

## **DECLARATION OF COVENANTS AND CONDITIONS FOR WAPITI NEIGHBORS**

This DECLARATION OF COVENANTS, AND CONDITIONS is adopted by the Property Owners of the Wapiti Neighbors, located in Umatilla County, Oregon.

### **RECITALS**

Wapiti Neighbors was created via a series of land partitions as referenced on partition plat nos. 2015-23, 2015-25, 2015-26, and 2015-30, recorded in Umatilla County as Document Nos. 2015-6340579; 2015-6360143; 2015-6360144; and 2015-6370524, respectively.

The Property Owners of Wapiti desire to enact this Declaration to designate responsibility for road maintenance and to implement certain use restrictions as agreed upon by the Owners.

NOW, THEREFORE, this Declaration is adopted by the Owners of Property in Wapiti and shall replace and wholly supersede any prior documents governing the Property.

### **ARTICLE I DEFINITIONS**

Section 1. “Wapiti” shall mean and refer to all of the property and its developed status as a residential development.

Section 2. “Articles” shall mean and refer to the Articles of Incorporation for the corporation Wapiti Neighbors., as filed with the Oregon Corporation Division on or about\_\_\_\_, 2024, and as may be amended from time to time.

Section 3. “Association” shall mean and refer to Wapiti Neighbors, Inc., and its successors and assigns.

Section 4. “Board” shall mean and refer to the Board of Directors elected by the members pursuant to the provisions of the Bylaws.

Section 5. “Bylaws” shall mean and refer to the Bylaws for Wapiti Neighbors, Inc., as may be amended from time to time.

Section 6. “Common Property” shall mean and refer to Wapiti Lane, located West of Interstate 84 and East of Old Oregon Trail Highway, as well as the shared well, WELL 1 (UMAT 57554/L116936); 825 FEET NORTH AND 1085 FEET EAST FROM SW CORNER, SECTION 34(1N-35E-34-SW SW), both of which are intended to be devoted to the common use and enjoyment of the Owners.

Section 7. “Declaration” shall mean and refer to this Declaration of Covenants, and Conditions for Wapiti Neighbors.

Section 8. "Lot" shall mean and refer to each and any of the parcels as depicted on the above referenced partition plats, provided, however, that "Lot" shall not include Wapiti Lane, which is designated for use as Common Property.

Section 9. "Occupant" shall mean and refer to the occupant of a Dwelling, or Lot who shall be either the owner, lessee, or any other person authorized by the owner to occupy the premises.

Section 10. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot or a purchaser in possession under a land sale contract. The foregoing does not include persons or entities who hold an interest in any Lot merely as security for the performance of an obligation.

Section 11. "Property" shall mean and refer to all real property, including all Lots, Common Property, and any improvements located on the real property subject to this Declaration, as more particularly set forth on Exhibit "A" hereto.

## ARTICLE II GENERAL PLAN OF DEVELOPMENT

Section 1. Lots. The Property has been partitioned into 13 Lots adjacent to Common Property.

Section 2. Ownership of Common Property. Title to that portion of the Property designated as Common Property on the plat and described in Exhibit "B" hereto shall be held by the Association. In the event the Common Property is ever assessed for property tax purposes separately from the Lots, the Association, by and through its Board, shall take such steps as may be necessary to assess all Owners equally for their share of such taxes and to pay such property taxes on a current basis.

## ARTICLE III MEMBERSHIP IN ASSOCIATION

Section 1. Members. Each Owner is a member of the Association. Membership in the Association is appurtenant to, and may not be separated from, ownership of any Lot. Transfer of ownership of a Lot automatically transfers membership in the Association. Without any other act or acknowledgment, Owners and Occupants will be governed and controlled by this Declaration, the Articles, and the Bylaws of the Association and any amendments thereto.

Section 2. Voting Rights. Each Lot shall be entitled to one Lot Owner vote on all membership matters.

## ARTICLE IV USE CONDITIONS

Section 1. Governmental Conditions. All uses, occupancy, construction, and other activities conducted on any Lot, including but not limited to the keeping of animals, horses, and livestock, timber harvesting, and hunting and harassment of wildlife, shall conform with and be subject to applicable laws, zoning ordinances, use restrictions, setback requirements, construction codes, building codes, and all other regulations imposed by all local, state, and federal authorities.

Section 2. Utilities. Each Owner shall be responsible for causing infrastructure for their Lot's power, telephone, and water services to be buried underground. Owners shall ensure that installation of the above referenced utility services is performed in accordance with county and local regulations.

Section 3. Maintenance of the Common Property. Maintenance, repair, and costs associated with such maintenance and repair of Wapiti Lane and the related access easement shall be the shared responsibility of each Owner.

Section 4. Shared Well. Maintenance, repair, and operating costs of the shared well shall be the shared responsibility of each Owner. All Owners shall cause the installation of a water meter for their specific Lot before drawing from well water. No lot owner may cause a well to be dug for their specific lot that could potentially draw from the same aquifer as the community well, without first obtaining, and submitting a community impact statement from the state, and written unanimous approval of all other Wapiti property owners.

## ARTICLE V COMMON PROPERTY

Section 1. Members' Easement of Enjoyment. Subject to the provisions of this Declaration and the Bylaws, every Owner shall have a nonexclusive right and easement of enjoyment in and to the Common Property, which shall be appurtenant to and shall pass with the title to every Lot.

Section 2. Extent of Members' Easements. The members' easements of enjoyment created hereby shall be subject to the right of the Association to charge reasonable assessments and fees for capital expenditures for the Common Property and the maintenance and upkeep of the Common Property and payment of all Association expenses.

## ARTICLE VI COVENANTS FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation for Assessments. Each Owner of any Lot by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agrees to pay the Association (1) regular assessments or charges for common expenses, and (2) special assessments to make up for a deficit in the operating or reserve account or budget, or defray, in whole or in part, the cost

of any construction, reconstruction, repair, or replacement of a capital improvement upon the Common Property. All such assessments, together with interest thereon at the rate established from time to time by resolution of the Board of Directors and together with all other costs, fees, charges and fines allowed by law, shall be a lien and charge on the land and shall be a continuing lien upon the Lot against which each such assessment is made. Such lien shall exist and be executed, recorded and foreclosed in the manner provided by law. Any assessment properly imposed under this Declaration or the Bylaws is the joint and several personal obligation of all Owners of the Lot to which the assessment pertains. In a voluntary conveyance (i.e. one other than through foreclosure or deed in lieu of foreclosure), the grantees will be jointly and severally liable with the grantors for all Association assessments imposed through the recording date of the instrument effecting the conveyance.

## Section 2. General Assessments.

(a) Purpose of Assessments. The assessments levied under this Article shall be used exclusively for the purpose of promoting the recreation, health, safety, and welfare of the residents of the Property, and for the improvement and maintenance of such Property, including replacement reserve allocations to create a fund for the maintenance, replacement, and repair of improvements to the Common Property, and for payment of any common operating expenses such as well water, premiums for insurance, legal and accounting services, and the like.

(b) Method of Assessment. By a vote of two-thirds (2/3) of the Directors voting on the issue, the Board shall determine the annual assessment upon the basis provided above, provided, however, the annual assessment shall be sufficient to meet the obligations imposed by the Declaration. The budget shall be presented to the Association and may be amended by a majority of the votes held by the members. Both annual and special assessments must be filed at a uniform rate for all Lots. The Board shall set the date(s) such assessment shall become due. The Board may provide for collection of assessments annually or in monthly, quarterly, or semi-annual installments; provided, however, upon the default in the payment of any one or more installments, the entire balance of such assessments may be accelerated at the option of the Board and be declared due and payable in full, together with interest, late fees, and attorneys' fees and costs as hereinafter provided.

(c) Offsets. Subject to the provisions of Article IV, Section 4 above, no offsets against any assessment will be permitted for any reason, including, without limitation, any claim that the Association is not properly discharging its duties.

Section 3. Common Property Reserve Account. The assessment against each Lot, regardless of whether it has been improved with a substantially complete Living Unit, shall include an amount allocated to a reserve study established for the purpose of funding replacements of those elements of the Common Property that will normally require replacement, in whole or in part, in more than one (1) year and less than thirty (30) years.

Amounts assessed with respect to reserves shall take into account the estimated remaining life of the items for which the reserve is created and the current replacement cost of such items.

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of correcting a deficit in the operating or reserve account or budget, or defraying, in whole or in part, the cost of any construction, reconstruction, repair, or replacement of a capital improvement upon the Common Property, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of the Owners who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5. Effect of Non-Payment of Assessments; Remedies of the Association. In addition to any other remedies provided by law, the Association may bring an action at law against the Owner personally obligated to pay the same or foreclose a lien upon the Lot.

Regardless of whether suit is filed, the Association is entitled to recover from a delinquent Owner all fees, costs, and expenses, including reasonable attorneys' fees, that the Association incurs in collecting such delinquent assessments. In the event suit is filed, neither the action nor any judgment entered therein shall be a waiver of the lien of the Association. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Property or abandonment of their Lot.

Section 6. Subordination of the Lien to Mortgages. The lien with respect to any assessment provided for herein shall be prior to any homestead exemption and all other liens and encumbrances on a Lot, except:

- (a) A first mortgage of record;
- (b) A lien for real estate taxes and other governmental assessments or charges; and
- (c) Liens and encumbrances recorded before the recordation of this Declaration.

Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof shall extinguish the lien of such assessments which became due prior to such sale or transfer.

## ARTICLE VII GENERAL PROVISIONS

Section 1. Records. The Board of Directors shall keep detailed records of the actions of the Board, including minutes of the meetings of the Board and minutes of the meetings of the Association. The Board of Directors shall also keep detailed and accurate financial records in chronological order of the receipts and expenditures of common obligations or of individual obligations for which the Board is serving as the conduit for payment of expenses. The Board of Directors shall also maintain an assessment roll in which there shall be an account for each Lot. Such account shall designate the name and address of the Owner or Owners of the Lot, the amount of each assessment against the Owner, the dates and amounts

on which the assessment becomes due, the amounts paid upon the account, and the balance due on the assessments.

Section 2. Indemnification of Directors, Officers, Employees, and Agents. The Association shall indemnify any Director, officer, employee, or agent who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative, or investigative (other than an action by the Association) by reason of the fact that they are or were a Director, officer, employee or agent of the Association or are or were serving at the request of the Association as a Director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fee), judgments, fines and amounts paid in settlement actually and reasonably incurred by said person in connection with such suit, action or proceeding if they acted in good faith and in a manner they reasonably believed to be in, or not opposed to, the best interest of the Association, and, with respect to any criminal action or proceedings, had no reasonable cause to believe their conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or with a plea of nolo contendere or its equivalent, shall not of itself create a presumption that a person did not act in good faith and in a manner which they reasonably believed to be in, or not opposed to, the best interest of the Association, and, with respect to any criminal action or proceeding, had reasonable cause to believe their conduct was unlawful. Payment under this clause may be made during the pendency of such claim, action, suit or proceeding as and when incurred, subject only to the right of the Association to reimbursement of such payment from such person, should it be proven at a later time that such person had no right to such payments. All persons who are ultimately held liable for their actions on behalf of the Association as a Director, officer, employee, or agent shall have a right of contribution over and against all other Directors, offices, employees, or agents and members of the Association who participated with or benefited from the acts which created said liability.

Section 3. Enforcement. The Association and the Owners within the Property or any mortgagee on any Lot shall have the right to enforce all of the covenants, conditions, restrictions, reservations, easements, liens, and charges now or hereinafter imposed by any of the provisions of this Declaration as may appertain specifically to such parties or Owners by any proceeding at law or in equity. Failure by either the Association or by any Owner or mortgagee to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of their right to do so thereafter.

Section 4. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall not affect the other provisions hereof and the same shall remain in full force and effect.

Section 5. Amendment. Except as otherwise provided in the restrictions set forth elsewhere herein, this Declaration may be amended at any time by an instrument approved by not less than seventy-five percent (75%) of the total votes of the Owners. Any amendment must be executed, recorded, and certified as provided by law. Provided, however, that no amendment of this Declaration shall effect an amendment of the Bylaws or the Articles of

The undersigned hereby certify that this DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR WAPITI PROPERTY OWNERS' ASSOCIATION has been adopted by one-hundred percent (100%) of the total votes of the Owners.

My commission expires: \_\_\_\_\_