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Index to: DECLARATION OF COVENANTS

*N. G. Boyle*

FIRST DECLARATION  
OF  
COVENANTS, CONDITIONS, RESTRICTIONS  
AND MAINTENANCE AND ARCHITECTURAL CONTROL  
FOR  
*TETON SADDLEBACK VISTAS*

Correction to Instrument # 173855

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**FIRST RESTATED DECLARATION  
OF  
COVENANTS, CONDITIONS, RESTRICTIONS  
AND MAINTENANCE AND ARCHITECTURAL CONTROL  
FOR TETON SADDLEBACK VISTAS**

This Declaration is made \_\_\_\_\_, 2006 by the undersigned owners of Lots within that certain real estate development located in Driggs, Teton County, Idaho and commonly known as "Teton Saddleback Vistas".

**RECITALS**

- A. Teton Saddleback Vistas is a \_141 Lot subdivision which was originally developed by Rick W. Massie, individual.  
The Lots comprising Teton Saddleback Vistas are more particularly described in "Exhibit "A"" and are collectively referred to in this Declaration as Teton Saddleback Vistas. These CC&Rs shall not apply to block 1, lots 1&8 and block 2 lot 1. These lots are scheduled to be presented before Teton County for rezone to commercial other intended uses/zonings at the discretion of the developer. These lots will not come under any design review or conditions of Teton Saddleback Vista. However should the proposed rezone fail the lots would be subject to all the conditions of the CC&Rs with the exception that these lot could be subdivided again into smaller residential lots per County Zoning conditions.
- B. Declarant deemed it to be desirable to impose a common plan and scheme of development for architectural approval, control and maintenance of Teton Saddleback Vistas by recording a document entitled "Declaration of Covenants, Conditions, Restrictions and Maintenance and Architectural Control Agreement for Teton Saddleback Vistas". It was the further purpose and intent of the Original Declaration to impose covenants, conditions, restrictions and equitable servitudes on the real property comprising Teton Saddleback Vistas for the purpose of enforcing, protecting and preserving the value, desirability, and attractiveness of Teton Saddleback Vistas and the residences and other improvements constructed within the development.
- C. Right to Farm Act. Idaho Code Chapter 45, Sections 22-4501 through 22-4504  
The Idaho "Right to Farm Act" shall be in full force and effect concerning all lots within Teton Saddleback Vistas Subdivision.

## ARTICLE I Definitions

In addition to other definitions provided for herein, the following terms shall have the following meanings:

Section 1.01. "Architectural Committee" or "Committee" shall mean the committee created pursuant to Section 3.02 of this Declaration and charged with architectural review and approval of Improvement projects on Lots within Teton Saddleback Vistas, as more particularly provided in Article III, below.

Section 1.02. "Architectural Rules" means any rules adopted by the Architectural Committee pursuant to Section 3.11, below.

Section 1.03. "Association" means the Teton Saddleback Vistas Owners Association, an unincorporated association, whose membership is comprised of all Owners of Lots within Teton Saddleback Vistas.

Section 1.04. "Association Board" and "Board" means the Board of Directors of the Association.

Section 1.05. "City" means the City of Driggs and its various departments, divisions, employees and representatives.

Section 1.06. "Common Expenses" means and refers to the common expenses of the Association, as reflected in the Association's annual budget, required to properly perform the following duties and responsibilities only: (a) maintenance of administration and enforcement of the Architectural Committee; (b) expenses associated with the maintenance, repair and eventual replacement of the "Commonly Maintained Areas" of Teton Saddleback Vistas; (c) if and to the extent insurance is maintained by the Association pursuant to Section 8.01, below, the cost of insurance premiums for such insurance; and (d) other reasonable expenses associated with the administration, operation, and management of the Association that would be ordinarily and customarily incurred by an association performing the same duties and responsibilities as the Association in a subdivision of similar size and character.

Section 1.07. "Commonly Maintained Areas" shall mean: (i) the private and public streets which provides access to the Lots in Teton Saddleback Vistas and improvements associated with that street, such as any of the common areas that exist, along with the common area at the entrances to Teton Saddleback Vistas Road; (ii) lighting at the entrance to the development; (iii) walls/fencing that separates lots from the common areas at the entrances to Teton Saddleback Vistas Estates and fencing that separates lots from adjoining boundary properties not within Teton Saddleback Vistas Estates; (iv) any security gates at the entrances to the development and their components; (v) all landscaping and associated irrigation equipment located within the Private Planting and Landscape Easement as shown on the subdivision Map; (vi) any fire ponds, pumps and equipment; (vii) maintenance of irrigation canals.

Section 1.08. "County" means the County of Teton, State of Idaho, and its various departments, divisions, employees and representatives.

Section 1.09. "Declarant" means the original subdividers of Teton Saddleback Vistas, namely Rick W. Massie an individual.

Section 1.10. "Declaration" means this instrument as it may be amended from time to time in accordance with the amendment provisions of Section 11.03, below.

Section 1.11. "Governing Documents" means this Declaration, the Bylaws for Teton Saddleback Vistas Owners Association, and any Architectural Rules adopted pursuant to Section 3.11, below, as such documents may be amended from time to time.

Section 1.12. "Improvement" means and includes: (a) the erection of any Structures, as defined in Section 1.18, below, on a Lot; (b) the planting of any substantial trees, hedges, shrubs, bushes and major landscaping of any kind; (c) any excavation, fill, ditch, diversion dam or other thing or device which affects or alters the natural flow of surface or subsurface water from, upon, under or across any portion of the Subdivision; and (d) any utility line, conduit, pipe or other related facility or equipment. "Improvement" shall also include any exterior modification or remodeling of existing Structures.

Section 1.13. "Lot" or "Lots" shall mean any numbered lot described in Exhibit "A" to this Declaration, and any Lot or Lots which may be created by a legal re-subdivision of any Lot or Lots described in Exhibit "A". No lots within Teton Saddleback Vistas Subdivision may be further divided. Section 1.13 shall not apply to block 1, lots 1&8 and block 2 lot 1. These lots are scheduled to be presented before Teton County for rezone to commercial other intended use at the discretion of the developer. However should the proposed rezone fail the lots would be subject to all the conditions of the CC&Rs with the exception that these lot could be subdivided again into smaller residential lots per County Zoning conditions.

Section 1.14. "Map" shall mean the map of Teton Saddleback Vistas, which map recorded \_\_\_\_\_, 2006

Section 1.15. "Mortgage" means a mortgage or deed of trust encumbering a Lot. A "mortgagee" shall include the beneficiary under a deed of trust.

Section 1.16. "Owner" means each person or entity holding a fee ownership interest in a Lot, as shown in the Official Records of Teton County, Idaho. The term "Owner" shall not include persons or entities who hold an interest in a Lot merely as security for the performance of an obligation.



Section 1.17. " Teton Saddleback Vistas " means the real property described in Exhibit "A". and any Improvements constructed or to be constructed thereon.

Section 1.18. "Structure" shall mean any tangible thing or device to be fixed permanently or temporarily to real property including, without limitation, any building, garage, driveway, walkway, concrete pad, asphalt pad, fence, wall, pole, sign, antennae, swimming pool, spa, tennis court or trash enclosures.

## ARTICLE II

### Association and Owner Maintenance Obligations

Section 2.01. Association Maintenance Responsibility. Unless and until such responsibilities are delegated to, and accepted or assumed by, a state, local or municipal governmental agency or entity, the Association shall be responsible for maintaining the areas of Teton Saddleback Vistas described as "Commonly Maintained Areas." Repairs and maintenance to be undertaken and performed to the Commonly Maintained Areas by the Association shall be such at a minimum as shall be required to maintain and repair those areas as originally constructed, subject to the rights of the Owners, in accordance with Section 5.12, to cause improvement over and above the maintenance and repair herein provided to take place.

Section 2.02. Owner Maintenance Responsibilities. Each Owner shall be responsible for the following maintenance, repair and replacement duties:

(a) Residence and Lot Maintenance Each Owner shall be obligated to repair and maintain his or her Lot and the residence, garage, and other Structures and Improvements erected or placed on the Lot (including, without limitation, landscaping) in such manner as to present a well-maintained, high quality appearance so as to prevent the property from becoming unsightly. Without limiting the generality of the foregoing, the vegetation and landscaping on Lots shall be planted or maintained by the Owner or resident in such a manner as to reduce the risk of fire, annually eliminate weeds that the county deems nuisance, rubbish and debris, and prevent or retard shifting or erosion of soils. Landscaping irrigation by well water shall be limited to .5 (1/2) acre.

(b) Drainage Courses, Ditches and Swales. Each Owner shall keep drainage courses, ditches and swales on or adjacent to his or her Lot free and clear of all obstructions, and shall, in cooperation with contiguous property Owners, maintain all such drainage ditches, swales and culverts common to their Lots in good order. No Owner or resident shall materially add to the natural water volume of any drainage course without making adequate provisions with respect to potential impacts on neighboring Lots. Any such alterations, obstructions, or additions to water volume shall be undertaken in compliance with all applicable governmental ordinances. Any lots that have a canal, canal crossing, and canal culvert shall cooperate with the Canal purveyor so as to allow Canal purveyor full unrestricted access to the canal system.

(c) Fences and Landscaping. Each Owner shall maintain all fences and landscaping located on such Owner's Lot in accordance with the provisions of Section 4.01(d) and (e), below.

Section 2.03. Association Recovery of Costs of Certain Repairs and Maintenance. If the need for maintenance, weed abatement, irrigation canal maintenance or repair, which would otherwise be the Association's responsibility hereunder is caused through the willful or negligent acts of an Owner, his or her family, guests, tenants, or invitees, and is not covered or paid by insurance maintained by the Association or any liability insurance maintained by the responsible Owner, the cost of such maintenance or repairs shall be subject to recovery by the Association from the responsible Owner and the Owner shall be obligated to pay such expenses within thirty 30 days following receipt of an itemized billing therefore, subject to the right of the Owner to request a hearing on the matter in accordance with Section 10.04, below.

Section 2.04. Cooperative Maintenance Obligations. To the extent necessary or desirable to accomplish the Association's maintenance obligations within the Commonly Maintained Areas of Teton Saddleback Vistas, individual Owners shall cooperate with the Association and its agents and maintenance personnel in the prosecution of its work.

Section 2.05. Liability of Owners For Damages Associated With Commonly Maintained Areas. Unless otherwise provided by law, to the extent that the loss is not covered by insurance maintained by the Association pursuant to Article VIII, below, each Owner of a Lot that is subject to this Declaration agrees to bear equal liability for any personal injury or damage to property of any worker employed by the Association to make repairs to, or to maintain any portion of, the Commonly Maintained Areas of Teton Saddleback Vistas or to any third person resulting from or arising out of the Association's performance of its repair and maintenance obligations hereunder.

### **ARTICLE III** **Architectural Committee**

Section 3.01. General Statement Regarding Approval of Improvements and Standards for Approval. Prior to commencing construction or installation of any substantial Improvement within Teton Saddleback Vistas the Owner planning such Improvement must submit to the Architectural Committee a written request for approval. The Owner's request shall include structural plans, specifications and plot plans conforming to the requirements imposed by Sections 3.04 and 3.05, below. Article III shall not apply to block 1, lots 1&8 and block 2 lot 1. These lots are scheduled to be presented before Teton County for rezone to commercial other intended use at the discretion of the developer. These lots will not come under any design review or conditions of the of Teton Saddleback Vista **Architectural Committee**. However should the proposed rezone fail the lots would be subject to all the conditions of the CC&Rs with the exception that these lot could be subdivided again into smaller residential lots per County Zoning conditions.

Approval or disapproval of the Owner's requested improvement shall be based on a finding by the Architectural Committee that the proposed Improvement (a) conforms with the Governing Documents and the Architectural Rules as may be adopted from time to time by the Association; (b) will be in harmony with external design of other Structures and/or landscaping within Teton Saddleback Vistas; and (c) will not unreasonably interfere with the enjoyment of any other Owner of his or her property, including, without limitation, the rights of other Owners to enjoy scenic and solar access free of unreasonable obstructions.

The purpose of the Architectural Committee is to achieve and maintain the aesthetic goals of the Declarant in order to implement, protect and further the common plan and scheme of development contemplated by this Declaration. The function of the Committee is to review and act upon any request for approval of Improvements submitted by an Owner in order to ensure compliance with the building restrictions and other requirements of this Declaration and the Architectural Rules. The Committee shall also have the right to inspect projects during the course of construction and upon completion of the project to make sure all Improvements conform with the Owner's plans and specifications as approved by the Committee. It is not the purpose of the Architectural Committee to deprive any individual Owner from having a home of unique design and quality, but rather to protect the Teton Saddleback Vistas developments, as a whole, against non-conforming designs or construction that is substandard in quality. Therefore, exceptions or variances to any of the restrictions contained in Article IV (Minimum Construction Standards), may be granted by the Architectural Committee, in accordance with Section 3.10, below, after proper written application has been made by the requesting Owner. Only written variances shall be granted.

The building requirements and limitations of Article IV, below, are not intended to usurp any standards, limitations or requirements established by the County of Teton and either existing now or imposed by future ordinance or regulation. Instead, these restrictions are intended to supplement those County standards in furtherance of the common plan and scheme of development of Teton Saddleback Vistas.

Section 3.02. Committee Members, Organization and Term. Until the property sold out to 90%. Rick Massie shall have the right to appoint the members of the Architectural Committee. After the property is sold out to 90% the Architectural Committee shall consist of three persons appointed by the Board of Directors from among the Owners of Lots in the development. Reasonable efforts shall be made by the Board to appoint person to serve on the Architectural Committee who are actively engaged and/or experienced in land development, land planning, architecture, engineering or such other associated fields as would lend background experience to such person to responsibly judge the intent of these restrictions and the conformity of submitted plans and specifications to the development plan and scheme of Teton Saddleback Vistas. The term of each member of the Architectural Committee shall be a period of five years, unless the member is removed or resigns prior to the expiration of his or her term.

Section 3.03. Action by the Architectural Committee. The Architectural Committee will review plans and specifications submitted in accordance with Sections 3.04 and 3.05, below. Any approval of plans and specifications by the Committee must be in writing; provided, however, that if no notice of rejection is received by the Owner within thirty (30) days or the date the Committee receives a request for approval in substantial compliance with Section 3.04 and 3.05, below, the proposed Improvement project shall be deemed to be approved. All decisions of the Committee will be final upon the Committee's written approval or rejection. Applicant shall have the right to appeal a decision to the entire Association with a two-thirds majority necessary to overcome the decision after the property has been sold out to 90%.

The action or inaction of the Committee or its agents, when the Committee is exercising its discretion in enforcing this Declaration in good faith, shall not be a basis for damages to any Owner herein, or any other person, nor shall any such action or inaction by the Committee or any member of the Committee or their officers or agents, individually or collectively, constitute a cause of action for damages or equitable relief to any Owner herein or any other person. The Committee or any member of the Committee, or its agents, acting singularly or together, shall not be responsible for any loss or damage, or be liable in any other way for any errors or defects, either latent or patent, in the plans and specifications submitted for approval, or any building structure or drainage courses or systems erected or constructed in accordance with such plans and specifications. Committee approval of an Owner's plans shall not constitute a representation, warranty or guarantee whether expressed or implied, that such plans and specifications comply with good engineering design or with zoning or building ordinances, or other governmental regulations or restrictions.

Section 3.04. Submission of Preliminary Plans. The Owner of any Lot upon which construction is contemplated shall submit to the Committee (**first step**) a set of preliminary working drawings or plans which shall consist of a plot plan, floor plan and elevation. Upon review, the Committee may request additional drawings for clarification. The purpose of this preliminary review is to expedite the final review process by identifying potential problems and concerns at an early stage in the improvement process when alterations or modifications in plans should not be difficult or costly. The Architectural Rules may contain provisions exempting minor Improvement projects and/or landscaping projects from the requirements of this Section 3.04.

Section 3.05. Submission of Final Plans and Specifications. Upon approval of the preliminary plans (**first step**), two sets of final plans and specifications shall be submitted to the Committee for final approval (**second step**). Such plans and specifications shall describe in detail the floor plan, elevations, structural elements, use of materials, heights and dimensions, site placement, fences, exterior color schemes, grading, drainage, access, landscaping and patio plans and any other pertinent data as may be required to fully illustrate the intended design, construction and use of the proposed structure. Physical samples of exterior materials and colors shall be submitted for approval if required.

Before giving any final approval, the Committee may require the plans and specifications to be modified as to design, size, location, use of materials or modification of proposed exterior color schemes and may condition approval on implementation of such modifications. The approval by the Committee shall not relieve the Owner from complying with any requirements of any public authority having jurisdiction. Committee approval of any plans or specifications shall not be deemed to be a waiver by the Committee of its right to object to any of the features or elements embodied in such plans and specifications if and when the same features or elements are embodied in any subsequent plans or specifications submitted for approval at other building sites.

Section 3.06. Proceeding With Work. Upon receipt of approval from the Architectural Committee (**third step**), the Owner shall, as soon as practicable, satisfy all conditions thereof and diligently proceed with the commencement of construction pursuant to said approval and, in all cases, complete construction within two years from the date of such approval or such earlier period as may reasonably be prescribed by the Committee as a condition to plan approval. In the case of building Improvements the requirements of this Section shall be deemed to have been met if the Owner has completed construction of the building's foundation and all exterior surfaces (including the roof, exterior walls, windows and doors) within one year of the date of Architectural Committee approval.

If the Owner fails to comply with this Section, any approval given pursuant to this Article III shall be deemed revoked unless, upon written request of the Owner made prior to the expiration of the initial two year period, the Architectural Committee extends the time for commencement or completion. No such extension shall be granted except upon a finding by the Architectural Committee that there has been no change in the circumstances upon which the original approval was granted and that the Owner has a bona fide intention and ability to complete the project within the time allowed by the requested extension.

Section 3.07. Failure to Complete Work. Unless the Owner has been granted an extension of time to complete the project by the Architectural Committee or, completion is rendered impossible or would result in great hardship to the Owner due to strikes, fires, national emergencies, natural calamities, acts of God, or other factors beyond the control of the Owner or his or her agents the Association shall proceed in accordance with the provisions of Subparagraph 3.08(c), (d) and (e), below, as though the failure to complete the improvement project was a noncompliance with approved plans.

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Section 3.08. Inspection of Work by Architectural Committee. Inspection of the work relating to any approved improvement and correction of defects therein shall proceed as follows:

(a) During the course of construction of Improvement projects members of the Architectural Committee shall have the right to inspect the construction site at any reasonable time to confirm that construction is proceeding in accordance with the approved plans and specifications and any applicable Architectural Rules. Neither the Committee nor any

authorized agent, acting in good faith, shall be deemed guilty of, or liable in any manner for trespass while inspecting property for such purposes.

(b) Upon the completion of any work for which Architectural Committee approval is required under this Article, the Owner shall give the Architectural Committee a written notice of completion.

(c) Within thirty (30) days of receipt of a written notice of completion, the Architectural Committee, or its duly authorized representative, may inspect the Improvement to determine whether the project was constructed, reconstructed, altered or refinished in substantial compliance with the approved plans and any applicable Architectural Rules. If the Architectural Committee finds that the Improvement was not done in substantial compliance with the approved plans, then the Committee shall give the Owner a written notice of noncompliance within the 30-day inspection period detailing those aspects of the project that must be modified, completed or corrected.

(d) If the Owner fails to remedy any noncompliance within thirty (30) days from the date of receipt of a notice of noncompliance, the Architectural Committee shall notify the Board of Directors of the Association in writing of such failure. The Board shall then set a date on which a hearing before them shall be held regarding the alleged noncompliance. The hearing date shall be not more than thirty (30) days nor less than fifteen (15) days after the notice of the noncompliance is given by the Association to the defaulting Owner and the Architectural Committee and, in the discretion of the Board of Directors, to any other interested party.

(e) At the hearing, the Owner, a representative(s) of the Architectural Committee, and any other interested Owner, may present information relevant to the question of the alleged noncompliance. After considering all such information, the Committee shall determine whether there is a noncompliance and, if so, the nature thereof. If a noncompliance exists, the Committee shall require the Owner to remedy or remove the non-complying elements of the project within such period or within any extension of such period as the Committee in the reasonable exercise of its discretion may establish. If the Owner fails to take corrective action after having a reasonable opportunity to do so, the Association may either remove the non-complying Improvement or remedy the noncompliance and, in either case, the Owner shall reimburse the Association for all expenses reasonably incurred to enforce this Declaration. In addition to the foregoing, this Declaration shall be deemed to vest the Association with the right to bring a proceeding in equity to enforce any provision hereof or any decision of the Architectural Committee if the Owner fails to take corrective action after having a reasonable opportunity to do so.

(f) If for any reason the Architectural Committee fails to notify the Owner of any noncompliance within thirty (30) days after receipt of the Owner's notice of completion, the Improvement shall be deemed to have been constructed in accordance with the approved plans.

Section 3.09. Non-Waiver and Absence of Liability. The approval by the

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Architectural Committee of any plans, drawings or specifications for any work done or proposed, or for any other matter requiring the approval of the Architectural Committee under this Declaration, or any waiver thereof, shall not be deemed to constitute a waiver of any right to withhold approval of any similar plan, drawing, specification or matter subsequently submitted for approval by the same or some other Owner.

Section 3.10. Variances. The Architectural Committee, in its sole discretion, shall be entitled to allow reasonable variances of any procedures specified in this Article or of any minimum construction standards specified in Article IV, below, in order to overcome practical difficulties, avoid unnecessary expense or prevent unnecessary hardships, provided the following conditions are met:

(a) If the requested variance will necessitate deviation from, or modification of, a property use restriction that would otherwise be applicable under this Declaration, the Architectural Committee must conduct a hearing on the proposed variance after giving at least ten (10) days prior written notice to all Owners. Any Owner may attend such a hearing and shall be entitled to comment on the requested variance.

(b) The Architectural Committee must make a good faith written determination that:  
(i) the requested variance does not constitute a material deviation from any restriction contained herein or that the proposal allows the objectives of the violated requirement(s) to be substantially achieved despite noncompliance; or (ii) that the variance relates to a requirement imposed by this Declaration or the Architectural Rules that is unnecessary or burdensome under the circumstances; or (iii) that the variance, if granted, will not result in a material detriment, or create an unreasonable nuisance, with respect to any other Lot, cCommonly Maintained Areas, or Owner within Teton Saddleback Vistas.

A variance granted with respect to an Improvement project on any particular Lot shall not necessarily entitle any other Owner to receive the same or any similar variance with respect to an Improvement proposed for any other Lot. Instead, the granting of variances shall depend on the particular facts and circumstances of each case submitted for consideration.

Section 3.11. Architectural Rules. The Architectural Committee may, from time to time and with approval of the Owners, adopt, amend and repeal, by unanimous vote of the Committee, rules and regulations to be known as Architectural Rules. Said rules shall interpret and implement the provisions of this Declaration by setting forth the standards and procedures for Architectural Committee review and guidelines for architectural design, placement of any work of Improvement or color schemes, exterior finishes and materials and similar features which are recommended for use in Improvement project within Teton Saddleback Vistas; provided, however, that said rules shall not be in derogation of the minimum standards required by this Declaration. In the event of any conflict between the Architectural Rules and this Declaration, the provisions of the Declaration shall prevail. The Architectural Rules may contain provisions modifying or waiving the requirements of Sections 3.04 and 3.05, above, in the case of minor projects that do not merit the preparation of detailed plans.

#### **ARTICLE IV**

##### **Minimum Construction Standards**

The following minimum construction standards shall govern any residential construction within Teton Saddleback Vistas and shall not apply to block 1, lots 1&8 and block 2 lot 1. These lots are scheduled to be presented before Teton County for rezone to commercial other intended use at the discretion of the developer. These lots will not come under any design review or conditions of the of Teton Saddleback Vista. However should the proposed rezone fail the lots would be subject to all the conditions of the CC&Rs with the exception that these lot could be subdivided again into smaller residential lots per County Zoning conditions.:

Section 4.01. On Site Construction.

(a) Set Backs. All residences with minimum set backs of 30 feet in the front, 30 feet at the sides and 40 feet in the rear of all Lots.

(b) Location on Lots. The location of the structure or structures on the building site and the landscaping shall bear such an overall relation to the adjacent properties as to create an aesthetically pleasing overall appearance.

(c) Lot Coverage. The Architectural Committee must approve the Lot coverage of any proposed structural Improvement, including location and footprint of all Structures.



(d) Fences. All fences, including the location, style, material, natural un-painted/ un-stained finish, height and function thereof, shall conform to the prior approved exhibit "Fencing". The Architectural Committee shall prior to installation approve all fencing. Chain link fences shall not be permitted.

Each Owner shall maintain and repair the fences located on the Owner's Lot, except for fences located in Commonly Maintained Areas, which the Association shall have maintenance and repair responsibility pursuant to Section 2.01, above. If the fencing is common to both Owner and Commonly Maintained Areas the cost to maintain shall be divided equally between the Owner and Commonly Maintained Areas. If the Owner fails or refuses to fully and faithfully comply with and conform to the provisions of this Section then the Association, acting on behalf of the other Owners, shall have the right to enter upon the defaulting Owner's Lot or Lots, in accordance with the procedural requirements of Section 10.04, below, and perform such work as may be necessary to fulfill the requirements of this Section. The Association shall be entitled to reimbursement for all such expenses incurred.

(e) Landscaping. Landscaping plans shall be submitted to the Architectural Committee along with the Owner's plans and specifications and must be approved in writing by the Committee prior to the commencement of any construction or site preparation. Landscaping shall be installed around each residence in the front, side and rear yard areas within a reasonable time after the completion of the residence. Landscaping shall be maintained in a neat and orderly condition at all times after installation so as to present a pleasing appearance to the Owners and occupants of other residences in Teton Saddleback Vistas. All approved landscaping must be completed within sixty (60) days after a notice of occupancy has been filed with the County for the Owner's residence and, in the event that the landscaping has not been completed by the occupancy date, Architectural Committee may, in its discretion, require an Owner to post a bond in an amount not to exceed one thousand dollars (\$5,000) in lieu thereof, in order to ensure the Owner's timely completion of the landscaping work. Owner's shall plant and maintain a landscape area of at least the minimum set backs, front, side, and rear as per section 4.01 a. Landscaping irrigation by well water shall be limited to .5 (1/2) acre. Landscaping is measured from structure, walks, drivewaysdriveways, or apperatusapparatus which ever is greater.

The Association, acting on behalf of the Owners collectively, hereby reserves the right at all times, in accordance with Section 10.04, below, and upon written or visual evidence of any implanted or inadequately maintained vacant or improved building site, to enter in or upon said building site after reasonable notice to the Owner to plant, cut or replant, trim, remove,

replace and/or maintain hedges, trees, shrubs and flowers within said building site and/or to keep cultivated and/or remove plants on any portion of the Lot, and to charge the cost thereof to the Owner. In accomplishing the purposes of this paragraph the Association and its agents shall not be deemed guilty of any manner of trespass.

(f) Lighting. Downward directed, low wattage, dark sky lightning is required for Teton Saddleback Vistas.

#### Section 4.02. Basic Structural Requirements.

(a) Type and Character of Design. Teton Saddleback Vistas is a Custom/Production home subdivision and all construction shall be of "Custom Quality". The exterior design of all building improvements shall in all cases be subject to final approval by the Architectural Committee. Wood shall be the dominate theme. No pre-fabricated homes shall be allowed to be built other than those of natural log "Log Custom Home" and those shall have a minimum log diameter of 10 inches.

Exterior design in each case shall be compatible with the overall scheme and design of Teton Saddleback Vistas. All barn structures shall have wood/rock exteriors.

(b) Colors. All exterior colors, textures and materials, including roof materials, must be adequately described in the plans and specifications (with an indication where the colors will be used upon the finished dwelling) and approved in writing by the Committee prior to initiation of construction. Color samples shall be submitted to the Committee along with the plans and specifications. The Committee is authorized to maintain a chart of approved colors.

(c) Residence Size Requirements. No residence shall be erected on any Lot having total floor area of the main structure, exclusive of open porches, garages, patios, exterior stairways and landings, of less than 2,200 square feet. In the event a residence has more than one story, the ground floor area shall have at least 1,500 square feet.

(d) New Materials and New Structures Only. No second hand materials shall be used

in construction of any building or structure without the prior written approval of the Architectural Committee. No buildings of any kind shall be removed from any other place to any building site, or from one building site to another without the prior written approval of the Architectural Committee.

(e) Garages. Each residence shall have at least a three (3) car garage which may be either of an attached or detached design. At least one garage door size shall be of size so as to accommodate oversized SUVs. No garages may face the street. All garages shall have adequate surfaces abutting them for maneuvering in and out of garages.

(f) Painting. All exterior wood and manufactured surfaces with the exception of brick or masonry shall be painted or stained. In order to maintain external harmony within Teton Saddleback Vistas, the Architectural Committee shall approve the colors of any exterior wall surface of any Structure or Improvement.

(g) Roof Design, Pitch and Materials. No flat roofs or rock roofs shall be permitted unless approved by the Committee. The roofing materials shall consist of one of the following: fire retardant wood shingles, slate or heavy or medium split cedar shakes (some composition roof materials may be allowed by the Committee. Other types of roofing materials may be submitted for review and approval by the Architectural Committee in its sole discretion.

(h) Licensed Contractor. All residence structures shall be constructed by a contractor licensed under the laws of the State of Idaho.

Section 4.03. Alterations, Additions, Remodeling, Redecoration of Exterior Portions of Structure. No alterations or additions to any exterior design or any color of any structure shall be made without the prior written approval of the Architectural Committee. The materials used for any such approved alteration must be in harmony with and compliment the original building or buildings. No approval is required to repaint or re-stain any structure with the same color scheme as previously used and approved by the Committee.

## ARTICLE V Uses Prohibited and Permitted

Section 5.01. Restriction on Use of Lots. No building other than one (1) detached single-family private residence, a private garage for the use of the occupants of such residence, and other usual and appropriate outbuildings, strictly incidental and appurtenant to a single-family residence, shall be erected or maintained on any Lot in Teton Saddleback Vistas. No use whatsoever except in connection with its use and improvement as the site and grounds of a single-family private residence shall be made of any Lot. The term "single-family private residence" is intended to exclude every form of boarding or lodging house, sanitarium, hospital and the like, but is not intended to exclude a separate "guest house" for the entertainment of social guests, nor persons employed upon the premises. No guest house shall be rented to a person who is not an employee for the occupants of the principal residence.

Section 5.02. Animals. No animals of any kind shall be raised, bred (dog breeding kennel operations not allowed), or kept on any Lot, or in any Commonly Maintained Area, except that dogs, cats, horses, mules or other common household pets may be kept on an Owner's Lot so long as no animal is kept, bred or maintained for any commercial purpose. Horses and mules may not be kept on any lots less than 3 acres. Animals shall only be allowed on the Commonly Maintained Areas when they are leashed or otherwise under the supervision and restraint of their Owner. No animal shall be left chained or otherwise tethered in the front of any residence as a common practice. Any pet deemed a nuisance by a majority of the Owners may not be kept or maintained within Teton Saddleback Vistas. Lots of more than 5 acres shall have the right to raise horses so long as the horses do not over graze the acres.

Section 5.03. Garages/Barns and Vehicles. Each Owner shall keep his or her garage area in a neat and orderly condition with all storage areas completely enclosed. Garages shall not be used for storing or parking campers, trailers, boats or recreational vehicles, or for any purpose which would prevent the Owner from parking his or her passenger vehicles in the garage.

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Each Owner shall keep his or her Barn area in a neat and orderly condition with all storage areas completely enclosed. Barns shall be used for horses, storing or parking campers,

trailers, boats or recreational vehicles, or for any purpose which would prevent the Owner from parking his or her passenger vehicles in the garage. Farm Tractors, implements, trailers or recreational vehicles may not be kept or stored in front, side or back yards. Farm Tractors, implements, trailers or recreational vehicles shall be stored inside barns and not stored outside.

Except for loading and unloading, or as permitted by a majority of the Owners, no vehicles shall be parked or stored in any Commonly Maintained Area or driveways for extended periods. The provisions of this Section shall not apply to vehicles while being used in the construction or repair of any Improvements on any Lot within Teton Saddleback Vistas.

No vehicle of any type shall be permanently or semi-permanently parked in any driveway, street or on any Commonly Maintained Area for reconstruction or repair and no dilapidated or inoperable vehicle, including vehicles without wheel(s) or an engine, shall be stored at any location within Teton Saddleback Vistas; provided, however, that the provisions of this Section shall not apply to emergency vehicle repairs.

Section 5.04. Antennas. Aerials and Satellite Dishes. Outside television antenna, aerial, satellite dish or similar device for the transmission or reception of television, radio, satellite, or other signals or any kind are prohibited, except:

(a) Antennas or satellite dishes with a diameter or diagonal measurement not greater than thirty-six inches (36") in diameter to the extent permitted by law which are designed to receive direct broadcast satellite services, video programming services via multi-point distribution services, or television broadcast signals (collectively "Permitted Device[s]") may be erected, placed or installed on a Lot, provided that:

(i) Any such Permitted Device is placed in the least conspicuous location on the residence or Lot at which an acceptable quality signal can be received and is either not visible from or is screened from the view from the street within Teton Saddleback Vistas or any neighboring Lot.

(ii) Reasonable restrictions which do not significantly increase the cost of installation of a Permitted Device or significantly decrease its efficiency or performance, including, without limitation, screening material, location or complimentary-color painting of the Permitted Device, may be imposed as part of the Architectural Rules.

Section 5.05. Limitations on Commercial Activities. No business of any kind whatsoever shall be established, maintained, operated, carried on, permitted or conducted within Teton Saddleback Vistas or any part thereof. Notwithstanding the foregoing, no restrictions contained herein shall be construed so as to prohibit any Owner from (a) maintaining his or her personal library in the Owner's residence; (b) keeping his or her personal business records or accounts therein; (c) handling personal or professional telephone calls or correspondence there from; (d) conducting work of the sort which can be accomplished through the use of a home computer and/or facsimile machine or similar electronic equipment, or (e) conducting any other activities on the Owner's Lot or within the Owner's residence otherwise compatible with residential use and the provisions of this Declaration

which are permitted under applicable zoning laws or regulations without the necessity of first obtaining a special use permit or specific governmental authorization so long as the activity does not involve signage or customer/patron visits. Such uses are expressly declared to be customarily incidental to the principal residential use and not in violation of any provision of this Section. Section 5.05. does not apply to block 1, lots 1&8 and block 2 lot 1.

These lots are scheduled to be presented before Teton County for rezone to commercial other intended use at the discretion of the developer. These lots will not come under any design review or conditions of the Teton Saddleback Vista.

Section 5.06. Offensive Activities. No noxious or offensive activity shall be carried on within Teton Saddleback Vistas, nor shall anything be done or placed within any Lot or the Commonly Maintained Area which may be or become a nuisance, or cause an unreasonable embarrassment, disturbance or annoyance to other Owners in the enjoyment of Teton Saddleback Vistas. Without limiting any of the foregoing, no Owner shall permit noise, including but not limited to barking dogs, or excessive volume of stereo amplifiers to emanate from Owner's Lot, which would unreasonably disturb another resident's quiet enjoyment of his or her Lot, residence or the Commonly Maintained Area.

Section 5.07. Trash. All garbage and trash shall be placed and kept in covered containers and Owners shall be obligated to contract with the County's licensed refuse disposal franchisee for weekly refuse collection service. In no event shall such containers be maintained so as to be visible from the Commonly Maintained Areas or any neighboring Lot. No portion of any Lot shall be used for the storage of building materials or other materials not customarily used in connection with the routine maintenance of a residence other than in connection with approved construction.

Section 5.08. Clotheslines. No outside clothesline or other outside clothes dryer facilities shall be maintained on any Lot.

Section 5.09. Basketball Standards. Basketball standards or other fixed sports apparatus may be attached to any residence or garage or be on any Lot where visible from any street except Commonly Maintained Area, with prior Committee approval.

Section 5.10. Signs/Mail Boxes. No sign of any kind shall be displayed to the public view on any Lot or any Commonly Maintained Area, without the approval of the Board of Directors of the Association, except one "For Sale" or "For Lease" sign of customary and reasonable dimensions. Address signs (Exhibit "Signage") shall be provided by the Association and shall be the only signage allowed. Personal mail boxes shall not be allowed on each lot. US Postal approved "gang" mail boxes shall be provided by the association at US Postal approved location or locations within Teton Saddleback Vistas.

Section 5.11. No Structural Changes or Improvements By Owner Without Architectural Approval. No Owner shall make structural changes to his or her residence or to

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any substantial improvements on the Owner's Lot without the prior written approval of the Architectural Committee in accordance with Article III, above Section 5.12. Commonly Maintained Areas. Unless approved by a majority of the Owners, no person shall construct, reconstruct, refinish, alter or maintain any Improvement upon, or shall make or create any excavation or fill upon, or shall change the natural or existing drainage of, or shall destroy or remove any tree, shrub or other vegetation from, or plant any tree, shrub, or other vegetation located within any portion of the Commonly Maintained Areas.

Section 5.13. Insurance Hazards Created Byv Owner Nothing shall be done or kept on any Lot or in any Commonly Maintained Area which will increase the rate of insurance on any policy held by the Owners or the Association in accordance with Article VIII, below, without the prior approval of the Owners. No Owner shall permit anything to be done or kept on any Lot or in any Commonly Maintained Area which will result in the cancellation of insurance held by the Owners or the Association or which would be in violation of any law.

## **ARTICLE VI**

### **The Teton Saddleback Vistas Owners Association**

Section 6.01. Formation. The Teton Saddleback Vistas Owners Association (the "Association") has been organized as an unincorporated Association whose membership is comprised of all Owners of Lots within Teton Saddleback Vistas. The Association may subsequently incorporate as a nonprofit mutual benefit corporation upon a majority vote of all Owners.

Section 6.02. Association Action; Board of Directors and Officers; Approval of the Members. With the exception of those matters requiring approval of the Owners under the Governing Documents, the affairs of the Association shall be conducted and all powers shall be exercised by the Association's Board of Directors and such officers as the Association Board may elect or appoint. Unless a higher percentage vote is required by this Declaration or the Bylaws to approve a particular action or undertaking on the part of the Association, all matters requiring the approval of the Owners shall be deemed approved if approved by a simple majority of the Owners who are present and voting at a meeting at which a quorum has been established, or, if the vote is conducted by written ballot, a simple majority of votes once ballots are received from at least a quorum of the Owners. Pursuant to Section 5.05 of the Bylaws, the quorum for valid action by the Owners either at a meeting or for a vote that is conducted by written ballot shall be a majority of the Owners.

Section 6.03. Membership in the Association. Each Owner of a Lot shall be a Member of the Association. An Owner shall hold one membership in the Association for each Lot that the Member owns. All memberships in the Association held by Owners shall be

appurtenant to, and may not be separated from, the Lot owned by each Owner, and ownership of a Lot or parcel shall be the sole qualification for an Owner's membership in the Association. Each Owner shall remain a Member of the Association until his or her ownership of, or ownership interest in, all Lots in Teton Saddleback Vistas ceases, at which time the Owner's membership in the Association shall automatically cease. Persons or entities who hold an interest in a Lot merely as security for performance of an obligation are not Members.

Section 6.04. Membership Voting.

(a) Commencement of Voting Rights. Voting rights attributable to the ownership of Lots shall not vest until Assessments against those Lots by the Association has commenced.

(b) One Class of Membership. This shall be only one class of membership in the Association. The rights, preferences and privileges of Members shall be as set forth in the Association's Bylaws.

(c) Suspension of Voting Rights. The voting rights of an Owner as a member of the Association may be temporarily suspended under those circumstances described in Section 10.04, below and shall be suspended during any period when the Owner is delinquent in the payment of Assessments duly imposed in accordance with Article VII, below.

(d) Exercise of Voting Rights Among Multiple Owners. The Owner or Owners of each Lot within Teton Saddleback Vistas shall be entitled to one (1) vote on any matter requiring Member approval of Association actions or approval of the Owners pursuant to the Declaration. When title to a Lot is held by more than one person, and any one (1) or more of the co-Owners of the Lot may cast the vote which is appurtenant to the Lot; provided that, in the event of a dispute among the co-Owners the majority shall be entitled to vote and, if no clear majority can be obtained, the co-Owners shall lose their right to vote. In the event any Owner re divides, gives, sells, transfers, conveys or assigns any Lot or portion thereof described in this Declaration so as to create an additional Lot, separate and distinct of the Lots as they exist as of the date of this Declaration, then a separate vote shall come into existence for that separate Lot and the Owner(s) of the new Lot shall possess a membership in the Association. For the purposes of this Declaration, the person or persons who hold fee title to a Lot which is subject to this Declaration shall be entitled to exercise the vote appurtenant to the Lot; provided that if said person sells a Lot or Lots subject to this Declaration under contract of sale then the sellers, by that contract, may convey to the purchaser thereof the right to vote in any manner requiring approval of the Owners under this Declaration or approval of the Association Members under the Governing Documents.



Section 6.05. Assessments. The Association shall have the power to establish, fix and levy Assessments against the Owners of Lots within Teton Saddleback Vistas and to enforce payment of such Assessments, as more particularly provided in Article VII, below. Any Assessments levied by the Association against its Members shall be levied in accordance with, and pursuant to, the provisions of this Declaration.

Section 6.06. Transfer of Memberships. Membership in the Association shall not be transferred, encumbered, pledged or alienated in any way, except in connection with the sale of the Lot to which the membership is appurtenant, and then, only to the purchaser of the Lot. In the case of a sale, the membership appurtenant to the transferred Lot shall pass automatically to the purchaser upon the recordation of a deed evidencing the transfer of title. In the case of an encumbrance recorded with respect to any Lot, the Mortgagee shall not possess any membership rights until the Mortgagee becomes an Owner by foreclosure or acceptance of a deed in lieu thereof. Tenants who are delegated rights of use pursuant to the rental or lease of a residence do not thereby become Members, although the tenant and his or her family and guests shall at all times be subject to the property use restrictions and enforcement/disciplinary provisions of the Governing Documents. If any Owner fails or refuses to transfer the membership registered in his or her name to the purchaser of his or her Lot, the Association shall have the right to record the transfer upon its books and thereupon any other membership outstanding in the name of the seller shall be null and void.

Section 6.07. Powers and Authority of the Association.

(a) Duties and Powers of the Association. The sole purposes of the Association shall be as follows: (i) to maintain, repair and replace the Commonly Maintained Areas of the development; (ii) to discharge the duties and responsibilities of the Architectural Committee; and (iii) to levy assessments pursuant to Article VII, below, to defray all common expenses and to carry out the duties described in this subparagraph (a) in a timely and responsible manner, in the event that the maintenance and repair activities identified in this Section 2.01, above, are ever assumed by a state, local or municipal governmental agency or entity, then, to the extent of such assumption, the maintenance activity shall no longer be considered as part of the purposes of the Association.

(b) Association's Limited Right of Entry.

(i) Right of Entry. Generally. Without limiting the foregoing description of powers, but in addition thereto, the Association and its agents shall have the right and power to enter any Lot to perform the Association's maintenance obligations under this

Declaration, shall be subject to the following:

(A) The right of entry may be exercised immediately and without prior notice to the Owner or resident in case of an emergency originating in or threatening the Lot where entry is required. The Association's work may be performed under such circumstances whether or not the Owner or his or her lessee is present.

(B) In all non-emergency situations involving routine repair and/or maintenance activities relating to those drainage and open space easement areas and private streets that the Association is obligated to maintain, the Association, or its agents, shall furnish the Owner or his or her lessee with at least twenty-four (24) hours prior written notice of its intent to enter the Lot, specifying the purpose and scheduled time of such entry, and shall make every reasonable effort to perform its work and schedule its entry in a manner that respects the privacy of the persons residing on the Lot.

(C) In no event shall the Association's right of entry hereunder be construed to permit the Association or its agents to enter any residence without the express permission and consent of the Owner or other adult occupant of the residence.

## **ARTICLE VII**

### **Assessments**

#### Section 7.01. Assessments Generally.

(a) Covenant to Pay Assessments. Each Owner of a Lot by acceptance of a deed therefortherefore (whether or not it shall be so expressed in such deed), covenants and agrees to pay to the Association Regular and Special Assessments in accordance with this Article VII.

(b) Extent of Owner's Personal Obligation for Assessments. All Assessments, together with late charges, interest, and reasonable costs (including reasonable attorneys' fees) for the collection thereof, shall be a debt and a personal obligation of the person who is the Owner of the Lot at the time the Assessment is levied. Each Owner who acquires title to a Lot (whether by conventional conveyance, at a judicial sale, trustee's sale or otherwise) shall be personally liable only for Assessments attributable to the Lot which become due and payable after the date that the person acquires title. Accordingly, when a person acquires title to a Lot, he or she shall not be personally liable for delinquent Assessments of prior Owners unless the new Owner expressly assumes the personal liability. However, if the acquired Lot is conveyed subject to a valid lien for delinquent Assessments (and related costs of collection) pursuant to Section 7.08, below, the Association may continue to exercise its foreclosure remedies against the Lot, regardless of the change of ownership, and/or the Association may pursue its collection remedies against the prior Owner, individually.

(cc) Creation of Assessment Lien. In the event that any Regular or Special Assessment is not paid in full prior to the delinquency date for such Assessment, the delinquent Assessment, together with late charges, interest, and reasonable costs (including reasonable attorneys' fees) for the collection thereof, shall be a charge on the Lot and shall become a lien upon the Lot against which such Assessment was made upon recordation of a Notice of Delinquent Assessment in accordance with Section 7.08 (b)(i), below. Any lien for unpaid Assessments created pursuant to the provisions of this Article VII may only be enforced by judicial foreclosure as provided in Section 7.08(b), below. Nevertheless, recordation of a Notice of Delinquent Assessment shall not preclude the Association from maintaining an action at law against a defaulting Owner to recover delinquent assessments, late charges, interests and other reasonable costs of collection to which a recorded lien pertains.

(d) No Avoidance of Assessment Obligations. No Owner may exempt himself or herself or the Owner's Lot from liability or charge for the Owner's share of any Assessment made against the Owner or his or her share of any Regular or Special Assessment made against the Owner's Lot by the abandonment or non-use of the Owner's Lot. Except as specifically provided in this Declaration, all assessments and other charges shall be paid without offset or reduction for any reason, including without limitation, any claim that the Association is not properly discharging any of its duties under this Declaration.

(e) Maintenance of Assessment Funds. All Association funds shall be promptly deposited in one or more insured checking, savings or money market accounts in a financial institution or institutions selected by the Board of Directors. In addition, the Board shall be entitled to make prudent investments of any capital replacement reserve funds in insured certificates of deposits, mutual funds, or other similar investments consistent with the investment standards normally observed by trustees. To preclude the need for multiple accounts, the proceeds of all Assessments may be commingled in one or more accounts maintained in the name of the Association so long as separate accounting records are maintained sufficient to accurately ascertain the amount of deposits and withdrawals on account of regular assessments, special assessments and reserve accounts and to accurately determine the account status of any particular Member. Amounts collected and deposited into Association reserve accounts shall only be expended for the purpose or purposes for which the funds were collected and any withdrawal of funds from reserves shall require the signatures of at least two directors of the Association.

#### Section 7.02. Regular Assessments.

(a) Regular Assessments Generally. Not less than forty-five (45) days nor more than sixty (60) days prior to the beginning of the Association's fiscal year, the Owners agree that they shall meet and by majority vote establish a budget of the estimated cost and

expenses which are anticipated to be incurred by the Association to perform its services during the forthcoming year (including reasonable contributions to capital replacement reserves to defray the costs of future repairs, replacement or additions to streets, drainage courses and other capital improvements that the Association is obligated to repair and maintain pursuant to Article n, above). The aggregate budgeted expenses so established by the Owners shall be the Regular Assessment for the forthcoming fiscal year. For the first year, or portion thereof, following approval of this First Restated Declaration, the Owners shall meet promptly following approval to organize the initial Board of Directors and established a budget for the Association's first year of operation (or portion thereof).

(b) Allocation of Regular Assessment. Except as provided in the next succeeding sentence, the common expenses of the Association shall be allocated among and charged to all the Owners according to the ratio of the number of Lots owned by the assessed Owner to the total number of Lots subject to assessment so that each Lot bears an equal share of the aggregate Regular Assessment.

(c) Commencement Date for Regular Assessments. Regular Assessments shall commence as to all Lots on the first day of the first month following the Owner's approval and recordation of this Declaration in the Official Records of Teton County, Idaho. Each Lot within Teton Saddleback Vistas shall thereafter be subject to its share of the then established annual Regular Assessment established each year in accordance with subparagraph (a), above.

(d) Assessment Roll. That portion of the estimated common expenses assessed against and charged to each Owner shall be set forth and recorded in an Assessment roll which shall be maintained and available with the records of the Association. The assessment roll (which may be maintained hi electronic form) shall show, for each Lot, the name and address of the Owner of Record, all Regular and Special Assessments levied against each Owner and his or her Lot, and the amount of such Assessments which remain unpaid.

(e) Mailing Notice of Assessment. The budget materials distributed to the Members pursuant to Section 7.02(a), above, shall provide notice to each Member of the amount of the Regular Assessment allocated to each Lot for the next succeeding fiscal year.

(f) Failure to Make Estimate. If, for any reason, the Owners fail to approve a budget for any fiscal year, then the Regular Assessment made for the preceding fiscal year, together with any Special Assessment made pursuant to Section 7.03, below, for that year, shall be assessed against each Owner and his or her Lot on account of the then current fiscal year, and the Assessments shall be payable on the regular payment dates established by the Association Board.

(g) Payment of Assessments. Because it is anticipated that the Association's Regular Assessment levied against each Owner and his or her Lot will not be substantial, each year's Regular Assessment shall be due and payable in equal quarterly installments on the first day of the first month of each calendar quarter and shall be delinquent if not paid by the 15th day of that month.

### Section 7.03. Special Assessments.

(a) Purposes for Which Special Assessments May Be Levied. Subject to the membership approval requirements set forth in subparagraph (b), below, if at any time, the Regular Assessment for any fiscal year is insufficient in amount due to extraordinary expenses not contemplated in the budget prepared for said fiscal year, the Association's Board of Directors shall be empowered to levy and collect a Special Assessment, applicable to the remainder of such year only, for the purpose of defraying, in whole or in part, any deficit which the Association would otherwise incur in the performance of its duties and the discharge of its obligations hereunder.

(b) Member Approval for Certain Special Assessments Requiring Membership Approval. Unless approved by the Members on accordance with Section 7.07, below, the Association shall not levy Special Assessments in any fiscal year which are in excess of five percent (5%) of the Association's budgeted gross expenses for that year. The foregoing Member approval requirements shall not apply, however, to any Special Assessment imposed to address any "emergency situation" as defined in Section 7.04, below.

(c) Allocation and Payment of Special Assessments. When levied by the Association Board or approved by the Members as provided in Section 7.07, below, the Special Assessment shall be divided among, assessed against and charged to each Owner and his or her Lot in the same manner prescribed for the allocation of Regular Assessments pursuant to Section 7.02(b), above (i.e., equal allocation). The Special Assessment so levied shall be recorded on the Association's Assessment roll and notice thereof shall be mailed to each Owner and the Special Assessment shall be all due and payable within thirty (30) days following its levy unless a schedule of installment payments is indicated in the Board's notice of the Special Assessment or in the solicitation materials accompanying any ballot distributed to the Members to approve a Special Assessment requiring Member approval (see Section 7.07, below).

Section 7.04. Assessments to Address Emergency Situations. The required Special Assessments which, in the aggregate, exceed five percent (5%) of the Association's budgeted gross expenses for the fiscal year in which the Special Assessment(s) is/are levied, shall not apply to Assessments which are needed to address emergency situations. For purposes of this Section, an emergency situation is any of the following:

- (i) An extraordinary expense required by an order of a court.
- (ii) An extraordinary expense necessary to repair or maintain any area which the Association is obligated to repair or maintain where a threat to personal safety is discovered.
- (iii) An extraordinary expense necessary to repair or maintain any area which the Association is obligated to repair or maintain that could not have been reasonably foreseen by the Association Board in preparing and distributing the budget pursuant to Section 7.02(a), above; provided, however, that prior to the imposition or collection of an assessment under this subparagraph (iii), the Association Board shall pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process. The Association Board's resolution shall be distributed to the Members together with the notice of assessment.

Section 7.05. Purpose and Reasonableness of Assessments. Each Regular and Special Assessment made in accordance with the provisions of this Declaration shall be imposed solely to fund or defray the common expenses arising out of or related to the Association's discharge of those duties described in Section 6.07(a), above. Each and every Assessment levied hereunder is further declared and agreed to be a reasonable Assessment, and to constitute a separate, distinct and personal obligation of the Owner of the Lot against which the Assessment is imposed that shall be binding on the Owner's heirs, successors and assigns; provided, however, that the personal obligation of each Owner for delinquent Assessments shall not pass to the Owner's successors in title unless expressly assumed by them.

Section 7.06. Exemption/Modification of Certain Properties From Assessments. The following real property subject to this Declaration shall be exempt/modified from the Assessments and the lien thereof provided herein:

- (a) Any portion of Teton Saddleback Vistas dedicated and accepted by a local public authority;
- (b) Any Lot owned by the Association as a result of the Association's acquisition of the Lot in foreclosure or by receipt of a deed in lieu of foreclosure unless the Association is receiving income through the lease or rental of the residence located thereon.
- (c) Should the rezone be successful block 1, lots 1&8 and block 2 lot 1 would pay according to street frontage Teton Saddleback Vistas Road as lineal footage to average lot frontages of the residential lots. Should the rezone fail and a new residential plan is approved for these lots then the normal assessment per lots shall apply.

(d) For reasons that the cost of maintenance for lots that front county maintained roads will be less and these lots do not enjoy the same improvements fronting their lots ; lots 9,10,11,13,16,19 block 1 and lots 3,2 bock 4, lots 10, 11, 12,13, 14 block 6, lot 17 block 5, lot 29 block 2, lot 1,22, 23, 24 block 8 shall be assessed differently. These lots shall be charged at 75% of the normal assessment . The short fall shall be spread over the other lots.



Section 7.07. Notice and Procedure for Member Approval Pursuant to Sections 7.02 and 7.03. In the event that Member approval is required in connection with any Regular or Special Assessment the affirmative vote required to approve the increase shall be a Majority of a Quorum of the Members. The quorum required for such membership action shall be a majority of all Members, and the required affirmative vote shall be at least a majority of those Members present in person or by proxy at the meeting. The solicitation materials accompanying any ballot to approve Assessments requiring Member approval shall be distributed to all Owners at least ten (10) days prior to the scheduled date of the meeting and shall describe in reasonable detail the purposes for which the Assessment is being proposed, the total amount of the proposed Assessment and each Owner's allocable share thereof, and the terms of payment if the Assessment is approved (i.e., lump sum or installment payments).

Section 7.08. Collection of Assessments; Enforcement of Liens.

(a) Delinquent Assessments. If any installment payment of a Regular Assessment or lump sum or installment payment of any Special Assessment assessed to any Owner is not paid within fifteen (15) days after the same becomes due, such payment shall be delinquent and the amount thereof may, at the Association Board's election, bear interest at the maximum rate allowed by law commencing thirty (30) days after the due date until the same is paid. In addition to the accrual of interest, the Association Board of Directors is authorized and empowered to levy a late charge in the amount of the greater of \$10.00 or ten percent (10%) of the delinquent assessment.

(b) Effect of Nonpayment of Assessments.

(i) Creation and Imposition of a Lien for Delinquent Assessments. The amount of any delinquent Regular or Special Assessment, together with any late charges, interest and costs (including reasonable attorneys' fees) attributable thereto or incurred in the collection thereof, shall become a lien upon the Lot of the Owner so assessed only when the Association Records a Notice of Delinquent Assessment executed by an authorized representative of the Association, setting forth: (A) the amount of the delinquent Assessment(s) and other sums duly imposed pursuant to this article and California law; (B) the legal description of the Owner's Lot against which the Assessments and other sums are levied; (C) the name of the Owner of Record of such Lot; (D) the name and address of the Association. Upon payment in full of the sums specified in the Notice of Delinquent Assessment, the Association shall cause to be recorded a further notice stating the satisfaction and release of the lien thereof and a reasonable charge can be imposed for the preparation and recordation of that release.

(ii) Remedies Available to the Association to Collect Assessments.

The Association may bring legal action against the Owner personally obligated to pay the delinquent Assessment, foreclose its lien against the Owner's Lot in a judicial foreclosure proceeding or accept a deed in lieu of foreclosure.

(iii) Prohibition on Use of Non-judicial Foreclosure. The Association shall have no right to foreclose its lien for delinquent Assessments by use of non-judicial foreclosure remedies. Instead, such liens may only be enforced pursuant to judicial foreclosure (Code of Civil Procedure §725(a), et seq.); provided, however, that in accordance with Civil Code §1367(e), nothing in this subparagraph (iii) or in Section 726(a) of the Code of Civil Procedure shall prohibit the Association from pursuing the collection of delinquent assessments in a small claims court proceeding or other legal action against the Owner who is responsible for the delinquency to recover sums for which a lien has been created pursuant to this Section 7.08 or prohibit the Association from taking a deed in lieu of foreclosure.

Section 7.09. Transfer of Lot by Sale or Foreclosure. The following rules shall govern the right of the Association to enforce its Assessment collection remedies following the sale or foreclosure of a Lot:

(a) Except as provided in subparagraph (b), below, the sale or transfer of any Lot shall not affect any Assessment lien created by recordation of a Notice of Delinquent Assessment which has been duly recorded against the Lot prior to the sale or transfer, and the Association can continue to foreclose its lien in spite of the change in ownership.

(b) The Association's Assessment lien shall be extinguished as to all delinquent sums, late charges, interest and costs of collection incurred prior to the sale or transfer of a Lot pursuant to a foreclosure or exercise of a power of sale by the holder of a prior encumbrance (but not pursuant to a deed-in-lieu of foreclosure). A "prior encumbrance" means any first Mortgage or other Mortgage or lien recorded against the Lot at any time prior to recordation of the Association's Assessment lien (see Section 7.10, below).

(c) No sale or transfer of a Lot as the result of foreclosure, exercise of a power of sale, or otherwise, shall relieve the new Owner of such Lot (whether it be the former beneficiary of the first Mortgage or other prior encumbrance or a third party acquiring an interest in the Lot) from liability for any Assessments which thereafter become due with respect to the Lot or from the lien thereof.

(d) No sale or transfer of a Lot as the result of foreclosure, exercise of a power of sale, or otherwise, shall affect the Association's right to maintain an action against the foreclosed previous Owner personally to collect the delinquent Assessments, late charges, interest and associated costs of collection incurred prior to and/or in connection with the sale or transfer.

Section 7.10. Priorities. When a Notice of Delinquent Assessment has been recorded, such notice shall constitute a lien on the Lot prior and superior to all other liens except: (a) all taxes, bonds, assessments and other levies which, by law, would be superior thereto; and (b) the lien or charge of any first Mortgage of record (meaning any recorded Mortgage with first priority over other Mortgages) made in good faith and for value; provided, however, that such subordination shall apply only to the Assessments which have become due and payable prior to the transfer of such property pursuant to the exercise of a power of sale or a judicial foreclosure involving a default under such first Mortgage or other prior encumbrance.

## **ARTICLE VIII**

### **Insurance Obligations of the Association and the Owners**

Section 8.01. Insurance Maintained by the Association. Annually, the Association's Board shall meet with an insurance agent to discuss and agree upon the nature and scope of insurance the Association should maintain in order provide adequate coverage for the risks and perils attendant to the performance of its maintenance and repair responsibilities, as described in Article II, above, or to protect the Association's directors and officers in the performance of their duties and responsibilities under this Declaration and the Association's Governing Documents. If it is recommended that the Association should maintain insurance of any kind, the cost of the premiums for such insurance shall be considered a Common Expense for assessment purposes.

Section 8.02. Owner Insurance Responsibilities. Each Owner shall be solely responsible for the type, amount and sufficiency of the personal liability insurance and property damage insurance that the Owner may maintain with respect to the Owner's Lot and residence. Each Owner shall have a loss assessment clause in his or her homeowners policy to cover any liability arising from personal injury or property damage other than that attributable to the normal repairs or maintenance undertaken pursuant to this Declaration.

**ARTICLE IX**  
Mortgagee Protection

Section 9.01. Mortgages Permitted- Any Owner may encumber his or her Lot with a Mortgage or Mortgages.

Section 9.02- Priority of Mortgage. Notwithstanding any other provision of this Declaration, it is hereby provided that a breach of any of the conditions contained in this Declaration by any Owner or of any re-entry by reason of such breach, shall not defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value as to said Lot or any part thereof.

Section 9.03. Effect of Breach. No breach of any provision of this Declaration shall invalidate the lien of any Mortgage made in good faith and for value, but all of the covenants, conditions and restrictions shall be binding on any Owner whose title is derived through foreclosure sale, trustee's sale, or otherwise.

**ARTICLE X**  
Enforcement of Declaration

Section 10.01. Arbitration of Disputes. In the event any dispute concerning the terms of this Declaration which and the parties are unable to resolve informally, it is agreed that each Owner who is a party to the dispute shall appoint an arbitrator within fifteen (15) days of demand of any other Owner, and within ten (10) days thereafter the arbitrators shall meet, and if they can agree, shall determine the solution, and such shall be binding on the parties to the dispute. In the event the arbitrators cannot reach an agreement by virtue of the fact that they are of equal number, then they shall appoint a third arbitrator and the decision of the majority shall be made within thirty (30) days of the initial demand, and such shall be binding upon all parties to the dispute. In the event that enforcement is sought by the Association, it shall be under the same obligation as the Owners to resolve the matter through arbitration in accordance with this Section. The provisions shall govern the conduct of any arbitration proceeding initiated pursuant to this Section 10.01.

Section 10.02. Costs and Attorneys' Fees. In any action brought because of any alleged breach or default of any Owner under this Declaration, the arbitrators or the court may award to the prevailing party in such action such attorneys' fees and other costs as it may deem just and reasonable.

Section 10.03. Failure Not a Waiver. The failure of the Association or any Owner to enforce any of the covenants, conditions, restrictions, limitations, reservations,

grants or easements, rights, rights-of-way, liens, charges or equitable servitudes contained in this Declaration shall not constitute a waiver of the right to enforce the same thereafter, nor shall such failure result in or impose any liability upon the Association or the Board, or any of its officers or agents.

Section 10.04. Rights and Remedies of the Association.

(a) Rights Generally. The Association shall have the right to enforce the obligation of Owners to pay assessments pursuant to Article VII, above, and to enforce the provisions of Article III, (architectural review and approval) and Article IV (minimum construction standards), above. Because the Association has been formed solely to discharge specified and limited duties and responsibilities (see particularly Section 6.07(a), above) the Association shall not be responsible for enforcement of the property use restrictions set forth in Article V, above, other than Sections 5.11 and 5.12. The decision of whether it is appropriate or necessary for the Association to take enforcement or disciplinary action in any particular instance where enforcement falls within the limited jurisdiction of the Association is one which shall be made in the sole discretion of the Association's Board.

(b) Limitations of Disciplinary Rights. In those instances where enforcement action by the Association is authorized and deemed necessary or appropriate by the Board, no penalty or temporary suspension of rights shall be imposed pursuant to this Article X unless the Owner alleged to be in violation has first been given at least fifteen (15) days' prior notice by the Association describing the nature of the Owner's infraction as well as the Association's proposed penalty or other disciplinary action. The purpose of this notice is to give the receiving Owner an opportunity either to initiate appropriate action to correct the condition giving rise to the Association's actions or to be heard before the Board of Directors or an appropriate committee established by the Board with respect to the alleged violation(s) at a hearing conducted at least five (5) days before the effective date of the proposed disciplinary action.

At the hearing, the accused Owner shall be given the opportunity to be heard, including the right to present evidence and to present or question witnesses. The Board shall notify the accused Owner, in writing, of the Board's decision within five (5) business days following conclusion of the hearing. In no event shall the effective date of any disciplinary action commence sooner than five (5) days following conclusion of the hearing.

(c) The notice and hearing procedures set forth in this Section 10.04, above, shall not apply to any actions by the Association or its duly authorized agents to collect

delinquent assessments. Instead, the collection of delinquent Assessments shall be subject to the provisions of Section 7.08, above, and any other notice, hearing and/or dispute resolution requirements or procedures as may be specifically applicable by law to Association assessment collection efforts.

Section 10.05. Notices. Any notice required by this Article shall, at a minimum, set forth the date and time for the hearing, a brief description of the action or inaction constituting the alleged violation of the Governing Documents and a reference to the specific Governing Document provision alleged to have been violated. The notice shall be in writing and may be given by any method reasonably calculated to give actual notice; provided, however, that if notice is given by mail it shall be sent by first-class or certified mail sent to the last address of the Member shown on the records of the Association.

## **ARTICLE XI**

### **General Provisions**

Section 11.01. Term The covenants and restrictions of this Declaration shall run with and bind the real property defined herein as Teton Saddleback Vistas, and shall inure to the benefit of and be binding on the Owners of any Lots, within Teton Saddleback Vistas, their legal representatives, heirs, grantees, tenants, successors and assigns, subject to this Declaration, for a term of 30 years from the date this Declaration is recorded. Thereafter, they shall be automatically extended for successive periods of 10 years, unless an instrument in writing, signed by a majority of the then Owners of the Lots, has been recorded within the year preceding the beginning of each successive period of 10 years, agreeing to change said covenants and restrictions in whole or in part, or to terminate the same.

Section 11.02. Notices. Notices provided for in this Declaration and the Guidelines shall be in writing and shall be deemed sufficiently given when delivered personally or within seventy-two (72) hours after deposit in the United States mail, postage prepaid, addressed to an Owner at the last address such Owner designates to the Committee for delivery of notices, or in the event of no such designation, at such Owner's last known address, or if there be none, at the address of the Owner's Lot. Notices to the Committee shall be addressed to the address designated by the Committee by written notice to all Owners.

Section 11.03. Amendments. This Declaration shall be amended only upon the written approval of ninety percent (90%) of the Owners. An amendment shall be effective when it has received the required percentage approval and has been recorded in the Office of the County Recorder. A certificate signed and acknowledged by the President and Secretary of the Association can confirm that the required affirmative vote of the Owners to approve the amendment has been duly obtained. At least thirty (30)

days prior to the circulation of any petition or ballot to approve an amendment to approve an amendment of this Declaration each Owner shall receive a complete copy of the text of the proposed amendment, together with a brief explanation of the purpose or objective of the amendment if such purpose or objective is not readily apparent from the text of the proposal.

Section 11.04. Severability. Should any provision or portion hereof be declared invalid or in conflict with any applicable law, the validity of all other provisions and portions hereof shall remain unaffected and in full force and effect.

Section 11.05. Headings. The headings used in this Declaration are for convenience only and are not to be used to interpret the meaning of any of the provisions of this Declaration.

Section 11.06. Rezone. **Let it be known to anyone who purchases any lot(s) of Teton Saddleback Vistas that these CC&Rs shall not apply to block 1, lots 1&8 and block 2 lot 1. These lots are scheduled to be presented before Teton County for rezone to commercial or other intended uses at the discretion of the developer. These lots will not come under any design review or conditions of the of Teton Saddleback Vista. However should the proposed rezone fail the lots would be subject to all the conditions of the CC&Rs with the exception that these lot could be subdivided again into smaller residential lots per County Zoning conditions. Also with this foreknowledge you will not contest, challenge, or protest any plan that the developer shall present to the governing bodies concerning the rezone or uses. Upon the purchase of any lot within Teton Saddleback Vistas you are acknowledging your consent to the development of block 1, lots 1&8 and block 2 lot 1. This includes approval of any and all structures and uses. You agree that the governing body and the developer shall determine the ultimate zoning and uses and you will offer no objections.**

DATED: \_\_\_\_\_, 2006.

Teton Saddleback Vistas Subdivision,

By: 

Its:

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IN WITNESS WHEREOF, the undersigned Owners consent to this First Restated Declaration of Covenants, Conditions, Restrictions and Maintenance and Architectural Control for Teton Saddleback Vistas and to the terms, covenants, conditions and restrictions contained herein by their respective signatures, acknowledged by a Notary Public. All Owners of record of a Lot shall execute this Declaration, and the following signature pages may be executed in counterpart. All references to Lots are to Lots shown on the Subdivision Map for Teton Saddleback Vistas, filed on \_\_\_\_\_.



**EXHIBIT A**

Description of Property Subject to Declaration

All that certain real property situated in the County of Teton, Idaho described as follows:

Lots 1 through 141, inclusive, as shown on the Map entitled "Teton Saddleback Vistas", recorded in the Office of the Teton County Recorder, \_\_\_\_\_, 2006.

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