

**FOURTH RESTATED DECLARATION OF COVENANTS, CONDITIONS AND  
RESTRICTIONS FOR TIMBERLINE RANCH SUBDIVISION**

[Terminating and Restating, in its entirety, that *Third Restated Declaration of Covenants, Conditions and Restrictions for Timberline Ranch Subdivision*, Previously recorded March 23, 2018 as Instrument No. 249655]

This FOURTH RESTATED DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR TIMBERLINE RANCH SUBDIVISION [hereinafter “Fourth Restated Declaration”], is made and effective as of the date signed below, by **TREE TOPS TIMBERLINE, LLC, an Idaho Limited Liability Company**, [hereinafter the “Declarant”], which was also the original “Declarant,” holding all of those certain rights, title and interests as referenced, described and reserved in (1) that *Restated Declaration of Covenants, Conditions and Restrictions for Timberline Ranch Subdivision*, Instrument No. 234176, recorded October 10, 2014, in (2) that *Second Restated Declaration of Covenants, Conditions and Restrictions for Timberline Ranch Subdivision*, Instrument No. 241449, recorded July 5, 2016, and in (3) that *Third Restated Declaration of Covenants, Conditions and Restrictions for Timberline Ranch Subdivision*, Instrument No. 249655, recorded March 23, 2018, [hereinafter “the 2018 Declaration”].]

Declarant presently owns all but seven Lots of the Subdivision Property, and therefore owns at least Three-Fourths (3/4) of all Lots of the Subdivision Property identified below; and pursuant to those rights afforded to it by Paragraphs 27(a), (b), (c) and (d) of the 2018 Declaration, with the assent of the Timberline Ranch Subdivision Owner’s Association, now therefore:

DECLARANT TREE TOPS TIMBERLINE, LLC, HEREBY RESTATES the 2018 Declaration in its entirety. Therefore, the *Third Restated Declaration of Covenants, Conditions and Restrictions for Timberline Ranch Subdivision*, recorded March 23, 2018 as Instrument No. 249655, are hereby terminated, revoked, repealed, replaced and now Restated in their entirety by this *Fourth Restated Declaration of Covenants, Conditions and Restrictions for Timberline Ranch Subdivision*, dated and effective as of the date signed below.

**NOW THEREFORE**, the Declarant, after having approved and adopted this Fourth Restated Declaration by the unanimous consent of its managers and members, hereby declares that all of the lands within the TIMBERLINE RANCH SUBDIVISION, and any part thereof, as more particularly described as being Phase I(A), as that phase and plat is identified in those Teton County, Idaho plat book and records, and which is comprised of 65 platted residential lots (“**Lots**”), with additional open space lots, legally referred and described as:

ALL of the Final Plat Timberline Ranch Subdivision, Teton County, Idaho, as per the plat recorded January 18, 2007, as Instrument No. 184307. Correction plat recorded August 26, 2008, as Instrument No. 199741. Amendment #1 recorded July 22, 2010, as Instrument No. 212175. \*

LESS: (1) All of Phase 1-B as shown on Final Subdivision Plat Amendment No. 1, Timberline Ranch Subdivision, Teton County, Idaho, as per the plat recorded July 22, 2010, as Instrument No. 212175; (2) Tract 1 of the Final Plat of Timberline Ranch Subdivision, Teton County, Idaho, as per the plat recorded January 18, 2007, as Instrument No. 184307. Correction plat recorded August 26, 2008, as Instrument No. 199741, Amendment #1 recorded July 22, 2010, as Instrument No. 212175; and (3) the *Future Phase* of Timberline Ranch Subdivision - correction plat recorded August 26, 2008, as Instrument No. 199741, Amendment #1 recorded July 22, 2010, as Instrument No. 212175 - more specifically identified as 25.15 Acres of land having a Teton County Tax reference of #1198 less #5680, Less Timberline Ranch Sub Phase 1, and identified by Census Tract / Block # as 960100/4386.

\* [With said 65 platted residential Lots also described as Block 3 – Lots 1 through 9, Block 4 – Lots 1 through 7, Block 5 – Lots 1 through 3, Block 6 – Lots 1 through 15, Block 7 – Lots 1 through 17, and Block 8 – Lots 1 through 14, of the *Final Plat Timberline Ranch Subdivision*.]

**SHALL BE HEREAFTER** owned, sold, conveyed, encumbered, leased, used, occupied and developed subject to the following covenants, conditions and restrictions [the "Covenants" or "Fourth Restated Declaration"], which Covenants shall run with the land and the Property and any portion thereof, and shall be binding upon all parties having or acquiring any legal or equitable interest in or title to the Property or any part thereof, and shall inure to the benefit of every owner of any part of the Property, as follows:

**1. STATEMENT OF INTENT & DEFINITIONS.**

**(a) Intent.** The Timberline Ranch Subdivision [as identified below and hereinafter also referred to as "Subdivision" or the "Property" or "Subdivision Lots" or "Lots"], is a desirable residential area, and it is the intent of these covenants to protect and enhance the value, desirability and aesthetics of the Property; to protect Lot Owners from development and use of other Lots within the Subdivision which may depreciate the value and/or restrict the use of their Lot(s); to prevent the erection or construction of unsightly, unsuitable or unsafe structures; to insure adequate and reasonably consistent value of the Lots and improvements of the property; to encourage the construction and maintenance of appropriate improvements; to ensure and encourage the provision of adequate and suitable landscaping; and to provide for the maintenance and improvements of non-

motorized pathways, common areas and easements within the Subdivision. The restrictions imposed by these Covenants are intended to be kept to a minimum while preserving the right of Lot Owners to enjoy their property in attractive surroundings free of nuisances, undue noise and danger. It is the further intent to provide by these Covenants that disturbance of the natural environment be kept to a minimum.

**(b) Property Defined.** These Covenants shall apply to all Subdivision Lots within the Property, as shown on the aforesaid Plats and Phase IA, and to any additional Subdivision Lots as may be created hereafter by division, subdivision, split or partition in accordance with Section 2 below. Each covenant herein shall apply to each such Subdivision Lot, and any portion thereof, and shall be binding upon and run with the land. No part of this Fourth Restated Declaration is applicable to, restricts, governs or is effective as to Declarant's real property formerly referred to and excluded in the property description above as the *Future Phase*, which is referenced in Teton County Plats as being 25.15 Acres of land, having a Teton County Tax reference of #1198 less #5680, Less Timberline Ranch Sub Phase 1, and which is also identified as Teton County Census Tract / Block # 960100/4386.

**(c) General Definitions.** The following words used in this Declaration shall have the following meanings:

i. **"Declarant"** means Tree Tops Timberline, LLC, an Idaho Limited Liability Company.

ii. **"Subdivision"** means the Timberline Ranch Subdivision, as consisting of 65 or more platted lots, as referenced and legally described above.

iii. **"Lot"** or **"Subdivision Lot"** means any Lot of land shown on the Plat of the Property, which is designated as a Lot on the map or otherwise, and which is or may be improved with a residential dwelling in conformity with these Covenants, and any resulting portion thereof. "Adjoining Lot" means a Lot which is contiguous to another referenced Lot as shown on any recorded plat of the Property.

iv. **"Owner"** means a person(s) or entity who or which is a record owner of a fee or undivided fee interest in any Lot subject to these Covenants, excluding any person or entity who holds a lien or interest in a Lot as security for the performance of an obligation.

v. The **"Association"** means the *Timberline Ranch Subdivision Owner's Association*, which shall consist of the Owners of the Lots, shall have the nonexclusive power and duty to administer and enforce this Fourth Restated Declaration, and shall include, when context

requires, its Board of Directors, officers and other authorized representatives and agents as the same, or any of them, may from time to time be constituted.

**vi. “Assessments”** shall mean those payments required of Owners and Association Members, including regular, special, limited and such Assessments of the Association as further defined in this Third Restated Declaration.

**vii. “Committee”** shall mean the Architectural Control Committee as hereinafter described.

**viii. “Common Areas”** shall mean the “open areas” which are part of the Property designated as such on said Plat, and any other real property [including walkways, lighting facilities, easements and improvements] acquired by the Association for the common use and enjoyment of all the Members of the Association. The “open areas” may be utilized by the Association for paths, landscaping, recreational uses and structures, utility uses and structures, and agricultural uses. Generally, all utility pipes, lines or systems, roads and streets, walkways, maintenance and pump house buildings, and other similar improvements owned by the Association shall be deemed to be Common Areas and operated and maintained as such up to the point, if applicable, where the improvement or facility borders upon a Lot. The Association shall be entitled to conduct landscaping activities on Common Areas and within the boundaries of roadway, irrigation, ditch and utility easements.

**2. SUBDIVISION.** No Subdivision Lot shall be further divided, subdivided, split or partitioned in any manner, unless such Lot as split is then consolidated with a contiguous Lot, and the resulting Lot is larger than the Lot prior to its split. Two or more contiguous Lots within the Subdivision may be combined and thereafter treated as one building site, with the resulting Lot and building site subject to the same restrictions and conditions as would be applicable to both Lots prior to the consolidation. All resulting Lots shall be subject to this Fourth Restated Declaration, and each such division, subdivision, split, or partition shall fully comply with all applicable land use, subdivision, and zoning laws and regulations.

**3. RESIDENTIAL.** All Lots shall be used exclusively and only for residential purposes. However, nothing in this Fourth Restated Declaration shall be deemed to prevent any person from pursuing his or her calling upon the Lot owned by or occupied by such person, if such person is self-employed and has no employees working on such Lot or in such dwelling unit, and does not advertise any product, work for sale, or service provided to the public upon such Lot or dwelling unit. Any home business or home occupation use permitted herein must also comply with any and all applicable zoning regulations of Teton County and the City of Victor, as now in effect or as

hereafter from time to time amended or promulgated. Such home business or home occupation use as permitted herein, may NOT result in an increase in vehicular traffic to that Lot which is above and beyond what would otherwise be reasonable if that Lot were used exclusively for residential purposes. No advertising or director signs relating to a home occupation or profession shall be allowed within the private, public, or commonly held lands within the Subdivision.

**4. GENERAL STANDARDS FOR IMPROVEMENTS OF ALL LOTS.** The following overview, standards and requirements are intended to apply to all Lots within the Subdivision, are incorporated by reference into those *General Standards* set forth below in Section 4(a) through 4(u) below, and are imposed so as to create harmony and a minimum of uniformity for the design, construction and placement of homes, outbuildings, lot access and driveway positioning within the Subdivision. Each home within the Subdivision shall be constructed by a qualified and professional General Contractor registered in Idaho, utilizing design and architectural plans prepared by a qualified Designer / Architect. All such home construction shall be custom built and designed, shall specify the use of quality materials to be used in construction, and shall utilize natural and earth tone colors on the exterior of the homes or outbuildings to be constructed. Any design or architectural plans that are NOT custom in nature or origination, or which are amateur, generic, of a suburban tract-home variety, boiler-plate in nature, mail ordered, internet sourced or downloadable to the general public for a fee are strictly prohibited. All construction designs must be presented to the Architectural Committee for approval, and prior to construction, in conformance with the requirements set forth in Sections 5 and 6 below.

**(a) Design Character.** The Design characteristic of all houses and construction in the Subdivision shall be consistent with that of a one or two story “Ranch Style or “Western Style” designed home(s). “Mountain Modern” and/or “Mountain Contemporary” designed homes are also permitted using the additional criteria set forth in Section 4(q) below.

**(b) New Construction.** Any building(s) erected on a Subdivision Lot shall be on-site new construction. NO manufactured, mobile, pre-assembled, pre-fabricated or modular homes or construction is permitted, and NO Log home construction, or geodesic domes, pods, tents, teepees or yurts are permitted at any time. No owner of a Lot shall erect or place any Log home/s, mobile home/s, factory constructed or other modular residential building/s or fabricated residential pod/s or container/s on a Lot. No structure shall be moved from any location outside the Subdivision onto any Lot in the Subdivision. Home construction utilizing panelized wall systems (e.g., self-insulated panels [SIP’s]) and similar systems, which are assembled on-site are permitted. There shall be no

more than one (1) primary principal dwelling unit with attached garage constructed on each Lot or each parcel thereof. Trailers, Mobile homes, tents, teepees, yurts, sheds, cabins, containers or pods shall not be used as temporary or permanent residences at any time.

(c) **Construction Code Requirements.** All dwellings and improvements shall be constructed to meet the minimum requirements, codes and regulations then existing in Teton County, Idaho and the City of Victor.

(d) **Maximum Dwelling Size.** The maximum building size for the Principal Dwelling Unit shall be **Five Thousand [5,000]** square feet, exclusive of any and all accessory structures and outbuildings.

(e) **Minimum Dwelling Sizes.** The following minimum square footage requirements are required for all Principal Dwelling Units on lots in the subdivision:

i. Single Story Ground Level Residences – [1,600 square feet minimum]. All single story floor plans for Principal Dwelling Units located on any lot in the Subdivision are required to and shall have a minimum fully enclosed area devoted to residential living purposes of **One Thousand Six Hundred [1,600]** square feet of above-grade finished floor area, exclusive of the attached garage, decks, porches, terraces or walk-out basements. No Basement area will be considered a part of the finished floor area requirement set forth herein.

ii. Two Story Residences – [2,400 square feet minimum]. All two story floor plans for Principal Dwelling Units located on any lot in the Subdivision are required to and shall have a minimum fully enclosed area devoted to residential living purposes of **Two Thousand Four Hundred [2,400]** square feet of above-grade finished floor area, AND a minimum **One Thousand Three Hundred Ninety Two [1,392]** square foot foundation footprint, exclusive of the attached garage, decks, porches, terraces or walk-out basements. No Basement area will be considered a part of the finished floor area requirement set forth herein.

(f) **Second Story / Upper Floor Size Requirements.** The second story or upper floor of any two story designed Principal Dwelling Unit located on any lot in the Subdivision must have a maximum or minimum square footage of no more than Forty-Two Percent [42%] and no less than Thirty-Five Percent [35%] of the above-grade finished floor area of the entire Principal Dwelling Unit, exclusive of the attached garage, decks, porches, terraces or walk-out basements. *[As examples only:* (1) the second story or upper floor of a 2,400 square foot home shall not exceed 1,008 square feet in size, and shall not be less than 840 square feet in size; (2) the second story or upper floor of

a maximum dwelling size 5,000 square foot home shall not exceed 2,100 square feet in size, and shall not be less than 1,750 square feet in size.]

**(g) Garage and Outbuilding Requirements.**

**i.** Subject to all Town and County zoning regulations, each Principal Dwelling Unit located on a Subdivision Lot is required to have an attached private garage for at least two vehicles, which garage shall have a minimum size of 24' Wide x 20' Deep in size. Car ports, RV ports, pre-built sheds and pre-fabricated steel buildings are strictly prohibited on all Lots on the Property. No garage door shall exceed sixteen (16) feet in width, nor shall be less than nine (9) feet in width. Garage doors, unless custom covered with actual siding material, will be of high-quality name brand material, and color compliant. Any garage windows shall have real glass, and shall NOT be made of plastic or plexi glass material.

**ii.** Subject to all Town and County zoning regulations, and so long as not prohibited pursuant to this Sections 4., NO more than One (1) detached outbuilding, which may be used for a shop, studio, greenhouse or guest quarters, additional garage, workshop, recreation room, storage area, barn recreation room, or any combination thereof, shall be permitted on any Lot.

**iii.** For each Subdivision Lot upon which the primary Principal Dwelling Unit is a single story ground level residence, the following are prohibited: (1) any two story / level garage; (2) any two story / level detached outbuilding, or (3) any garage or detached outbuilding having a top roof height higher than the top roof height of the ground level residence.

**iv.** Subject to all Town and County zoning regulations, any detached outbuilding shall not exceed **One Thousand [1,000]** square feet on the ground level, and shall be of properly framed construction, and subject to those design and requirements and restrictions as set forth in this Sections 4. and Section 6. herein; provided further, an outbuilding constructed on a Lot shall be constructed in a style that matches the primary Principal Dwelling Unit constructed thereon, and the siding and roof materials and colors of both buildings shall be the same on the dwelling unit and accessory building/s.

**v.** The distance and location of any outbuilding in relation to the Principal Dwelling Unit must be approved by the Committee, the intent being that the respective improvements must be appropriately integrated with the home. Construction of any outbuilding, garage, accessory structure or shed shall not proceed, but may be contemporaneous with, or subsequent to, the construction of the residence. In any event, no outbuilding may be utilized until the residence is complete and occupied.

vi. Any plan for an outbuilding must be submitted to and approved by the Committee as provided herein. The criteria for the home exteriors above apply to the outbuilding(s) and all outbuildings shall be compatible in design and color with the Principal Dwelling Unit.

**(h) Additional Criteria for Home Exterior.** Unless otherwise approved by the Committee in writing, the exterior design of a home constructed on any Lot shall be compatible with the natural surroundings and general design and concept of those other homes built within the Subdivision.

**(i) Vehicle Storage Facilities and Driveway Construction.** Development of each Lot shall provide for automobile storage for a minimum of two (2) outdoor and two (2) indoor parking spaces for the Principal Dwelling Unit. All parking spaces and driveways shall be asphalt or concrete only. No gravel or chip-sealed driveways are permitted for any reason.

**(j) Fencing.** Any and all fencing on any Lot is limited to, and shall be One (1) or Two (2) Rail Post and ground attached single (1) Pole fencing, with or without wire, and shall be NOT be more than Forty (40) inches in height. No other fencing of any type is permitted, specifically restricting chain-link, woven, vinyl, barb wire and jack, buck or cross post fencing.

**(k) Set Backs.** No improvement (excluding only perimeter fences, earth berms, landscaping and similar improvements which would not defeat the purpose of the set back) shall be constructed closer to the front or rear of any Subdivision Lot, or any stream, canal, pond, or irrigation ditch, than a distance of thirty (30) feet. No improvement (excluding only perimeter fences, earth berms, landscaping and similar improvements which would not defeat the purpose of the set back) shall be constructed closer to side of any Subdivision Lot than a distance of ten (10) feet. Eaves, steps and open porches of buildings shall not be considered as part of such improvement. Consideration shall be given to placing structures so as not to disrupt the view of other Lot owners and to provide continuity with the natural surroundings.

**(l) Height Limits.** The following height restrictions apply for one and two story / level Principal Dwelling Units, Garages and detached buildings:

i. Single Story / Ground Level Building: The maximum building height for any single story ground level building is Twenty-Four (24) Feet, for any roof slope. Building height shall be measured from the approved finished grade to the highest point of the structure. Minor



projections such as chimneys or other structures not enclosing habitable space shall be excluded in determining the maximum height.

**ii. Two Story / Level Building:** The maximum building height for any two story or two level structure or building is Thirty (30) Feet, for any roof slope. Building height shall be measured from the approved finished grade to the highest point of the structure. Minor projections such as chimneys or other structures not enclosing habitable space shall be excluded in determining the maximum height.

**iii. Ground Level Wall Requirements:** A minimum Nine (9) foot floor to top plate eave wall end height is required for all ground level framed walls.

**(m) Grading.** Finish grading on all buildings shall assure drainage of surface water from the buildings and avoid concentrating runoff onto adjacent properties. All buildings on all Lots shall provide a minimum grade decline of six (6) inches for the first ten (10) feet adjacent to the building's foundation.

**(n) Roof Requirements and Restrictions.**

**i. General.** All Roof Designs for Principal Dwelling Units, will demonstrate uniformity, proportion and symmetry, and will present with appropriate roof breaks or separations before utilizing a change in pitch style, type or form. [*As Examples Only:* a gabled roof with a shared eave, that turns into or incorporates a hip-style roof on the same plane, at the opposite side elevation, would be prohibited. Similarly, a hip-style roof with one particular pitch on the north / south elevation, and a substantially differing pitch on the east / west elevation would be prohibited.]

**ii. Ridge Lines.** For any single roof ridge line proposed or designed to exceed more than Forty (40) feet, the roof ridge line must incorporate an intersecting or interrupting roof line, secondary roof structure, raised dormer or step-down roof on any or either side of the roof in order to break up the overall roof mass. Any single roof ridge line proposed or designed to exceed more than Forty-Eight (48) feet, must incorporate an intersect greater than or equal to a combined Twenty-four (24) feet in order to break up the overall roof mass.

**iii. Pitch.** The minimum roof pitch shall be 6:12 inch per foot for the major components of any roof. Any minor components or secondary roof structure [shed roof or dormer roof] may have a pitch as low as 3:12. Alternative roof pitch design elements, such as a flat roof component, shall be considered on a case by case basis by the Committee so long as the same are singular or minimal in context, scale and proportion to the roof system.

**iv. Roof Materials.** Roofing material shall be asphalt shingles, shake shingles, or tile shingles. Other metal products and profiles are permissible on dormers and covered porches,

so long as the metal roof materials are new. NO reclaimed metal or galvanized roofing materials are permitted in any instance. All roofing materials shall be of a non-glare variety, and NO bright paint colored, or blue or bright red roofs are permitted at any time. All roofing materials must be approved by the Committee and must include minimum quality threshold of at least laminated architectural grade asphalt shingles with minimum forty (40) year manufacturer warranty or those other roofing products as permitted above, and as approved by the Committee.

v. Roof Trusses. NO use or continuation of a factory-built roof truss shall be permitted beyond the inside of any wall.

vi. Covered Porch / Deck Roof. For all roof-over framing of covered porches and decks, all angles and pitches on the underside (soffit) must be either identical to the topside roof pitch, or otherwise level. All roof-over edges for covered porches and decks shall have a minimum fascia of Six (6) inches in height, or an exposed rafter-tail design.

vii. Eaves, Soffit and Fascia. All major roof components shall have a minimum horizontal eave projection of Twenty-Four (24) inches measured from the finished wall. All roof edges shall have a minimum fascia of Six (6) inches in height.

**(o) Exterior Walls, Siding, Eaves, Soffit, Fascia and Window Requirements.**

i. Materials. All exterior wall construction shall be real stone, brick, natural wood siding or stucco. Natural wood materials used for Siding, Corner Boards, Fascia and Trim shall be exterior grade, natural material (example: fir/cedar). Soffit may be less than or equal to 1" x 6" *or* rough-text ply with batten over seams. Any natural wood Siding that is smooth will display no more than a 3" reveal. Additionally, all natural wood Siding, Corner Boards, Soffit, Eaves, Fascia, and Trim must be fully primed and painted *or* stained. Stained natural wood Siding, Corner Boards, Soffit, Eaves, Fascia, and Trim must be solid body stain finished, semi-solid body stain finished, semi-transparent stain finished, and/or transparent stain finished. As a secondary feature to Siding, non-galvanized steel and patina tin *as well as* painted metal may be permitted as an exterior wall feature(s) (example: wainscoting/vertical corner). All applications must be color-compliant and approved by the Committee. NOT PERMITTED: Is any log siding, vinyl siding, tin/aluminum siding, masonite siding, wood composite siding, plywood siding, T-111 siding, false stone or faux log siding. EXCEPTIONS: Are HARDIEPLANK® *Lap Siding*, HARDIESHINGLE® *Siding*, OR LP® SMARTSIDE® *Trim and Siding*®, which will be fully primed and painted following complete installation (including all nailing and calking sealant application of any seams). These identified material specific brand(s) are only permitted using a grain exposed (not smooth) application for exterior wall Siding, Corner Boards, Fascia and Trim. These identified material specific brand(s) are only permitted up to a maximum of 6" or less board reveal. All natural wood materials used for

Siding will be either blind nailed or fastened using an appropriate or recommended screw fastener. All natural wood material Corner Boards and Fascia will be fastened using an appropriate or recommended screw fastener. NO gun-nailing of natural wood material Siding, Corner Boards or Fascia is permitted. All applications must be color-compliant and approved by the Committee.

ii. Form. No wall shall consist of a single finish treatment for more than twenty [20] horizontal feet without interruption by a wall projection or a different siding material, window, wall corner, chimney, wall recess, porch or other architectural form.

iii. Foundation Wall Corners. Each Principal Dwelling Unit, inclusive of the attached garage, shall have a minimum of Twelve (12) corners on all foundation wall perimeters and vertically framed walls.

iv. Windows. All windows shall be “premium quality” Aluminum Clad and/or Fiberglass. NOT PERMITTED: Vinyl Windows are not permitted under any circumstance. Window requirements will follow and comply with the color requirements specified in Section 4.(o).v. below.

v. Color. All exterior surfaces shall be “wood” and/or of “earth” tone(s). Additionally, black and white variations are acceptable if approved by the Committee. NOT PERMITTED: Are any bright or brilliant colors (including white) on Siding, Corner Boards, Soffit, Eaves, Fascia, Trim, Windows, Doors and Garage Doors.

**(p) Post and Beam Porch/ Deck Hand-Rails.** All exposed Post and Beam applications shall be designed using solid wood timber and or glue-lam material(s). Post and Beam features along with Deck Hand-Rail designs shall be sized proportionately. Metal/Iron material alternatives shall be considered on a case by case basis and must be color compliant and approved by the Committee,

**(q) “Mountain Modern” / “Mountain Contemporary” Design Exceptions.** These home designed style type(s) may be characterized here as having a monolithic primary roof and whose pitch is 6:12 inch per foot or less. Guidelines for any so called “mountain modern” / “mountain contemporary” designed style type(s) are as follows and will be further considered on a case by case basis by the Committee.

i. The main body of any structure shall not exceed a twenty-eight (28) foot outside to outside room width.

ii. Roofs must be monolithic, single sided and not offset (or two part) upon any one structure component.

iii. Roof Pitch must be a minimum of 1:12 and maximum of 6:12 inch per foot.

iv. Nothing other than premium quality standing seam metal roofs or minimum

40-year asphalt roof where applicable are permitted.

v. Overall residential enclosed ground living area square foot size will be a minimum of One Thousand Six Hundred (1,600) square feet and a maximum of Two Thousand Four Hundred (2,400) square feet.

vi. Maximum Building height must not exceed twenty (20) feet under any circumstance. Building height shall be measured from the approved finished grade to the highest point of the structure. Minor projections such as chimneys or other structures not enclosing habitable space shall be excluded in determining the maximum height.

vii. Smooth siding material, corners, fascia and soffit are permitted when using natural material, and so long as it is no wider than three (3) inches and blind fastened.

viii. Metal fascia and perforated soffit may be used accordingly and in conjunction with a metal roof material.

ix. All other design requirements in this Section 4 are incorporated and required.

**(r) Exterior Lighting.** All exterior lighting fixtures shall be downcast ninety (90) degree cut off fixtures and shall be free of glare and fully shielded such that no light rays are emitted by the installed fixture at angles above the horizontal plane, and so as to prevent any nuisance on or to adjacent roads and/or Lots. Lights cast upwards towards walls or trees shall not be allowed on any site. Exterior lighting, except downcast walkway and driveway lighting not more than three (3) feet above ground, shall not be used for extended periods, shall not be left on overnight, and shall not be used unless the site is occupied. The use of flood lighting is prohibited.

**(s) Completion of Construction.** Once construction is begun on any residence or remodel, such construction shall be completed within twelve (12) months following the date on which such construction was commenced. The construction of all other improvements must be completed within the time period established by the Committee in its approval of such improvement. The Committee, in its sole and exclusive discretion, may grant additional construction time on a case-by-case basis.

**(t) Rebuilding or Restoration.** If any home or other improvement is destroyed in whole or in part, it must be rebuilt or all debris must be removed and the Lot restored to a sightly condition. Any such rebuilding or restoration must be initiated within six (6) months after the damage or destruction occurs and, thereafter, diligently pursued to completion within a reasonable time not to exceed one (1) year after the date the damage occurred unless a longer period is otherwise approved by the Committee due to unusual circumstances.

**(u) Damage to Property.** Each Lot Owner is responsible for any damage caused to the Subdivision Property, Roads and Pathways within the Subdivision during the construction of improvements upon such Owner's Lot by any vehicle or equipment belonging either to an Owner or to any person or entity using the roads within the Subdivision while engaged in any activity benefitting the Owner. Each Owner shall also be responsible for any damage caused by utility cuts in roads, washouts and run off damage caused by failure to install culverts properly and in a timely manner as may be necessary in connection with the construction of improvements upon or any other uses made by such Owner to his/her Lot. If responsible party has not arranged for damages to be repaired within 10 days then the Committee will arrange for repairs to be done and the party or their agents will be responsible for said costs. Any repairs will be done to bring the damaged property back to its original condition. All repairs will be inspected by the Committee for approval of completion and conformance to standards set forth herein.

**5. ARCHITECTURAL COMMITTEE.** An Architectural Committee for the Subdivision, appointed by the Board of Directors of the Association, is herein referred to as the "Committee." All notices to the Committee required herein shall be sent to the address designated by the Committee from time to time, [which address initially shall be *c/o Jason Shiebler, P.O. Box 645, Driggs, ID 83422.*] All Committee actions or decisions shall be by a majority vote. The Committee shall consist of at least one (1) and not more than three (3) persons. A majority of the Committee may designate a representative to act for it. In the event of a vacancy due to the death, termination or resignation of any member, the remaining members shall have full authority to designate a successor. Neither the members of the Committee, nor its designated representative shall be entitled to any compensation of any kind for services performed pursuant to this covenant.

Jason Shiebler is hereby designated by Declarant as the initial sole member of the Committee, and shall hold office until such time as he has resigned or has had a successor appointed. At any time that Declarant is the Owner of at least ten (10) lots in the Subdivision, Declarant shall have the right to appoint and remove two members of the Committee. Thereafter, the Board of Directors of the Association shall have the power to appoint and remove all members of the Committee. Members of the Committee may be removed at any time, without cause.

The Board of Directors or the Architectural Committee shall not be liable for damages by reason of any action, inaction, approval or disapproval by it with respect to any request made pursuant to this provision, or any provision in this Fourth Restated Declaration. Any approval or permission granted, shall not be construed to constitute approval or permission by any official or commission of any governmental agency. Obtaining permits, applications or other written instruments required by any public or governmental agency shall be the sole responsibility of the applicant.

**6. CONSTRUCTION IMPROVEMENTS – APPROVAL REQUIRED.**

**(a) Prior Approval Required.** No new building, improvement or fencing shall be constructed or erected upon any Lot within the Subdivision until the Committee has approved the site plan and the construction plans and specifications submitted to it by the Subdivision Lot Owner in the form and manner set forth herein.

The Committee reserves the right to require the Owner to submit such other, additional information which it deems necessary for its determination and, if the Committee seeks additional information, the time period for its decision shall not start until such additional information is received by the Committee. The Committee shall consider each such application as to quality of workmanship and materials described, conformance with this Fourth Restated Declaration and harmony of the exterior colors, exterior construction materials and exterior design with existing structures and location with respect to topography and finish grade elevations. The President of the Board of Directors shall advise the applicant in writing of the Committee's decision within twenty-one (21) days of receipt of the application and submission of all additional information required by the Committee. In the event that the Committee disapproves any submitted plan, it shall inform the applicant, in writing, of the specific basis for disapproval and the manner in which the applicant may amend such plan to secure approval.

In the event the Committee fails to approve or disapprove any such plan so submitted within twenty-one (21) days after receipt of all required information and any other information, the Committee's failure to approve or reject the application shall not constitute a waiver of the rights of the Committee, the Association or any Lot Owner.

In the event that any construction is commenced upon any Lot within the Subdivision without having first secured Committee approval, the Committee and/or the Association and/or any Owner of a Lot within the Subdivision may institute an action to enjoin such construction until Committee approval has been granted. The prevailing party in any such injunction action shall be entitled to recover its or their attorney's fees, expert witness fees and costs of such action.

**(b) Requirements of Submission of Home and Site Plans.** All submissions to the Committee must include, at a minimum:

- i.** A site plan showing:
  - (1)** the location and siting of the structure(s) to be constructed on the Lot;
  - (2)** the location, siting and size and materials of all driveways, pathways and sidewalks;
  - (3)** the drainage across such Lot; and

(4) any other site improvements which the applicant considers to be important and which are known to the applicant at the time of the submission.

ii. The floor plan of the structure(s) with square footage indicated;

iii. A drawing showing the front, side and rear exterior elevations of all structures;

iv. A description on the drawings or on a separate specification sheet of the type and color of all exterior finishes and materials and roofing materials.

v. All plans submitted to the Association and Committee will be submitted on paper and mailed to Timberline Ranch Homeowners Association, P.O. Box 1120, Driggs, ID 83422. All proposed design, architectural and site plans for homes, buildings, and structures will be to scale: *i.e.* One Quarter (1/4) inch per one (1) foot scale for home, building, structure designs and One (1) inch per Ten (10) feet for Site Plans, and shall remain in the files of the Association and shall not be returned.

**(c) Location and Orientation of Improvements.**

i. A site plan depicting the location and orientation of all proposed improvements must be submitted and approved by the Committee as provided herein. The proposed location, setback and orientation of improvements and the driveway upon a particular Lot are important factors considered by the Committee. The Committee will generally consider and take into account, among other things, the topography of the particular Lot, the views, and the desire to maintain a maximum degree of symmetry, harmony and balance among all improvements situated within the Subdivision, in reaching its decision. Inasmuch as each Lot and the intention of each Owner for construction thereon presents a unique setting, each site plan shall be evaluated and approved by the Committee on a case-by-case basis rather than attempting to specify detailed requirements for the location and orientation of improvements herein. As a general rule, however, the following minimum criteria shall apply subject to the case-by-case evaluation by the Committee during the approval process.

ii. With respect to proper orientation of a home upon a Lot, any home shall, unless otherwise approved by the Committee in writing, be situated upon a Lot so that the front elevation of the home generally faces the road from which the home is accessed. The Committee may consider alternate orientations of the home if it is in close proximity to a neighboring home and it maintains a maximum degree of symmetry, harmony and balance among all improvements situated on the Lot and adjoining lots. Additionally, the Committee may consider the topography of a Lot, which merits the orientation of a home in a manner other than described in this paragraph.

**(d) Variances.** In conjunction with and in conformance to the Board's authority to grant variances pursuant to Section 21. below; the Committee shall have and retain the same authority to grant a variance to any rule, regulation, restriction or requirement herein for any reason it deems appropriate, [the unique or varying circumstances of the Lot and its Owner considered, including personal handicaps or Lot uniqueness], and so long as the end result of the requested variance is consistent with the theme, spirit and overall concept of the Timberline Ranch Subdivision. No variance may be granted regarding matters controlled by Federal, State, County or Town laws, rules or regulations.

**7. UTILITIES.** All utilities and service lines installed on Lots shall be located underground. Propane tanks must be buried or screened from public view and blend with the adjacent building on the Lot.

**8. WASTE DISPOSAL.** The owner of each Lot shall adhere to local regulations for disposing of trash and garbage. No rubbish, debris, ashes or trash of any kind shall be placed or permitted to accumulate upon said Lot. There shall be no burning of trash, debris or other materials at anytime, unless the same are done only on a temporary basis in a confined burn barrel during the construction of a house on the Lot. All solid waste containers must be stored out of view except during reasonable periods prior to and after pick-up, and only on the day of pick-up.

**9. MAINTENANCE AND LANDSCAPING.**

**(a)** It is the intent of these covenants that landscaping be installed to enhance each Subdivision Lot, the adjoining Lots and the Subdivision as a whole; so as to provide drainage and erosion control and to achieve a harmonious and integrated appearance of such Lot with the adjoining Lots and the Subdivision. A substantial contribution and investment shall be afforded to the installation and ongoing care and maintenance of "Landscaping" at any improved Lot within the Subdivision.

**(b)** Installation of all required landscaping shall be completed within twelve (12) months after completion of construction of the primary principal residence.

**(c)** All surface areas within the boundaries of all Lots not otherwise occupied by structures or roads shall be covered with native ground cover or other grass of the Lot Owner's choice. Soil immediately surrounding a home site, which has been disturbed during the construction phases, shall be re-seeded with a native turf mix or other grass of Owner's choice within one (1) year



after the completion of construction of the primary principal residence. The use of drought-resistant and/or low-maintenance grass is encouraged for purposes of a groomed lawn. Lawns, trees, and shrubs shall be irrigated with an automated, underground spray or drip system. Landscaping shall be limited to native grasses, trees, shrubs, and other vegetation suited to the area.

(d) Drainage easements are designated on the Plat along the sidelines of each Lot and along the roadways. No building, landscaping, or other site improvements shall be allowed which may interfere with the natural or designed drainage patterns that exist through the Subdivision as a whole. Any proposed changes to the Subdivision's natural or designed drainage patterns must be shown on any Lot Owner's application for approval of construction and must include a complete written definition of all proposed drainage changes

(e) Each Lot, its yard and landscaped areas, and all improvements thereon shall be maintained in a neat, clean, safe and well-maintained condition. Service areas, temporary storage piles not exceeding (30) days and compost shall be appropriately screened from view. No haystacks or hay bales, troughs, unstacked firewood, lumber, metals, bulk materials, rock and dirt piles, burn piles, scraps, refuse or trash shall be kept, stored or allowed to accumulate on any Lot at anytime unless the same are temporarily created for the purpose of home improvements, not to exceed thirty (30) days. Firewood must be neatly stacked in such a way as to be substantially screened from view of the other Lots.

(f) **Owner Obligation to Curtail Noxious Weeds.** All Owners, prior to initiating development, shall maintain their lot(s) free of noxious weeds.

**10. ALTERNATIVE ENERGY.** With regard to Windmills, Solar Panels, and other forms of Alternative Energy, the Lot owner should discuss the desire to use alternative energy with the local zoning department first. If it is determined that the proposed energy source meets local and State regulations, the owner should contact the Committee for a case-by-case approval. Alternative energy sources should be submitted to the Committee to ensure the size and location of such source will conform to these covenants.

**11. DOMESTIC ANIMALS.**

(a) No livestock or domestic animals, such as horses, sheep, goats, pigs, roosters, cattle and llamas may be kept, cared for or maintained on any Lot. Each Lot shall be entitled to a reasonable number of Household Pets (the term Household Pet(s) means generally recognized

Household Pets such as dogs, cats, fish, birds, rodents, and non-poisonous reptiles, and including not more than four female chickens), so long as such pets are not kept for any commercial purpose, are not kept in unreasonable numbers, do not cause an unreasonable amount of noise, odor, or do not otherwise become a nuisance to other Owners. All Owners or Occupants with Household Pets shall keep such animals restrained and controlled on the Owner's Lot at all times so they do not cause a nuisance to others and do not harass or endanger wildlife. For purposes of this Section, "nuisance" means any noisy animal, any vicious animal, or any animal which chews, tears, digs or scratches, litters or soils, destroys, or in any other manner injures clothing, garbage containers, gardens, flower beds, lawns, trees, shrubbery, or any other personal or real property within the Subdivision. Excessive, continued, or untimely barking, molesting of neighbors, chasing vehicles, habitually attacking other animals, swimming in ponds, trespassing upon private property in such a manner as to damage property shall also be deemed a nuisance. For purposes of this Section, a "noisy animal" means any animal which habitually, constantly, or frequently disturbs the sleep, peace, or quiet of any person.

(b) The Association shall have, and is hereby given, the right and authority to take such action or actions as it deems reasonably necessary to remedy the violation, including requiring the owner or custodian of a nuisance pet to confine such animal indoors or otherwise remedy the problem, and in the absence of resolving such problem, to levy against the offending Owner a Specific Assessment of not more than \$25.00 per day, for each day the Lot Owner refuses to remedy the problem, and maintains a nuisance pet.

(c) The Owner of a Lot where a Household Pet is kept, as well as the legal owner of such pet (if not such Owner), shall be jointly and severally liable for any and all damage and destruction caused by such pet, and for any clean-up of roads or other Lots necessitated by such pet.

**12. PARKING, STORAGE AND USE OF VEHICLES, MACHINERY AND EQUIPMENT.**

(a) Vehicles which are not in running condition, which do not have valid and effective Teton County registration, or are in a state of disrepair, and any trailers, campers, boats, recreational vehicles, snowmobiles and other like vehicles, machinery and equipment, shall NOT be used for habitation at any time on any Lot, and may be stored on a Lot ONLY so long as they are stored and enclosed in a garage, storage building or other covered structure. Private vehicles which are used on a daily basis do not need to be stored in such a manner.

(b) In the event that the Association shall determine that a vehicle is abandoned or

inoperable, or is otherwise in violation of the provisions of this Section, a written notice of violation describing said vehicle shall be personally delivered to the Lot owner upon whose Lot the vehicle sits, and if the offending vehicle is not removed or otherwise properly stored or enclosed within seventy-two (72) hours thereafter, the Association shall have the right to levy against such Lot Owner a Specific Assessment of not more than \$25.00 per day, for each day said vehicle remains on the Subdivision Lot.

(c) Motorcycles, motorized trail bikes, mini-bikes, dirt bikes, all-terrain vehicles, mopeds, snowmobiles and go-carts may not be used or operated in the Subdivision for recreational use. Notwithstanding the foregoing, motorcycles licensed for operation on public roads and snowmobiles may be used or operated in the Subdivision for access to and from the Subdivision.

**13. NO MINING, DRILLING OR EXCAVATING.** No Lot within the Subdivision shall be used for the purpose of mining, quarrying, drilling, boring, or exploring for or removing geothermal resources, oil, gas, or other hydrocarbons, minerals, rocks, stones, gravel, sand, top soil, or earth. Nothing contained herein shall be construed to limit the rights of the owner of a mineral interest severed from the surface of any portion of the Subdivision prior to the recording of this Fourth Restated Declaration, and nothing herein shall prevent the Declarant or its assigns from moving dirt, gravel, rocks and other soils necessary for the development of the Subdivision.

**14. CREEK, IRRIGATION DITCH AND POND PROTECTION.**

(a) **Creeks, Irrigation Ditches and Ponds.** It is imperative that any creeks and ditches located within the Subdivision shall flow freely. An Owner shall not take any action to affect, alter or impede the wetlands or the flow of any waters on a Lot or within the Subdivision. The Owner of any Lot upon which a ditch, creek or pond is located shall clean out any debris which collects in the water source located on such Lot. No pesticides or other noxious or dangerous chemicals shall be put into or allowed to enter any Subdivision Ponds, creeks or ditches.

(b) **Fish.** No species of fish shall be introduced into the water bodies of the Subdivision by any Lot Owner.

**15. FIREARMS, FIREWORKS AND HUNTING.** No firearm shall be discharged, and no fireworks shall be displayed or used, and, there shall be no hunting whatsoever, within the Subdivision.

**16. HAZARDOUS, NOXIOUS, OR OFFENSIVE ACTIVITIES.** No hazardous, illegal, noxious, or offensive activities shall be permitted within the Subdivision, nor shall anything be done or placed within the Subdivision Lots which is or may become a nuisance.

**17. EASEMENTS.**

(a) All dedications, limitations, restrictions and reservations of easements, including those for drainage, shown on the Teton County and Subdivision Plat/s are fully incorporated herein by reference for all purposes and made a part of this Fourth Restated Declaration.

(b) The Declarant hereby reserves for itself, so long as the Declarant's *Development Period* is in effect [as defined in Section 27(c) below], the right to grant to utility providers and the Association, perpetual easements in, on, under, over and across the Subdivision and its Lots, including easements ten (10) feet in width on each side of the boundary line along the entire perimeter of each lot in the Subdivision for the purpose of constructing, maintaining, operating, relocating, replacing, enlarging, and repairing electric, telephone, water, sewer, irrigation, and similar lines, pipes, wires, conduits, head gates, ditches, fences, and watercourses, and for purposes of inspecting, maintaining, repairing and replacing a roadway, pond, irrigation ditch and other such utilities and infrastructure to serve the Subdivision and its Lots; with such rights to be transferred to the Association at the end of the Development Period, or at such other earlier time as determined by Declarant;

(c) The Declarant hereby reserves for itself, so long as the Declarant's *Development Period* is in effect, the right to grant to third parties and the Association, perpetual non-exclusive maintenance easements in, on, under, over and across the Subdivision Common Areas, Common Roads and Pathways within the Subdivision for access to lots and areas as shown on such plat or as may hereafter be established by the Declarant, and for the purpose of installing, repairing, replacing and maintaining the roadways and the infrastructure for the irrigation ditches, ponds, creeks and including without limitation, walkways, pathway, trails and drainage systems, and the non-exclusive right and power to grant and record in the Public Records such specific easements as may be necessary, in the sole discretion of Declarant, in connection with the orderly development of the Subdivision property and Lots described in this Declaration; with such rights to be transferred to the Association at the end of the Development Period, or at such other earlier time as determined by Declarant;

(d) All work associated with the exercise of the easements described in subsections (b),

and (c) of this Section shall be performed in such a manner as to minimize interference with the use and enjoyment of the property burdened by the easement. Upon completion of the work, the person or entity exercising the easement shall restore the property, to the extent reasonably possible, to its condition prior to the commencement of the work. The exercise of these easements shall not extend to permitting entry into the structures on any Lot, nor shall it unreasonably interfere with the use of any Lot and, except in an emergency, entry onto any Lot shall be made only after reasonable notice to the Owner or occupant.

(e) In addition to the easements and reservations set forth on the Subdivision Plat, Declarant reserves the right for itself, and on behalf of the Association and Owners, perpetual Sixteen feet (16') easements around each Subdivision pond, creek and irrigation ditch's high water marks for the purpose of maintenance and water/pond management. To effectuate the purpose of these pond and ditch easements, there shall be no fencing of the ponds, creeks or ditches within the easement area. Similarly, any and all landscaping within the easement area must first be approved by the Association so as to insure the proposed landscaping does not interfere with Association maintenance. Any Owner wishing to landscape around a pond must submit a landscaping plan to the Committee, and obtain Association approval prior to initiating any landscaping project around the ponds, creeks or ditches.

(f) Title to the portion of the Roadway System that is contained within the boundaries of a Lot (the "Burdened Lot") shall be retained by the Owner of the Burdened Lot and shall be subject to the provisions of this Fourth Restated Declaration. Declarant hereby grants to each Owner and occupant, its successors and assigns and each of their guests or invitees a non-exclusive easement in, on, under, over and across the Roadway System for vehicular and pedestrian ingress, egress, access to and from their Lot and for private road purposes. The Association shall have the right to control vehicular circulation through the Properties by such means as establishing speed limits, by installing speed bumps or by any other means reasonably adopted by the Association.

**18. TIMBERLINE SUBDIVISION ASSOCIATION.**

(a) **Creation.** The Timberline Ranch Subdivision Owner's Association (hereinafter referred to as the "Association"), was and is created as an Unincorporated, Nonprofit Association under the *Idaho Uniform Unincorporated Nonprofit Association Act*, Sections 30-27-101, *et. seq.*, Idaho Statutes, 2015 *ed.*, to exercise the powers granted, and to perform the functions imposed, by these Covenants with regard to the Subdivision and Lots. The ***By-Laws of Timberline Ranch Subdivision Owner's Association*** shall govern the Association's actions, and are attached to this

Fourth Restated Declaration as **Appendix A**, for reference.

**(b) Board of Directors of the Association.** The management of the business of the Association, the management and maintenance of those parts of the Subdivision under the control of the Association, and the provision of Subdivision services shall be the sole responsibility of the Board of Directors.

**(c) Purposes and Powers.** The general purpose of the Association is to enforce these Covenants and to promote the health, safety, and welfare of the residents of the Lots. The Association, acting through its Board, shall also have the power to provide such additional services for the Lots as the owners may from time to time approve. The Association is hereby empowered to, and the Board shall:

**i.** Exercise all of the authority, powers, and privileges delegated to or vested in the Association by these Covenants or as may be reasonably implied as being necessary and proper hereunder, and to perform all of the duties and obligations established by these Covenants;

**ii.** Fix, levy, collect, and enforce payment by any lawful means, all charges or assessments pursuant to these Covenants, and to pay all expenses in connection therewith and all expenses incident to the conduct of the business of the Association;

**iii.** Be obligated to and shall accept title to any real property or interest therein, including improvements thereon, or to any personal property or equipment existing in the Subdivision when, as and if granted or furnished by Declarant. The Association shall also be obligated to and shall accept the benefits and burdens associated with any water rights, licenses, easements or other instruments which Declarant conveys to Association. In each and every instance, the Association shall hold the title, interest or rights granted, furnished or conveyed for the benefit of its members and shall maintain and preserve the same for the benefit of its members. With respect to any such property or rights, and any other property or rights acquired or held by the Association, the Board shall be obligated insofar as applicable in the particular circumstance to pay all rents, fees, taxes and assessments relating to, and necessary to preserve therein, and provide for the best and highest quality care, operation, management, insurance, maintenance, repair and placement of the same; including but not limited to all pathways, buildings (if any), park, utilities, and subdivision signs (if any);

**iv.** Provide Common Services to benefit the Subdivision, and the Owners. The Board may also engage the services of a manager or such other contractors as it deems necessary or desirable to provide such Common Services. The Board is specifically authorized to provide pathway maintenance, irrigation and weed control of common property, and maintenance and protection of the ponds. The Board is authorized to provide such services to individual Owner lots

if the same is necessary, and the Owner otherwise fails to act;

v. To the extent not assessed to or paid by Owners, the Board, on behalf of the Association, shall pay all real property taxes and assessments levied on Association property;

vi. In order to minimize road damage caused by heavy construction vehicles, the Association may establish required routes for such vehicles within the Subdivision and may prohibit such vehicles from entering specified roads within the Subdivision;

vii. Shall maintain water levels, vegetation, and aquatic health, and shall be solely responsible for stocking and maintaining the health of fish (if any) in all ponds in the Subdivision. The Association may lower water levels or completely empty some or all ponds during any period in the year when pond surfaces could be frozen or when irrigation or other water issues dictate such variations. Owners are prohibited from constructing any kind of structure and from depositing refuse or any other material or object in any pond in the Subdivision. Nothing in this section shall be interpreted to require Declarant or Association to stock or maintain fish in said ponds;

viii. Shall regulate use of irrigation water, including but not limited to regulating hours and extent of use and types of irrigation apparatus. The Association and Declarant shall have full authority to negotiate with the Trail Creek Irrigation Company and agencies of the State of Idaho as necessary to insure a continuing supply of irrigation water. The Association shall oversee and insure that Irrigation Maintenance is timely performed, shall provide for the payment of Irrigation Maintenance Costs, and shall serve and act as the “water master” to both administer the distribution of irrigation water within the Subdivision and to serve as liaison between the Association, Trail Creek Irrigation Company, and/or the City of Victor.

**(d) Number, Election, Tenure, and Qualifications of Board.** The number of Board Directors of the Association shall be three (3). Initially, the Board of Directors shall consist of the Member/s of the Architectural Committee, and the Declarant shall appoint any additional Directors in order to assure that Lot construction and Lot uses are in conformance with these Covenants, and to assure a high quality project. One member of the initial Board shall serve one (1) year, one, two (2) years, and one, three (3) years; thereafter, terms of Board Members shall be three (3) years. Until Declarant has sold and transferred title to sixty percent (60%) of the total number of Lots in the Subdivision to a non-related third party purchaser, Declarant shall have the sole right to appoint and remove all members of the Board, and to exercise the powers and responsibilities otherwise assigned to the Association Board. Not later than sixty (60) days after the conveyance of all lots in the Subdivision to non-Declarant Owners, the Lot Owners shall elect the entire Board of Directors. **The Board of Directors shall act at all times pursuant to majority vote.**

(e) **Limited Liability of Board of Directors.** Members of the Board and the officers, assistant officers, agents and employees acting in good faith on behalf of the Association:

i. Shall not be liable to the Owners as a result of their activities for any mistake of judgment, negligence or otherwise, except for their own willful misconduct or bad faith;

ii. Shall have no personal liability in contract to an Owner or any other person or entity under any agreement, instrument or transaction entered into by them on behalf of the Association in their capacity as such, except for their own willful misconduct or bad faith;

iii. Shall have no personal liability in tort to any Owner or any person or entity, except for their own willful misconduct or bad faith.

iv. Shall have no personal liability arising out of the use, misuse or condition of the Property which might in any way be assessed against or imputed to them as a result of or by virtue of their capacity as such.

v. The Association shall indemnify every director and Board against damages and expenses, including counsel fees, reasonably incurred in connection with any action, suit, or other proceeding to which he or she may be a party by reason of being or having been a Board Member, except that such obligation to indemnify shall be limited to those actions for which liability is limited under Idaho law.

(f) **Meetings.** The Members of the Association and the Board of Directors of the Association shall hold annual meetings. Annual meetings shall be held at such date and time as determined by the Board of Directors and Declarant. Other special meetings of the Association may be called at any time by the written request of a majority of Members in number, without regard to the value of the votes in the Association held by such Members. Written notice of any and all meetings of the Association shall be sent to all Owners not less than thirty (30) days and not more than sixty (60) days in advance of the meeting.

(g) **Member Voting.** Except as may otherwise be provided in this Fourth Restated Declaration, each Owner of a Lot shall have one vote to cast upon any matter that can be, or is delegated to be decided by a vote of the Members, **except that each Lot owned by Declarant shall be entitled to three votes.** If more than one person or entity owns a Lot, the vote of such member shall be cast as determined by the owners of such Lot. If the joint owners of a Lot are unable to reach agreement as to such Member's vote, the Board shall have the right to disqualify the vote on an issue to which such Member would otherwise be entitled to vote. Each Owner may vote in person or by proxy at all meetings of the Association. The presence of Owners or of proxies entitled to cast a majority of all the votes of the Association shall constitute a quorum. If the required quorum is



not present, the Members present shall have the power to adjourn the meeting from time to time without notice other than the announcement at the meeting, until a quorum shall be present. If a quorum shall be present at such meeting held in lieu of the adjourned meeting(s), any business may be transacted at such meeting as set forth in the original notice thereof.

**19. COMPLIANCE AND BOARD ENFORCEMENT WITHIN SUBDIVISION.** Every Owner and occupant of a Lot shall comply with the restrictions and requirements set forth in this Fourth Restated Declaration. The limitations, restrictions and requirements for land use and development set forth in these Covenants shall be enforceable by the Declarant, by the Board, or by any owner of a Lot within the Subdivision. Any Lot Owner who uses or allows his or her lot to be used or developed or neglected in violation of these Covenants further agrees to pay all costs incurred by the Board or the Declarant or other Lot Owner in enforcing the terms, conditions and restrictions of this Second Restated Declaration, including reasonable attorney's fees. The Board may impose sanctions for violation of this Fourth Restated Declaration after notice and a finding made in accordance with the Board's rules and procedures, to include, without limitation:

(a) Levying Specific Assessments to cover costs incurred by the Association to bring a Lot or Lot Owner's violation of this Fourth Restated Declaration into compliance;

(b) Suspending an Owner's right to vote;

(c) Suspending any services the Association provides to an Owner's Lot if the Owner is more than thirty (30) days delinquent in paying an assessment or charge owed to the Association;

(d) Exercising self-help or taking action to abate any violation of this Fourth Restated Declaration in a non-emergency situation;

(e) Requiring an Owner, as its own expense, to remove any structure or improvements on such Owner's Lot in violation of the requirements set forth in this Fourth Restated Declaration, and to restore the Lot to its previous condition and, upon failure of the Owner to do so, the Board or its designee shall have the right to enter the property, remove the violation and restore the property to substantially the same condition as previously existed and any such action shall not be deemed a trespass;

(f) Without liability to any Person, precluding any contractor, subcontractor, agent, employee or other invitee of an Owner who fails to comply with the terms and provisions of this

Fourth Restated Declaration from continuing or performing any further activities on the property;

(g) Bringing suit at law or in equity to enjoin any violation or to recover monetary damages to both;

(h) In addition to any other enforcement rights, if an Owner fails to properly perform his or her maintenance responsibility, the Association may record a notice of violation in the Public Records or perform such maintenance responsibilities and assess all costs incurred by the Association against the Lot and the Owner as a Specific Assessment. Except in an emergency situation, the Association shall provide the Owner reasonable notice and an opportunity to cure the problem prior to taking such enforcement action.

(i) All remedies set forth in this Fourth Restated Declaration shall be cumulative of any remedies available at law or in equity. In any action to enforce these Covenants, if the Association prevails, it shall be entitled to recover all costs, including, without limitation, attorneys fees and court costs, reasonably incurred in such action.

(j) The Association shall not be obligated to take any action if the Board reasonably determines that the Association's position is not strong enough to justify taking such action. Such a decision shall not be construed a waiver of the right of the Association to enforce such provision at a later time under other circumstances or estop the Association from enforcing any other covenant, restriction or rule.

**20. ASSESSMENTS.** Each owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association all assessments or charges duly established and collected as hereinafter provided. All such assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the owner of such Lot at the time when the assessment fell due.

(a) **Assessments.** The annual or biannual assessments and special assessments, together with interest, costs, and reasonable attorneys' fees, shall constitute a continuing lien superior to all other liens and encumbrances except:

i. Any assessment lien created or claimed under this Fourth Restated Declaration shall be subject and subordinate to the rights of any mortgagee or holder of a deed of trust under a

duly recorded first or second mortgage or deed of trust made in good faith and for value and which was recorded before the date on which the assessment sought to be enforced became delinquent;

**ii.** Liens and encumbrances recorded before the recordation of this Fourth Restated Declaration;

**iii.** Liens for real estate taxes and governmental assessments against the Lot.

**(b)** The lien hereunder shall not affect the priority of mechanics' or materialmen's liens or the priority of liens for other assessments made by the Association.

**(c)** Recording of this Fourth Restated Declaration constitutes record notice of the terms and obligations herein.

**(d)** The Association's lien may be foreclosed in any manner provided by Idaho Law.

**(e)** Assessments shall be a personal obligation of each Owner, and suit to recover money judgment shall be maintainable without waiving the lien securing it.

**(f)** Except as otherwise provided in Section 20(a)(i) above with regard to first mortgagees, a grantee or other successor in interest to an Owner's Lot shall be jointly and severally liable with the Owner grantor thereof for all unpaid assessments, penalties, interest, costs of collection and foreclosure, including attorneys' fees, chargeable to such Owner's Lot prior to the time of the conveyance or transfer.

**(g) Annual Budget.** At least thirty (30) days in advance of each annual or biannual assessment period, the Board shall prepare a budget estimate for Common Services and the administration of the Association, including taxes and insurance coverage as needed, and fix the amount of the assessment based on this estimate. The budget estimate may include a reserve for future contingencies.

**(h) Special Assessments For Capital Improvements.** In addition to the annual or biannual assessments, the Board may levy a special assessment for the purpose of defraying, in whole or in part, the costs of any construction, reconstruction, repair or replacement of any improvement upon the Property or the Common Roads, paths and Open Space; provided that any such special assessment shall have the assent of a majority of the Member Owners who are voting in person or by proxy at a meeting duly called for this purpose.

**(i) Notice and Quorum for any Special Assessment.** Written notice of any meeting called for the purpose of special assessment shall be sent to all Owners not less than thirty (30) days or no more than sixty (60) days in advance of the meeting. At the first such meeting, the presence of Owners or of their proxies entitled to cast votes for a majority of Lots in the Property shall constitute a quorum. Each Lot Owner shall be entitled to one (1) vote for any such special assessment vote, except for Declarant, who shall be entitled to three (3) votes for each lot owned by Declarant during Declarant's *Development Period*, as defined in Section 27 below.

**(j) Uniform Rate of Assessment.** Both annual and special assessments shall be fixed at an equal rate for each Lot, including each lot conveyed or developed by Declarant, whether undeveloped or developed. Assessments shall be collected on an annual or biannual basis at the discretion of the Board.

**(k) Initial Assessment / Date of Commencement of Annual or Biannual Assessment and Due Dates.** Initially, all Lots shall be subject to an annual assessment amount of **Two Hundred Dollars [\$200.00]** ["Initial Assessment".] The Initial Assessment shall be subject to adjustment, increase or decrease, by the Association and its Board, as provided for herein. The assessments provided for herein shall commence as to all Lots as of the date of this Fourth Restated Declaration, and shall be assessed and collected by the Association Board at such times as it determines for each assessment period, and as permitted annually or biannually herein. The Board shall operate on a calendar year basis. The Board shall fix the amount of the assessment against each Owner at least thirty (30) days in advance of each assessment period and written notice of the assessment shall be sent to every Owner, purchaser or mortgagee, and for a reasonable charge shall furnish a certificate signed by a Board member setting forth whether the assessments on a specified Lot has been paid.

**(l) Interest. Effect of Nonpayment of Assessments. Remedies.** Assessments which have not been paid within thirty (30) days after the due date shall bear interest from the due date at the rate of ten percent (10%) per annum. The Association may bring any action provided or permitted by law against an Owner delinquent in payment of assessments, either individually or to foreclose the lien against the Lot. The Association may discontinue the furnishing of any services to an Owner who is in default on payment of assessments after seven (7) days' written notice to such Owner. Further, any voting rights of an Owner who is in default on payment of assessments may be suspended by the Association. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of his Lot.

**21. VARIANCES BY BOARD.** The Board may authorize variances from compliance with any of the Covenants as described in this Fourth Restated Declaration herein to an Owner upon the Owner's written request to deviate from those standards and requirements described herein. The Board may grant a variance so long as it conforms to and does not conflict with any similar variance grant authorized and provided by the Committee pursuant to Section 6.(d) above, and provided that such variance shall be in conformity with the intent and purposes of this Fourth Restated Declaration, and provided further that in every instance such variance will not be materially detrimental or injurious to the other portions of the Subdivision Property or Owner's Lots as protected by this Fourth Restated Declaration. Such variances must be evidenced in writing.

**22. NO WAIVER.** The failure of the Board, the Committee, or its agents to insist, in one or more instances, upon the strict performance of any of the terms, covenants, conditions or restrictions of this Fourth Restated Declaration, or to exercise any right or option herein contained, or to serve any notice or to institute any action, shall not be construed as a waiver, for the future, of such term, covenant, condition or restriction; but such term, covenant, condition or restriction shall remain in full force and effect. The receipt and acceptance by the Board or its agent of the payment of any assessment from an Owner, with knowledge of the breach of any covenant hereof, shall not be deemed a waiver of such breach, and no waiver by the Board of any provision hereof shall be deemed to have been made unless expressed in writing and duly signed by or on behalf of the Board.

**23. ENFORCEABILITY.** These Covenants may be enforced by the Association and its Board, the Declarant and the record owner of any Lot in the Subdivision, but shall not run to the benefit of any third party.

**24. ACCEPTANCE OF FOURTH RESTATED DECLARATION.** Every Owner shall be bound by all of the provisions of the restrictions, covenants and requirements as set forth in this Fourth Restated Declaration, and every Owner, through his or her purchase or ownership, expressly accepts and consents to the operation and enforcement of all of the provisions set forth in this Fourth Restated Declaration.

**25. SEVERABILITY.** Invalidation of any one of these Covenants by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

**26. DURATION OF DECLARATION.** All of the covenants, conditions and restrictions set forth herein shall remain in full force and effect at all times against the Property and the owners and purchasers of any portion thereof, subject to the right of amendment as set forth herein. This Fourth

Restated Declaration is effective on the date of recordation in the Teton County, Idaho Clerk's Office. Unless sooner terminated in accordance with the provisions herein, this Fourth Restated Declaration and all the covenants set forth herein shall remain in full force and effect for an initial period of Twenty (20) years from the date of recordation hereof and thereafter, and unless revoked by the Association, shall automatically renew for successive periods of Twenty (20) years each.

**27. MEMBERSHIP VOTING, AMENDMENT OR REVOCATION.**

**(a) Amendment of Fourth Restated Declaration by Lot Owners.** This Fourth Restated Declaration or any provision hereof, or any of the covenants, conditions or restrictions contained herein, may be restated, terminated, extended, modified, amended or repealed by the recording of a written instrument specifying the modification, restatement, amendment or repeal, and which is executed by not less than three-fourths (3/4 - 75%) vote of the Lot Owners, provided and subject to the following voting conditions, requirements and exceptions:

**i. Declarant's Right to Three Votes for Each Lot Owned.** During Declarant's *Development Period* as defined in sub-section 27.(c) below, for purposes of any Association Membership voting, and for determining the Lot Owner percentage of vote required for the amendment, repeal, restatement or modification of this Fourth Restated Declaration, each Owner of a Lot shall have one (1) vote to cast for each Lot owned, and Declarant shall be entitled to three (3) votes to cast for each Lot Declarant owns;

**ii. Declarant's Affirmation and Approval Required.** For so long as Declarant remains record owner of at least ten (10) Lots within the Subdivision, an amendment, repeal, restatement or modification of this Fourth Restated Declaration shall require not less than three-fourths (3/4) vote of the Owners and the vote of the Declarant.

**(b) Declarant's Reserved Right to Amend and Annex at Anytime.** During Declarant's *Development Period* as defined in sub-section 27.(c) below, Declarant may, without the consent or concurrence of the Association Board, the Members, Lot Owners or any other party:

**i.** amend, modify or revoke this Fourth Restated Declaration if reasonably necessary, in the sole discretion of Declarant, to conform to any requirement, law, ordinance, regulation, or policy of any governmental agency, department or body of the United States or the State of Idaho or in order to qualify for financing or insurance for mortgages under VA or FHA or other lending programs;

**ii.** establish, vacate, and relocate Lots, easements, and utility locations;

**iii.** annex additional land which is adjacent to or contiguous to the Property, on

the condition that such parcels and future Lots be made subject to the terms and conditions of this Fourth Restated Declaration;

iv. restate, terminate, extend, modify, amend or repeal this Fourth Restated Declaration for any reason so as to benefit the Subdivision and its development; and

v. assign to the Association any and all rights to Trail Creek Irrigation Company water shares which are appurtenant to or attach to the Lots within the Subdivision.

**(c) Declarant's Development Period Defined.** The Declarant's *Development Period* shall be defined as a period commencing upon the recording of this instrument and ending upon the later of the seven [7] year anniversary of the date of this Fourth Restated Declaration's recordation with the Teton Clerk, OR until seventy-five (75%) of the Lots which are the subject of this Fourth Restated Declaration are sold by Declarant to a non-related third party. No special Declarant rights created or reserved under this section may be transferred except by an instrument, executed by the transferee, evidencing the transfer recorded in the Office of the County Clerk of Teton County, Idaho. Upon transfer of any special Declarant right, the liabilities and rights of the transferor Declarant and the rights, liabilities, and obligations of the transferee Declarant shall be as provided by law. Declarant's ability to transfer its reserved and/or special rights shall be limited to the following circumstances:

i. Should Declarant determine it necessary to transfer its property holdings to another entity which shares a mutual incorporator, member, partner or shareholder with Declarant.

ii. Should Declarant sell more than Fifty Percent (50%) of the total Lots it owns at the time of sale, and which then exist in the Property, to a single individual, partnership, general partnership, limited liability company, or corporation.

**(d) Development Rights.** No rule or action by the Association or Board shall impede the Declarant's right to develop the Property, Subdivision Lots or any property annexed into the Property as provided for herein.

## **28. IRRIGATION WATER AND ASSIGNMENT OF SHARES TO ASSOCIATION.**

**(a) Use of Irrigation Water.** Trail Creek Irrigation Company is the umbrella legal governing body in control of Kearsley Canal, and has a water master tasked with managing the use and flow of water within the Subdivision, and who [under the supervision of the Idaho State Water Master], shall work with the Association and Declarant to coordinate the use and flow of water to and within the Subdivision. The Association shall regulate use of irrigation water, including but not

limited to regulating the hours and extent of use and types of irrigation apparatus. The Association and Declarant shall have full authority to negotiate with the Trail Creek Irrigation Company and agencies of the State of Idaho as necessary to insure a continuing supply of irrigation water. The Association shall oversee and insure that Irrigation Maintenance is timely performed, and shall provide for the payment of any and all Irrigation Maintenance Costs and Irrigation Company assessments. The Association shall at all times utilize this water in a beneficial manner for application to all Lots, Common Areas and other properties within the Subdivision.

**(b) Assignment and Title to Irrigation Shares.** Declarant hereby reserves any and all rights, title and ownership of those Trail Creek Irrigation Company shares that it owns and which are appurtenant to the Lots and Subdivision properties described above, for itself and for the Association, with such rights and ownership to be transferred to the Association at the end of the Development Period, or at any such earlier time as determined by Declarant. At any such time that Declarant transfers ownership of any Lot within the Subdivision to a third-party, any and all Trail Creek Irrigation Company shares shall automatically be assigned, by virtue of the transfer and grant of property, to the Association, for the Association to own, manage and administer on behalf of the Subdivision. Every Owner, through his purchase or ownership of a Lot in the Subdivision, expressly accepts and consents to the terms and conditions of this assignment, accepts the assignment of any and all Trail Creek Irrigation Company shares which are appurtenant to any Lot to the Association, and authorizes and assigns to the Association all rights and authority to vote and manage those rights and obligations which arise from the ownership or transfer of those irrigation shares.

**29. RUNS WITH LAND.** All covenants, conditions, restrictions and agreements herein contained are made for the direct, mutual and reciprocal benefit of each and every Lot of the Subdivision; shall create an equitable servitude upon each Lot in favor of every other Lot; shall create reciprocal rights and obligations between the respective Owners of all Lots and privity of contract and estate between all grantees of said Lots, their heirs, successors and assigns; and shall, as to the Owner and occupant of each Lot, his heirs, successors and assigns, operate as covenants running with the land, for the benefit of all other Lots, except as provided otherwise herein.

### **CERTIFICATION**

The undersigned certifies:

(1) That Tree Tops Timberline, LLC is the Declarant herein, is managed by its managing member Jason Shiebler, is the record owner of 58 of the 65 Lots which make up the Timberline Ranch Subdivision, and has authorized and voted in favor of effecting this Fourth Restated Declaration.



(2) Jason Shiebler is the duly elected and acting President of the Timberline Ranch Subdivision Owner’s Association, an Idaho unincorporated, nonprofit association; and the foregoing Fourth Restated Declaration was duly adopted by a resolution of the Director.

**IN WITNESS WHEREOF**, this Fourth Restated Declaration of Covenants, Conditions and Restrictions for Timberline Ranch Subdivision is executed and subscribed this \_\_\_ day of April, 2020.

**TREE TOPS TIMBERLINE, LLC**

BY: \_\_\_\_\_  
Jason Shiebler  
Its Managing Member

***Affirmed:***

\_\_\_\_\_  
By: Jason Shiebler  
President – Timberline Ranch  
Subdivision Owner’s Association

STATE OF IDAHO )  
 ) ss.  
COUNTY OF TETON )

On this \_\_\_\_\_ day of April, 2020, the foregoing FOURTH RESTATED DECLARATION OF COVENANTS CONDITIONS AND RESTRICTIONS FOR TIMBERLINE RANCH SUBDIVISION was acknowledged to before me by Jason Shiebler, who appeared before me and was personally known to me, and who, being by me duly sworn, did say that he is the respective Managing Member of Tree Tops Timberline, LLC, an Idaho Limited Liability Company, and also the President of the Timberline Ranch Subdivision Owner’s Association, and that said instrument was signed on behalf of Tree Tops Timberline, LLC by authority of its Members and Managers and that Jason Shiebler, both as the company’s Managing Member, and as the duly authorized President of the Timberline Ranch Subdivision Owner’s Association, acknowledged said instrument to be the free act and deed of said company and homeowner’s association.

Witness my hand and official seal.

\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires:

**Attachment:**

**Appendix A – By-Laws of Timberline Ranch Subdivision Owner’s Association**