

**DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
WALIPINI SUBDIVISION**

THIS DECLARATION is made effective as of _____, 2020 by Bradley N. Dickey ("Grantor"). All capitalized terms not otherwise defined in the text hereof are defined in Article 3.

1. RECITALS

The property potentially subject to this Declaration includes, but is not limited to, the property legally described on Exhibit A attached hereto and made a part hereof by this reference ("Walipini Subdivision"). Any other property otherwise annexed into Walipini Subdivision shall be subject to this Declaration through a Supplemental Declaration and all property made subject to this Declaration shall be referred to as the Property." Unless and until a Supplemental Declaration is filed with the Teton County Recorder's Office, none of the property identified on Exhibit A or otherwise shall be subject to this Declaration.

The purpose of this Declaration is to set forth the basic restrictions, covenants, limitations, easements, conditions, and equitable servitudes (collectively "Restrictions") that apply to the Property. The Restrictions are designed to preserve the Property's value, desirability, and attractiveness, to ensure a well integrated high-quality development, and to guarantee adequate maintenance of the Common Area, and the Improvements located thereon, in a cost effective and administratively efficient manner.

2. DECLARATION

Grantor declares that the Property shall be held, sold, conveyed, encumbered, hypothecated, leased, used, occupied, and improved subject to the following terms, covenants, conditions, easements, and restrictions, all of which are declared and agreed to be in furtherance of a general plan for the protection, maintenance, subdivision, improvement, and sale of the Property, and to enhance the value, desirability, and attractiveness of the Property. The terms, covenants, conditions, easements, and restrictions set forth herein:

A. shall run with the land constituting the Property, and with each estate therein, and shall be binding upon all persons having or acquiring any right, title, or interest in the Property or any lot, parcel, or portion thereof;

B. shall inure to the benefit of every lot, parcel, or portion of the Property and any interest therein; and,

C. shall inure to the benefit of, and be binding upon, Grantor, Grantor's successors in interest, and each grantee or Owner, and such grantee's or Owner's respective successors in interest, and may be enforced by Grantor, by any Owner, or such Owner's successors in interest, as hereinafter described.

3. DEFINITIONS

"Building Lot." Building Lot shall mean one or more lots as specified or shown on any Plat and/or by Supplemental Declaration, upon which Improvements may be constructed.

"Declaration." Declaration shall mean this Declaration as it may be amended from time to time.

"Grantor." Grantor shall mean Bradley N. Dickey and his successors in interest, or any person or entity to whom the rights under this Declaration are expressly transferred by Grantor or its successor.

"Improvement." Improvement shall mean any structure, facility, or system, or other improvement or object, whether permanent or temporary, which is erected, constructed, or placed upon, under, or in, any portion of the Property, including but not limited to buildings, fences, streets, drives, driveways, sidewalks, bicycle paths, curbs, landscaping, signs, lights, mail boxes, electrical lines, pipes, pumps, ditches, waterways, and fixtures of any kind whatsoever.

"Owner." Owner shall mean the person or other legal entity, including Grantor, holding fee simple interest of record to a Building Lot which is a part of the Property, and sellers under executory contracts of sale, but excluding those having such interest merely as security for the performance of an obligation.

"Walipini Subdivision." Walipini Subdivision shall mean the Property.

"Person." Person shall mean any individual, partnership, corporation, or other legal entity.

"Plat." Plat shall mean any subdivision plat covering any portion of the Property as recorded at the office of the County Recorder, Teton County, Idaho, as the same may be amended by duly recorded amendments thereof.

"Property." Property shall mean the real property described in Exhibit A, including each lot, parcel, and portion thereof and interest therein, including all water rights associated with or appurtenant to such property, which are brought within the jurisdiction hereof by Supplemental Declaration or otherwise. The Property also may include, at Grantor's sole discretion, such additional property in addition to that described in Exhibit A as may be annexed by means of Supplemental Declaration as provided herein.

“Supplemental Declaration.” Supplement Declaration shall mean any Supplemental Declaration including additional covenants, conditions, and restrictions that might be adopted with respect to any portion of the Property.

4. GENERAL AND SPECIFIC RESTRICTIONS

4.1. Structures - Generally

All structures are to be designed, constructed and used in such a manner as to promote compatibility between the types of use contemplated by this Declaration.

4.1.1. Use and Size of Dwelling Structure. All Building Lots shall be used exclusively for residential purposes. Each Building Lot may be improved with up to three structures, a principal residential structure, and two separate ancillary structures such as a garage, guest house, and or a barn. Each Building Lot’s principal residential structure shall have a minimum size of 2,500 square feet exclusive of garage and a maximum size of 8,000 square feet exclusive of garage. The size of any ancillary structures must be approved by the Declarant as part of the Architectural Review requirements set forth below, but in no event will any ancillary structure exceed 8,000 square feet in size.

4.1.2. Architectural Review. No Improvements which will be visible above ground or which will ultimately affect the visibility of any above ground Improvement shall be built, erected, placed, or materially altered or removed from the Property unless and until the building plans, specifications, and plot plan or other appropriate plans and specifications have been reviewed in advance by the Declarant and the same have been approved in writing. The review and approval or disapproval may be based upon the following factors - size, height, design and style elements, mass and form, topography, setbacks, finished ground elevations, architectural symmetry, drainage, color, materials, physical or aesthetic impacts on other properties, and any and all other factors which the Declarant, in his reasonable discretion, deems relevant.

4.1.3. Setbacks and Height. No residential or other structure (exclusive of fences and similar structures) shall be placed nearer to the Building Lot lines or built higher than permitted by the Plat, by any applicable zoning restriction, by any conditional use permit, or by a building envelope.

4.1.4. Accessory Structures. Detached garages shall be allowed if in conformity with the provisions of this Declaration, and as approved by the Declarant.

4.1.5. Fencing. Only wildlife friendly fencing will be permitted as specified by the Declarant.

4.1.6. Lighting. Exterior lighting, including flood lighting, shall be part of the architectural concept of the Improvements on a Building Lot. Fixtures, standards, and all exposed accessories shall be harmonious with building design, and shall be as approved

by the Declarant. Lighting shall be restrained in design, and excessive brightness shall be avoided.

4.2. No Further Subdivision

No Building Lot may be further subdivided, nor may any easement or other interest therein, unless such subdivision complies with all applicable laws.

4.3. Nuisances

No rubbish, debris, junk, inoperative cars or trucks, waste, bulk materials of any kind shall be placed or permitted to accumulate anywhere upon the Property, and no odor shall be permitted to arise therefrom so as to render the Property or any portion thereof unsanitary, unsightly, offensive, or detrimental to the Property or to its occupants, or to any other property in the vicinity thereof or to its occupants. No noise or other nuisance shall be permitted to exist or operate upon any portion of the Property so as to be offensive or detrimental to the Property or to its occupants or to other property in the vicinity or to its occupants. Without limiting the generality of any of the foregoing provisions, no exterior speakers, horns, whistles, bells, or other sound devices, flashing lights, or search lights, shall be located, used, or placed on the Property.

4.4. Exterior Maintenance

No Improvement shall be permitted to fall into disrepair, and each Improvement shall at all times be kept in good condition and repair.

4.5. Parking

No parking is allowed at any time on the common roads within the subdivision, except in instances of temporary gatherings.

5. COMPLIANCE WITH NATURAL RESOURCE ANALYSIS

5.1. **Natural Resource Analysis.** Biota Research and Consulting Inc. prepared a Natural Resources Analysis for the Property, which is hereby incorporated into this Declaration by reference (the "NRA").

5.2. **Compliance.** All Owners of Building Lots will at all times comply with the NRA and in particular Appendix 3 of the NRA regarding general land use recommendations. No Improvements will be made that do not comply with the NRA.

6. EASEMENTS AND SHARED COSTS

6.1. Easements of Access

All Owners of Building Lots will have a perpetual easement for access, ingress and egress over that certain 60 foot wide road and utility easement depicted on the Plat as Walipini

Lane. Such easement shall run with the land, and may be used by Grantor, and by all Owners, their guests, tenants and invitees, residing on or temporarily visiting the Property, for pedestrian walkways, vehicular access and such other purposes reasonably necessary for the use and enjoyment of a Building Lot. All Owners of Building Lots will contribute equally to the maintenance of Walipini Lane. Maintenance will include but not be limited to snow removal and grading. The determination as to how much maintenance and when such maintenance is performed will be made by the vote of a majority of the Owners of Building Lots.

6.2. Drainage and Utility Easements

Grantor expressly reserves for the benefit of all the Property reciprocal easements of access, ingress and egress for all Owners to and from their respective Building Lots for installation and repair of utility services, for drainage of water over, across and upon adjacent Building Lots, and Common Areas, resulting from the normal use of adjoining Building Lots or Common Areas, and for necessary maintenance and repair for any improvement including fencing, retaining walls, lighting facilities, mailboxes and sidewalk abutments, trees, and landscaping.

6.3 Fire Pond

A fire pond and delivery water system will be utilized for the purposes of providing a potential emergency water supply for fire suppression and protection. These systems are to be maintained and the costs shared equally between the Owners of the Building Lots. Maintenance will be provided at a minimum in accordance with any fire protection resolution or ordinance adopted by Teton County or any Fire Protection District governing the Property. Easement rights to and around the pond shall be granted to emergency crews for the purpose of utilizing the pond. Easement shall also be granted to the Building Lots for the purpose of maintaining the pond.

6.4 Weed Control

All Owners of Building Lots will contribute equally to the control of noxious weeds on all Property. Weed control will be performed by a single contractor agreed to by a majority of the Owners and will be done at a minimum to comply with County requirements. The determination as to how much weed control is performed will be made by the vote of a majority of the Owners of Building Lots. Easement rights over the property shall be granted to the agreed upon contractor and the Owners for the purpose of performing weed control.

7. MISCELLANEOUS

7.1. Assessments

Each Building Lot Owner shall be responsible for his or her pro-rata share of all costs associated with the snow removal, road maintenance, fire pond maintenance, dust control, and weed control. On a yearly basis, the Building Lot Owners shall agree on fees to be assessed against each Building Lot and notify the respective Owners of the same for the following year.

Unless agreed otherwise, annual assessments shall be paid in quarterly installments during the fiscal year, and each installment shall be due on the first day of January, April, July and October. Failure to pay the fees can result in a lien being placed on a Building Lot and/or additional legal action. Any installment or other portion of an assessment not paid within 15 days after its due date shall be delinquent and shall be subject to interest and late charges not to exceed the maximum rate permitted by law, as well as all other additional charges.

7.2. Term

The easements created hereunder shall be perpetual, subject only to extinguishment by the holders of such easements as provided by law. The covenants, conditions, restrictions, and equitable servitudes of this Declaration shall run until in perpetuity unless amended as herein provided.

7.3. Amendment.

7.3.1. **By Grantor.** Except as provided in below, until the recordation of the deeds to Building Lots one and three in the Property out of Declarant's name, the provisions of this Declaration may be amended, modified, clarified, supplemented, added to (collectively, "amendment") or terminated by Grantor by recordation of a written instrument setting forth such amendment or termination.

7.3.2. **By Owners.** Except where a greater percentage is required by express provision in this Declaration, the provisions of this Declaration, any amendment shall be by an instrument in writing signed and acknowledged by all of the Owners, and such amendment shall be effective upon its recordation with the Teton County Recorder.

7.4. Enforcement and Non-Waiver.

7.4.1. **Right of Enforcement.** Except as otherwise provided herein, any Owner of any Building Lot shall have the right to enforce any or all of the provisions hereof against any property within the Property and Owners thereof.

7.4.2. **Violations and Nuisances.** The failure of any Owner of a Building Lot to comply with any provision hereof is hereby declared a nuisance and will give rise to a cause of action in any Owner of Building Lot(s) within the Property for recovery of damages or for negative or affirmative injunctive relief or both.

7.4.3. **Violation of Law.** Any violation of any state, municipal, or local law, ordinance, or regulation pertaining to the ownership, occupation or use of any property within the Property is hereby declared to be a violation of this Declaration and subject to any or all of the enforcement procedures set forth in this Declaration and any or all enforcement procedures in law and equity.

7.4.4. **Remedies Cumulative.** Each remedy provided herein is cumulative and not exclusive.

7.4.5. **Non-Waiver.** The failure to enforce any of the provisions herein at any time shall not constitute a waiver of the right to enforce any such provision.

7.5. **Interpretation**

The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development and operation of the Property. This Declaration shall be construed and governed under the laws of the State of Idaho.

7.5.1. **Restrictions Construed Together.** All of the provisions hereof shall be liberally construed together to promote and effectuate the fundamental concepts of the development of the Property as set forth in the recitals of this Declaration.

7.5.2. **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 herein.

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

7.5.4. **Captions.** All captions and titles used in this Declaration are intended solely for convenience or reference and shall not affect that which is set forth in any of the provisions hereof.

7.6. **Successors and Assigns**

All references herein to Grantor, Owners, or person shall be construed to include all successors, assigns, partners, and authorized agents of such Grantor, Owners, or person.

[Signature Page Follows]

IN WITNESS WHEREOF, the Grantor has executed this Declaration effective as of the date first set forth above.

Bradley N. Dickey

STATE OF IDAHO)

) ss.

COUNTY OF TETON)

On this ____ day of _____, in the year of 2020, before me _____, personally appeared Bradley N. Dickey, proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument, and acknowledged that he executed the same.

Notary Public

[Seal]

My Commission Expires on _____

EXHIBIT A

Legal Description of the Property