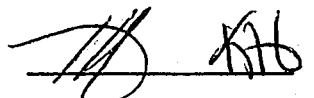
**3.10 Obligations with Respect to Zoning and Subdivisions.** All persons shall comply fully with the zoning and master plan designations approved for ESTATE by the Board of Commissioners of Douglas County, Nevada, and with all applicable federal, state and local laws, regulations and ordinances, insofar as the same is applicable and as the same may hereafter be amended from time to time.

**ARTICLE IV**  
**MAINTENANCE, FUNDS AND ASSESSMENTS**

**4.01 Maintenance** For the benefit of Owners and Declarant, Declarant shall keep, repair and maintain the interior common area roads. The cost for such obligation shall be paid and collected as set forth in this Article IV. Individual owners will be responsible for obtaining liability insurance over that portion of the common area roads that traverse their property.

**4.02 Future Obligation.** At such time as Declarant terminates its existence, and Estate or the survivor thereof, waives the right to assume such obligation, the Owners may form an association to perform the maintenance and repair functions. In the absence of such an association, a majority of the Owners may simply informally contract for the performance of such services with whoever they choose, and that informal group shall have the authority to collect funds and place and collect assessments, along with all additional authority provided pursuant to this Article IV.

**4.03 Agreement to Pay.** Each Owner of a Lot, evidenced by the recording of a deed in his name, covenants and agrees to pay to Declarant such regular and special assessments as are established, made, and collected as provided in this Declaration. Declarant acknowledges that It (and Its successors and assign) is responsible for the regular and special assessments as established and provided for in this Declaration for its two (2) homes, which are not otherwise burdened by these restrictive covenants. Each lot in the subdivision other than those owned by Declarant shall pay its estimated share of common expenses. A list of services and estimate of initial costs is attached hereto as Exhibit B and incorporated herein by reference, Each Lot shall be required to pay on an annual estimate, payable quarterly. Each Lot shall be responsible for the payment of 1/4 of the total.



**4.04 Regular Annual Assessments.** Prior to the beginning of each calendar year, Declarant shall estimate the expenses to be incurred during such year in performing its functions under this Declaration, including a reasonable amount for contingencies and appropriate replacement reserves, less any expected income and any surplus from the prior year's fund. Quarterly assessments will be due on January 10, April 10, July 10 and October 10. Uniform and equal assessments sufficient to pay such estimated net charges shall then be levied and collected as provided in this Article IV. If the sums collected prove inadequate for any reason, including nonpayment of any individual assessment, the Declarant may at any time and from time to time levy special assessments in the same manner as provided above. All such assessments shall be due and payable during the fiscal year in equal quarterly installments or in such other manner as the Declarant may designate in its sole and absolute discretion. Upon the purchase of a lot which has not been improved with a residence, the Owner will be required to pay a fifty percent (50%) assessment. Upon issuance of a building permit, the Owner will be required to pay the full assessment as established and provided in this Declaration.

**4.05 Late Charges.** If any assessment, whether regular or special, is not paid within fifteen (15) days after it is due, the Owner may be required to pay a late charge at such rate as the Declarant may designate from time to time not to exceed eighteen percent (18%) simple interest per annum.

**4.06 Unpaid Assessments as Liens.** The amount of any delinquent assessment, whether regular or special, assessed against any Lot and any late payment charge attributable thereto, plus interest on such assessment and charge at a rate not to exceed eighteen percent (18%) per annum simple interest, and the costs of collecting the same, including reasonable attorney's fees, shall be a lien upon such Lot and the improvements thereon. Such lien shall be prior to any declaration of homestead. Such lien shall be created in accordance with NRS 116.3116 and shall be foreclosed in the manner provided for in NRS 116.31162, 116.31164 and 116.31168.

**4.07 Mortgage Protection.** Notwithstanding any other provision of this Declaration, no lien created under this Article IV or under any other Article of this Declaration, nor any lien arising by reason of any breach of this Declaration nor the enforcement of any provision of this Declaration or of any supplemental declaration shall defeat or render invalid the rights of the beneficiary under any recorded mortgage or deed of trust of first and senior priority now or hereafter upon a Lot, made in good faith and for value perfected before the date on which the assessment sought to be enforced became delinquent. However, after the foreclosure of any such first mortgage or deed of trust or after any conveyance in lieu of foreclosure, such Lot shall remain subject to this Declaration and shall be liable for all regular and special assessments levied subsequent to completion of such foreclosure or delivery of such conveyance in lieu of foreclosure, and to all installments of all regular and special assessments levied

prior to completion of such foreclosure or delivery of such conveyance but falling due after such completion or such delivery.

**4.08 Effect of Amendments on Mortgages.** Notwithstanding the provisions of Section 5.02 below, no amendment of this Declaration shall affect the rights of any beneficiary whose mortgage or deed of trust has the first and senior priority and whose mortgage or deed of trust is recorded prior to the recording of the amendment and who does not join in the execution of the amendment. However, after foreclosure or conveyance in lieu of foreclosure, the Lot which was subject to such mortgage or deed of trust shall be subject to such amendment.

**ARTICLE V**  
**MISCELLANEOUS**

**5.01 Term.** This Declaration, including all of the covenants, conditions and restrictions hereof, shall run until 31 December 2100, unless amended as herein provided. After 31 December 2100, this Declaration, including all such covenants, conditions and restrictions, shall be automatically extended for successive periods of ten (10) years each, unless amended or extinguished by a written instrument executed by at least a majority of the Owners and recorded in the Douglas County real property records.

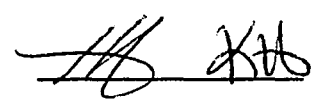
**5.02 Amendment.**

**A. Special Provisions.** No amendment of Article IV shall be effective as to any beneficiary who does not join in the execution thereof provided that its mortgage or deed of trust is recorded in the real property records of the county prior to the recordation of such amendment. No amendment of this Declaration shall be effective until executed and recorded in Douglas County in the manner herein provided.

**B. By Declarant.** Except as provided in Section 5.02.A, this Declaration may be amended only by the Declarant, its successors, and assigns, until 31 December 2020, including the unilateral right to encumber additional property with these covenants.

**C. By Owners.** After 31 December 2020, this Declaration may be amended by recording in the official records of Douglas County an instrument setting forth the amendment and certifying that such amendment has been approved by seventy-five percent (75%) of the Owners. These amendments may include new or different maintenance agreements, Owners' rights, etc.

**5.03 Notices.** Any notice permitted or required to be given by this Declaration shall be in writing and may be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to have been delivered on the third day (other than a Sunday or legal holiday) after a copy of the same has been deposited in the United States mail, postage prepaid.





**5.04 Enforcement and Non waiver.**

**A. Right of Enforcement.** Except as otherwise provided herein, any Owner, or Declarant, shall have the right to enforce all of the provisions of this Declaration against any Lot and the Owners thereof. Such right of enforcement shall include both damages for and injunctive relief against the breach of any such provision.

**B. Violation a Nuisance.** Every act or omission whereby any provision of this Declaration is violated in whole or in part is hereby declared to be a nuisance any may be enjoined or abated by any Owner, or by Declarant, whether or not the relief sought is for negative or affirmative action. However, only Declarant may enforce by self-help any of the provisions of this Declaration, and then only if such self-help is preceded by reasonable notice to the Owner in question.

**C. Violation of Law.** Any violation of any federal, state or local law, ordinance or regulation pertaining to the ownership, occupancy or use of any Lot hereby is declared to be a violation of this Declaration and subject to all of the enforcement procedures set forth in said restrictions.

**D. Remedies Cumulative.** Each remedy provided by this Declaration is cumulative and not exclusive.

**E. Non waiver.** The failure to enforce any provision of this Declaration at any time shall not constitute a waiver of the right thereafter to enforce any such provision or any other provision of said Declaration.

**5.05 Construction.**

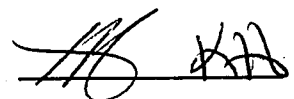
**A. Restrictions Severable.** Each of the provisions of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion thereof shall not affect the validity or enforceability of any other provision.

**B. Singular Includes Plural.** Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular; and the masculine, feminine or neuter shall each include the masculine, feminine and neuter.

**C. Captions.** All captions and titles used in this Declaration are intended solely for convenience of reference and shall not enlarge, limit or otherwise affect that which is set forth in any of the paragraphs, sections or articles hereof.

**D. Liberal Construction.** It is the intention of Declarant that this Declaration be liberally construed to promote the purpose of a well planned community, reserving to the Declarant the rights necessary to complete the project and to ensure the integrity of the interrelated land uses.

**E. Successor and Assigns.** The benefits and burdens created by this agreement shall inure to the successors and assigns of the Declarant, owners and lenders as applicable.



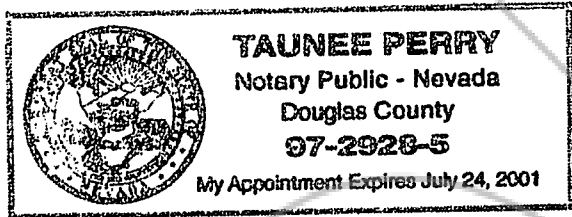
**IN WITNESS WHEREOF, Declarant has executed this Declaration the day and year first above written.**

By *Howard W. Herz*  
**Howard W. Herz**

By *Kregg L. Herz*  
**Kregg L. Herz**

STATE OF NEVADA            )  
                                       ) SS.  
 COUNTY OF DOUGLAS        )

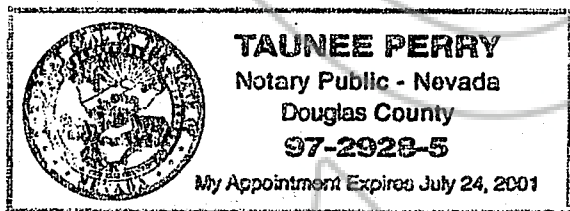
On June 16<sup>th</sup>, 2000, before me, Taunee Perry, a notary public, personally appeared HOWARD W. HERZ, personally known (or proved) to me to be the person whose name is subscribed to the above instrument who acknowledged that he executed the instrument.



*Taunee Perry*  
 Notary Public

STATE OF NEVADA            )  
                                       ) SS.  
 COUNTY OF DOUGLAS        )

On June 16<sup>th</sup>, 2000, before me, Taunee Perry, a notary public, personally appeared KREGG L. HERZ, personally known (or proved) to me to be the person whose name is subscribed to the above instrument who acknowledged that she executed the instrument.



*Taunee Perry*  
 Notary Public

*[Handwritten initials]*



**EXHIBIT A  
PRIVATE DEVELOPMENT MAP**

**EXHIBIT B  
TO  
Declarations of Covenants, Conditions and Restrictions  
for Black Diamond Estates at Mott Creek**

**MAINTENANCE PROGRAM**

**Snow Plowing:**

**32 Hrs. @ \$65<sup>00</sup> per hour**

**\$2,080.00**

**Maintenance:**

**Roads**

**\$1,280.00**

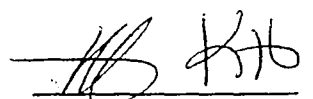
**Total Per Year \$3,360.00**

**Per Lot/year \$840.00**

**Per Quarter \$210.00**

**Per Month \$70.00**

**To be paid quarterly**



COPY

REQUESTED BY  
Howard Herz  
IN OFFICIAL RECORDS OF  
DOUGLAS CO., NEVADA

2000 JUN 20 AM 9: 32

LINDA SLATER  
RECORDER

\$31<sup>00</sup> PAID Kg DEPUTY

0494377

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