AMENDED AND RESTATED
BYLAWS
OF
MOUNTAIN SIDE HOMEOWNERS ASSOCIATION

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AMENDED AND RESTATED
BYLAWS
OF
MOUNTAIN SIDE HOMEOWNERS ASSOCIATION

RECITALS

Mountain Side Homeowners Association, a Colorado nonprofit corporation ("Association"), certifies that:

(1) The Association and its Members desire to amend and restate the Bylaws currently in effect as set forth below.

(2) The provisions set forth in these Amended and Restated Bylaws supersede and replace the existing Bylaws and all amendments.

The Bylaws of the Association are hereby amended by striking in their entirety Articles I through XVI, inclusive, and by substituting the following:

ARTICLE 1 INTRODUCTION, PURPOSES AND DEFINITIONS

Section 1.1 Introduction.

These Amended and Restated Bylaws are adopted for the regulation, management, and governance of the affairs of the Association. The Association was organized as a Colorado nonprofit corporation under Colorado law to act as the Association under the Declaration of Covenants, Conditions, and Restrictions for Mountain Side P.U.D., as may be amended (the "Declaration").

Section 1.2 Purposes.

The purposes for which the Association is formed are:

(a) to protect the value and desirability of the Mountain Side P.U.D. community (the "Community") and the Residential Units;

(b) to further the interests of the residents of the Community and Members of the Association;

(c) to be the owners association provided for in the Declaration;

(d) to operate and govern the Community; and

(e) to provide for the administration, maintenance, preservation, and architectural review of the Lots, Single Family, Duplexes, and Common Areas within the Community.

Section 1.3 Definitions

The definitions set forth in the Declaration and/or by Colorado law shall apply to all capitalized terms contained in these Bylaws, unless otherwise noted.

ARTICLE 2 MEMBERSHIP AND VOTING

Section 2.1 Membership and Voting.

Every person who is an Owner shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot. Ownership of a Lot or Residential Unit shall be the sole qualification for membership. Votes shall be allocated pursuant to the Declaration. Fractional and cumulative voting are prohibited.

Section 2.2 Suspension of Voting Rights and Use Rights.

During any period in which an Owner shall be in default in the payment of any Assessment, including interest, fines, late fees, attorney fees and costs, levied by the Association, the voting rights and right to use of the recreational facilities of the Owner shall be deemed suspended by the Board of Directors, without notice or hearing, until the Assessment has been paid. Voting rights and use rights of an Owner may also be suspended for other violations for a period not to exceed 90 days or during any period of violation, whichever is greater.

Section 2.3 Member Voting.

(a) At all meetings of Members, each Member eligible to vote may vote in person or by proxy.

(b) If only one of several Owners of a Lot or Residential unit is present at a meeting of the Association, the Owner present is entitled to cast the vote allocated to such Lot.

(c) If more than one of the Owners is present, the vote allocated to the Lot or Residential Unit may be cast only in accordance with the agreement of a majority of those Owners. Majority agreement exists if any one of the Owners casts the vote allocated to the Lot without protest being made promptly to the person presiding over the meeting by another Owner of the Lot. In the event of

disagreement between or among co-Owners and an attempt by two or more of them to cast such vote or votes, such vote or votes shall not be counted.

(d) The vote of a corporation, partnership, limited liability company, or other legal entity may be cast by any officer, director, trustee, partner, manager, or member of such corporation, partnership, limited liability company, or other legal entity in the absence of express notice of the designation of a specific person to the Board of Directors.

(e) The chair of the meeting may require reasonable evidence that a person voting on behalf of a corporation, partnership, or business trust Owner is qualified to vote.

(f) Votes allocated to Residential Units or Lots owned by the Association may not be cast by the Board.

Section 2.4 Transfer of Membership.

Transfers of membership shall be made on the books of the Association only upon presentation of evidence, satisfactory to the Association, of the transfer of ownership of the Lot to which the membership is appurtenant.

ARTICLE 3 MEETINGS OF MEMBERS

Section 3.1 Annual Meetings.

An annual meeting of the Members shall be held during each of the Association's fiscal years, at such time of the year and date as determined by the Board. The Directors shall be elected by the Members at the annual meeting, in accordance with the provisions of these Bylaws. The Members may transact other business as may properly come before them at the annual meeting. Failure to hold an annual meeting shall not be considered a forfeiture or dissolution of the Association.

Section 3.2 Budget Meetings.

Meetings to consider proposed budgets shall be called in accordance with the Act. The Act's budget process to be followed is as follows:

(a) The Board of Directors of the Association is to prepare and approve a proposed budget at least annually.

(b) Within 90 days after the Board of Directors' adoption of the proposed budget, or such longer time as allowed by the Act, the Board of Directors must mail or otherwise deliver, including posting the proposed budget on the association's website, a summary of the proposed budget to all Members,

and set a date for a meeting to consider the proposed budget. The meeting must occur within a reasonable time after mailing or other delivery of the summary, or as allowed in the Bylaws.

(c) Notice for the meeting at which the budget will be considered must be mailed not less than 10 days nor more than 50 days before the meeting.

(d) At the meeting, unless Members holding at least a majority of the total votes in the Association, or any higher percentage as may be set forth in the Declaration, vote to reject the proposed budget, the proposed budget becomes the approved budget of the Association.

(e) A quorum is not required at the meeting if the meeting is just a budget meeting. If the meeting is also an annual or special meeting at which other business is to be conducted, a quorum is required for other business to be conducted at the annual or special meeting, but not for consideration of the budget.

(f) In the event the proposed budget is rejected, the budget last ratified is continued until such time as a subsequent budget proposed by the Board of Directors is ratified.

Section 3.3 Special Meetings.

Special meetings of the Association may be called by the president, by a majority of the members of the Board of Directors, or by the secretary, upon receipt of a petition signed by Owners holding at least 20% of the votes in the Association. The form of notice, date, time, and place of the meeting shall be determined by the Board. If a notice for a special meeting demanded pursuant to petition is not given by the secretary within 30 days after the date the written demand or demands are delivered to the secretary, the person(s) signing the demand or demands may set the time and place of the meeting and give notice, pursuant to the terms of these Bylaws. Any meeting called under this Section shall be conducted by the president of the Board, or in their absence, a person chosen by a majority of the Board. In the event no Board members are in attendance, a chairperson for the meeting shall be elected by a majority of the Members present at the meeting, and that chairperson shall conduct the meeting.

Section 3.4 Notice of Meetings.

Notice of each meeting of the Members shall be physically posted in a conspicuous place if feasible and practicable at least 24 hours prior to any meeting of the Members. Written notice of each meeting of Members shall be given by, or at the direction of, the secretary or person authorized to call the meeting, by mailing a copy of the notice, postage prepaid, or by personal delivery, at least 10 days before, but not more than 50 days before the meeting to each Member, addressed to the Member's

address last appearing on the books of the Association, or supplied by a Member to the Association for the purpose of notice.

In addition to mailing, but not in lieu of, notice may also be sent by any other means permitted by the Colorado Revised Nonprofit Corporation Act, including, but not limited to, e-mail delivery. If the Association has the ability to give electronic notice, the Association shall e-mail notice of the Members' meeting to any Member who requests, and who provides their e-mail address to the Association in addition to the above specified delivery of notice. Any such e-mail notice shall be given at least 24 hours prior to the meeting. The notice shall specify the place, day and hour of the meeting and, in the case of a special meeting, the purpose of the meeting. No matters shall be heard nor action adopted at a special meeting except as stated in the notice.

Section 3.5 Place of Meetings.

Meetings of the Members shall be held in the Community, in any other location in the Summit County area, or in any other suitable place convenient to the Members, as may be designated by the chair of the meeting.

Section 3.6 Quorum of Members.

The presence of Members holding at least 20% of the votes entitled to be cast in the Association at any meeting, in person or by proxy, shall constitute a quorum for any action except as otherwise provided in the Governing Documents.

Section 3.7 Proxies for Members Meetings.

(a) The vote allocated to a Residential Unit may be cast under a proxy duly executed by an Owner.

(b) All proxies shall be in writing and provided to the Secretary or designee of the Association.

(c) If a Residential Unit is owned by more than one person, each Owner of the Residential Unit may vote or register protest to the casting of the vote by the other Owners of the Lot through a duly executed proxy. In the event of disagreement between or among co-Owners and an attempt by two or more of them to cast such vote or votes, such vote or votes shall not be counted.

(d) An Owner may revoke a proxy given under this section by written notice of revocation to the person presiding over a meeting of the Association or by attending the meeting and voting in person, after giving actual notice to the person presiding over the meeting of the Owner's intent to do so.

(e) A proxy is void if it is not dated.

(f) A proxy terminates 11 months after its date, unless it specifies a shorter term or a specific purpose, or upon sale of the Lot for which the proxy was issued.

(g) Proxies obtained through fraud or misrepresentation are invalid as determined in the sole discretion of the Secretary of the Association.

Section 3.8 Order of Business.

The Board may establish the order of business for all meetings of the Board or Members. Failure to strictly follow Robert's Rules of Order shall not invalidate any action taken at a meeting of the Board or Members.

Section 3.9 Waiver of Objection of Notice.

A Member's attendance at a meeting waives objection to lack of notice or defective notice of the meeting, unless the Member, at the beginning of the meeting, objects to holding the meeting or transacting business at the meeting because of lack of notice or defective notice. Further, a Member's attendance at a meeting waives objection to consideration of a particular matter at the meeting that is not within the purpose or purposes described in the meeting notice, unless the Member objects to considering the matter when it is presented.

Section 3.10 Voting Procedures/Secret Balloting.

(a) Secret ballots must be used if required by law.

(b) All other voting may be by voice, by show of hands, by consent, by mail, by electronic means, by proxy, by written ballot, or as otherwise determined by the Board of Directors prior to the meeting or by a majority of the Members present at a meeting.

Section 3.11 Voting By Mail Ballot.

(a) In any instance where a vote of the Members is required or permitted to be taken at a meeting of the Members, such vote may be taken by written ballot in lieu of a meeting, pursuant to this Section. In case of a vote by written ballot in lieu of a meeting, the secretary shall mail or deliver written notice and a ballot to all Members. The notice shall include: (i) a statement of the proposed action, (ii) a statement that Members are entitled to vote for or against such proposal, (iii) a date at least 10 days after the date such notice shall have been given on or before which all ballots must be received by the Association, (iv) the number of ballots which must be received to meet the quorum requirement and the percentage of votes received needed to carry the

vote; and (v) state the time by which the ballots must be received by the Association to be counted. The notice shall also be accompanied by written information sufficient to permit each person casting such ballot to reach an informed decision on the matter.

(b) The Association may conduct elections of Directors by mail, in its sole discretion, and pursuant to procedures adopted by it; *provided however,* that any procedures adopted shall provide for notice to Members of the opportunity to run for a vacant position and/or nominate any Member of the Association for a vacant position, subject to the nominated Member's consent.

(c) A written mail ballot, once received by the Association, may not be revoked.

Section 3.12 Telephone Or Electronic Communication In Lieu Of Attendance.

Members may attend meetings by using an electronic or telephonic communication method whereby the Member may be heard by the other Members and may hear the deliberations of the other Members on any matter properly brought at the meeting. The Member's vote shall be counted and the presence noted as if that Member were present in person.

Section 3.13 Voting in Elections of Directors/Other Voting.

In an election of Directors, candidates receiving the largest number of votes shall be elected. On all other items, the vote of Members holding a majority of the votes cast shall be binding upon all Members for all purposes except where a higher percentage vote is required in the Governing Documents, as amended, or by law.

Section 3.14 Acceptance or Rejection of Individual Votes.

The Association has the right to reject a vote, consent, written ballot, waiver, proxy appointment or proxy appointment revocation when it has a reasonable, good faith basis to doubt the validity of the signature or the signatory's authority to sign for the Owner. The Association and its officer or agent who accepts or rejects any of the above in good faith is not liable for any damages that may result from the acceptance or rejection. Unless a court decides otherwise, any action taken on the acceptance or rejection of any of the above will be deemed valid.

Section 3.15 Counting of Ballots.

All ballots shall be counted by a neutral third party, or a committee of volunteers who are Owners and are not Board members and not candidates in a contested election, selected or appointed at an open meeting in a fair manner by the chair of the Board or

person presiding at such meeting or as otherwise required by law and as may be further defined by policy or procedures of the Association.

ARTICLE 4 BOARD

Section 4.1 Number.

The affairs of the Association shall be governed by a Board of Directors which shall consist of nine members, elected or appointed as provided below. In the case where through removal or resignation, the total number of Board members is less than nine, the Board will be considered properly constituted until such vacancies are filled.

Five members of the Board of Directors shall be members of the Board of Managers of the Mountain Side Condominium Association. Four members of the Board of Directors shall be Owners of other Units within the Community which are not condominiums within the Mountain Side Condominium Association.

Owners who only own Units in the Mountain Side Condominium Association, and are not members of the Board of Managers of the Mountain Side Condominium Association, may not be elected as members of the Board of Directors.

Section 4.2 Qualification.

(a) Directors shall be Owners, but shall not be required to be residents of Colorado.

(b) Only one Owner per Lot, eligible to vote, current in the payment of Assessments, and otherwise in good standing, may be elected to, or appointed to fill a vacancy on the Board.

(c) If any Lot or Residential Unit is owned by a partnership, trust, corporation, limited liability company, or other legal entity, any officer, partner, director, manager, member, trustee, shall be eligible to serve as a Director.

(d) Any Owner who is more than 60 days delinquent in payment of any Assessment and is not in a qualified payment plan shall not be qualified to serve on the Board.

(e) Any Director who has unexcused absences from three consecutive Board meetings shall not be qualified to serve on the Board. An absence will be excused if the absent Board member notifies the Board president of the planned absence and the reason for the absence at least three days before the meeting, and a majority of the remaining Board members approve the absence as being for a valid purpose.

(f) Any Owner who is in violation of any provision of the Governing Documents of the Association for more than 60 days, after notice and the opportunity for a hearing, shall not be qualified to serve on the Board.

(g) Any Owner who initiates or maintains an adversarial judicial proceeding of any type or initiation of arbitration against the Association shall not be qualified to serve on the Board for the duration of the proceeding.

(h) Within 30 days of being elected or appointed as a director, each director shall comply with any applicable state and federal reporting requirements, including but not limited to the federal Corporate Transparency Act ("CTA"). The CTA requires the filing of a Beneficial Ownership Information Report, which must include the name of each director, the director's date of birth, address, and a copy of the director's driver's license, passport, or other qualifying document which shows a unique identifying number. Failure to do so shall result in the Director being unqualified to serve on the Board.

(i) Once elected or appointed, each Director is encouraged to and shall, to the extent required by law, attend at least one educational program per year related to the management, operation or law of community associations. The Director shall be entitled to reimbursement of any actual or necessary expenses incurred in attending such educational program(s), as long as approved, in advance, by the Board of Directors. Any such expenses shall be treated as a Common Expense.

(i) If, by the affirmative vote of the remaining members of the Board, a Director is deemed not qualified to serve on the Board, the Director's position shall be deemed vacant by resignation.

Section 4.3 Term of Office For Directors.

The term of office of Directors shall be two years. The terms of the Directors shall be staggered.

Four members of the Board of Directors shall be elected by the Owners who own a single family residence (also known as a patio home), Lot, or duplex unit in the Community, at the annual meeting of the Association pursuant to the terms of these Bylaws.

Five members of the Board of Directors shall be the members of the Board of Managers of the Mountain Side Condominium Association, and shall not be elected at the annual meeting of the Association.

Section 4.4 Resignation of Directors.

Any Director may resign at any time by giving written notice to the president, to the secretary or to the Board of Directors stating the effective date of the resignation. Acceptance of a resignation shall not be necessary to make the resignation effective.

Section 4.5 Removal of Directors.

(a) One or more Directors or the entire Board of Directors may be removed at a Special Meeting of Members called pursuant to these Bylaws, with or without cause, by a vote of a majority of the Members. Notice of a Special Meeting of the Members to remove Directors shall set forth that the meeting is being conducted for that purpose and shall be provided to every Member of the Association, including the Directors sought to be removed, as provided in these Bylaws. Directors sought to be removed shall have the right to be present at this meeting and shall be given the opportunity to speak to the Members prior to a vote to remove being taken.

(b) In the event of removal of one or more Directors, a successor shall be elected by the Members at the meeting to serve for the unexpired term of their predecessor(s).

Section 4.6 Vacancies.

Vacancies on the Board caused by any reason (other than removal) may be filled by appointment by a majority vote of the remaining Board at any time after the occurrence of the vacancy, even though the Directors present at that meeting may constitute less than a quorum. Each person so appointed shall be a Director who shall serve for the remainder of the unexpired term.

Section 4.7 Compensation.

No Director or officer shall receive compensation for any service the Director or officer may render as a Director or officer to the Association. However, any Director or officer may be reimbursed for actual expenses incurred in the performance of Association duties, if allowed by state law.

ARTICLE 5 MEETINGS OF DIRECTORS

Section 5.1 Regular Meetings.

Regular meetings of the Board of Directors shall be held at such times, place, and hour as may be fixed by the Board. The Board may set a schedule of regular meetings

by resolution, and no further notice is necessary to constitute such scheduled regular meetings.

Section 5.2 Special Meetings.

Special meetings of the Board of Directors shall be held when called by the president of the Association, or by any two Directors, after not less than two days' notice to each Director.

Section 5.3 Notice of Board Meetings.

Except as provided in these Bylaws above or below, written notice of each meeting of the Board shall be given by, or at the direction of, the secretary, by mailing a copy of the notice, postage prepaid, at least two days before the meeting, or by any other means permitted by the Colorado Revised Nonprofit Corporation Act, including, but not limited to, personal delivery, facsimile, and e-mail delivery, to each Board member entitled to vote, addressed to the Board member's address last appearing on the books of the Association, or supplied by a Board member to the Association for the purpose of notice. If a notice for a special meeting demanded pursuant to these Bylaws is not given by the Board within 30 days after the date the written demand or demands are delivered to the Board, the Directors signing the demand or demands may set the time and place of the meeting and give notice, pursuant to the above terms of these Bylaws. The notice shall specify the place, day and hour of the meeting, and, in the case of a special meeting, the purpose of the meeting.

Section 5.4 Location of Meetings and Open Meetings.

(a) All meetings of the Board of Directors shall be open to attendance by Members, as provided by applicable Colorado law.

(b) All meetings of the Board of Directors shall be held in the Community or in Summit County unless all Directors consent in writing to another location.

(c) All meetings of the Board of Directors may be conducted in person, via conference call, via electronic means, or via any other method permitted by applicable Colorado law.

(d) Rules and Regulations and amendments of the Articles of Incorporation and Bylaws may not be adopted in closed or executive sessions of the Board.

(e) For any executive session or closed Board meeting, minutes kept for that part of the meeting should only indicate that an executive session was held and the general subject of the executive session.

Section 5.5 Waiver of Notice.

Any Director may waive notice of any meeting in writing. Attendance by a Director at any meeting of the Board shall constitute a waiver of notice. If all the Directors are present at any meeting, no notice shall be required, and any business may be transacted at the meeting.

Section 5.6 Quorum.

At all meetings of the Board a majority of the Directors currently in office shall constitute a quorum for the transaction of business, unless there are fewer than three Directors, in which case all Directors must be present to constitute a quorum. The votes of a majority of the Directors present at a meeting at which a quorum is present shall constitute a decision of the Board unless there are fewer than three Directors, in which case, unanimity of the Directors is required to constitute a decision of the Board.

Section 5.7 Proxies for Board Meetings.

For the purposes of casting a vote for or against a particular issue, a Director may execute, in writing, a proxy to be held by another Director. The proxy shall specify a yes or no vote on each particular issue for which the proxy was executed.

Section 5.8 Consent to Corporate Action.

The Directors shall have the right to take any action, except the adopting of a rule or regulation, in the absence of a meeting, which they could otherwise have taken at a meeting, by:

(a) Obtaining the unanimous verbal vote of all Directors which vote shall be noted in the minutes of the next meeting of the Board and ratified at that time; or

(b) Providing written notice to each Director of a proposed action to be taken. Such notice shall include the date and time by which the Directors must respond to the proposed action and shall state that failure to respond by the time stated in the notice will have the same effect as abstaining in writing to a proposed action and failing to demand in writing that action not be taken without a meeting. Upon receiving written notice of a proposed action, each Director, by the date and time provided for in such notice, may: (i) vote in writing for such action; (ii) vote in writing against such action; (iii) abstain in writing from voting; (iv) fail to respond or vote; or (v) demand in writing that action not be taken without a meeting.

(1) In the event a sufficient number of affirmative votes for the proposed action are cast in writing and not revoked by the time stated in

the notice that equal or exceed the minimum number of votes that would be necessary to take such action at a meeting at which all of the Directors then in office were present and voted, then the action is taken unless one or more Directors demands that the action not be taken without a meeting. In the event action is taken pursuant to this provision, the action shall be noted in the minutes of the next meeting of the Board and ratified at that time.

(2) Any Director who in writing has voted, abstained, or demanded action not be taken without a meeting pursuant to this Section may revoke such vote, abstention, or demand in writing; provided such revocation is received by the Association by the time and date stated in the notice for such proposed action. A Director's right to demand that action not be taken without a meeting shall be deemed to have been waived unless the Association receives such demand from the Director in writing by the time stated in the notice for such proposed action and such demand has not been revoked.

(c) Any action taken under subsections (a) and (b)(1) above shall have the same effect as though taken at a meeting of the Directors and shall be effective at the end of the time stated in the notice for such proposed action.

Section 5.9 Telephone or Electronic Communication In Lieu of Attendance.

A Director may attend a meeting of the Board by using an electronic or telephonic communication method whereby the Director may be heard by the other Members and may hear the deliberations of the other Members on any matter properly brought before the Board. The Director's vote shall be counted and the presence noted as if that Director were present in person.

Section 5.10 Unit Owner Participation.

Owners must be allowed to speak before the Board votes on any issue under discussion. The Board shall allow a reasonable number of persons to speak on each side of the issue, but the Board may place restrictions on the time allowed for each Owner to speak. Owners may also be allowed to speak at such other times as the Board, in its sole discretion, deems appropriate.

ARTICLE 6 POWERS AND DUTIES OF THE BOARD OF DIRECTORS

Section 6.1 Powers and Duties.

The Board may act in all instances on behalf of the Association, except as provided in the Governing Documents or the Act. The Board shall have, subject to the limitations contained in the Declaration and the Act, the powers and duties necessary

for the administration of the affairs of the Association and of the Community, and for the operation and maintenance of the Community as a first class residential community, including the following powers and duties:

(a) Exercise any other powers conferred by the Governing Documents;

(b) Adopt and amend Rules and Regulations, including responsible governance policies, procedures and rules and regulations as required by the Act, and including penalties for infraction thereof;

(c) Adopt and amend budgets (subject to any requirements of the Declaration and the Bylaws);

(d) To keep and maintain full and accurate books and records showing all of the receipts, expenses, or disbursements of the Association;

(e) Collect Assessments as provided by the Governing Documents;

(f) Retain a managing agent, independent contractors, or employees as it deems necessary, and prescribe their duties;

(g) Institute, defend or intervene in litigation or administrative proceedings or seek injunctive relief for violations of the Governing Documents, and, in the Association's name, on behalf of the Association or two or more Owners, on matters affecting the Community;

(h) Provide Association disclosures required by, and pursuant to, the Act;

(i) Make contracts, administer financial accounts and incur liabilities in the name of the Association;

(j) Acquire, hold, encumber and convey, in the Association's name and in the ordinary course of business, any right, title or interest to real estate, pursuant to the consent requirements set forth in the Governing Documents, if any;

(k) Borrow funds and secure loans with an interest in future Assessments in order to pay for any expenditure or outlay required pursuant to the authority granted by the provisions of the recorded Declaration and these Bylaws, and to execute all such instruments evidencing such indebtedness as the Board of Directors may deem necessary and give security therefore, subject to the requirements set forth in the Declaration;

(l) Provide for the indemnification of the Association's Directors and any person serving without compensation at the request of the Association, and maintain association professional liability insurance;

(m) Supervise all persons acting on behalf of and/or at the discretion of the Association;

(n) Procure and maintain liability and hazard insurance as set forth in the Governing Documents;

(o) Cause all persons having fiscal responsibilities for the assets of the Association to be insured and/or bonded, as it may deem appropriate;

(p) Provide education to Owners on an annual basis; and

(q) Exercise for the Association all powers, duties, rights and obligations in or delegated to the Association and not reserved to the membership by other provisions of the Governing Documents or the Act.

Section 6.2 Managing Agent.

The Board may employ a managing agent at a compensation established by the Board, to perform duties and services authorized by the Board. The Board shall have the authority to delegate any of the powers and duties set forth in this Article to a managing agent. Regardless of any delegation to a managing agent, the members of the Board shall not be relieved of responsibilities under the Governing Documents or Colorado law.

Section 6.3 No Waiver.

The omission or failure of the Association or Owner to enforce the covenants, conditions, easements, uses, limitations, obligations, or other provisions of the Governing Documents shall not constitute or be deemed a waiver, modification, or release thereof, and the Board or the managing agent shall have the right to enforce the same at any time.

ARTICLE 7 OFFICERS AND THEIR DUTIES

Section 7.1 Enumeration of Offices.

The officers of this Association shall be a president, a vice-president, a secretary and a treasurer who shall at all times be members of the Board of Directors, and such other officers as the Board may from time to time create by resolution. Any two offices, except the offices of president and secretary, may be held by the same person.

Section 7.2 Election of Officers.

The officers shall be elected by the Board for one year terms at the first meeting of the Board of Directors following each annual meeting of the Members.

Section 7.3 Special Appointments.

The Board may elect other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may, from time to time, determine.

Section 7.4 Resignation and Removal.

Any officer may be removed from office with or without cause by a majority of the Board of Directors. Any officer may resign at any time by giving written notice to the Board, the president or the secretary. A resignation shall take effect on the date of receipt of a notice or at any later time specified therein. Acceptance of a resignation shall not be necessary to make it effective.

Section 7.5 Vacancies.

A vacancy in any office may be filled by appointment by the Board by majority vote of the Board. The officer appointed to the vacancy shall serve for the remainder of the term of the officer replaced.

Section 7.6 Duties.

The duties of the officers are as follows:

(a) President. The president shall have all of the general powers and duties which are incident to the office of president of a Colorado nonprofit corporation. Specifically, the president shall have the power to preside at all meetings of the Board of Directors and of the Members; appoint committees; see that orders and resolutions of the Board are carried out; sign contracts, leases and other written instruments; direct, supervise, coordinate and have general control over the day-to-day affairs of the Association.

(b) Vice President. The vice president shall take the place of the president and perform the president's duties whenever the president is absent or unable to act. If neither the president nor the vice president is able to act, the Board of Directors shall appoint some other Director to act in the place of the president on an interim basis. The vice president shall also perform other duties imposed by the Board of Directors or by the president.

(c) Secretary. The secretary shall record the votes and maintain the minutes of all meetings and proceedings of the Board and of the Members; serve notice of meetings of the Board and of the Members; keep appropriate current records showing the Members of the Association together with their addresses; cause Association records to be kept and maintained; and perform such other duties incident to the office of secretary or as required by the Board.

(d) Treasurer. The treasurer shall be responsible for the receipt, deposit and disbursement of Association funds and securities and for maintenance of full and accurate financial records; shall prepare an annual budget and a statement of income and expenditures to be presented to the membership, and deliver a copy of each to the Members. The treasurer shall

perform all duties incident to the office of treasurer and such other duties as may be assigned by the Board of Directors.

Section 7.7 Delegation.

Any officer duties may be delegated to the managing agent, committee, or another Board member; *provided, however,* the officer shall not be relieved of any responsibility under this Section or under Colorado law.

ARTICLE 8 COMMITTEES

Section 8.1 Designated Committees.

The Association may create committees and appoint such committee members as deemed appropriate in carrying out its purposes. Committee chair persons must meet the same qualifications to serve as Board members must meet to serve on the Board, as set forth in these Bylaws. Committees shall have authority to act only to the extent designated in the Governing Documents or delegated by the Board. The Board shall also have the power to remove any and all committee members with or without cause and to terminate any such committee.

Section 8.2 Open Committee Meetings.

All committee meetings shall be open to attendance by Members, as provided by applicable law.

ARTICLE 9 BOOKS AND RECORDS

Section 9.1 Association Records.

The Association records will be available for production to Owners in accordance with statutory requirements, which are further set forth in the Association's Inspection and Copying of Records Policy.

Section 9.2 Minutes and Presumptions Under the Minutes.

Minutes or any similar record of the meetings of Members, or of the Board of Directors, when signed by the secretary or acting secretary of the meeting, shall be presumed to truthfully evidence the matters set forth therein. A recitation in any such minutes that notice of the meeting was properly given shall be prima facie evidence that the notice was given.

Section 9.3 Examination.

The Association records shall at all times, during normal business hours and after at least ten days written notice, or at the next scheduled Board meeting if within 30 days of written request, be subject to inspection and copying by any Member, at their expense, except documents determined by the Board to be withheld under the inspection of records policy of the Association in accordance with the Act. Any Owner's request to inspect and copy Association records must describe with reasonable particularity what records are requested. The Association may charge the actual costs for copying of the records, as clarified further in its Inspection and Copying of Records Policy.

ARTICLE 10 AMENDMENTS

Section 10.1 Bylaw Amendments.

(a) These Bylaws may be amended by:

(i) The affirmative vote of a majority of the members of the Board of Directors at a duly constituted meeting; provided, however, no amendment shall be made to the quorum requirement without the affirmative vote of Members holding at least a majority of the votes entitled to be cast in the Association who are present and voting, in person or by proxy, at a regular or special meeting of the Members at which a quorum, as set forth in these Bylaws, is present;

or

(ii) The affirmative vote of Members holding at least a majority of the votes entitled to be cast in the Association who are present and voting, in person or by proxy, at a regular or special meeting of the Members called for such purpose at which a quorum is present, provided that notice has been sent to all Members pursuant to these Bylaws, and such notice sets forth that the meeting is being conducted for the purpose of amendment.

(b) Notwithstanding anything to the contrary in these Bylaws, these Bylaws may be amended by the Board of Directors, without Member approval, to comply with any statutory or judicial requirements.

ARTICLE 11 INDEMNIFICATION

Section 11.1 Obligation to Indemnify.

(a) The Association shall indemnify any person who was or is a party, or is threatened to be made a party, to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative; by reason of the fact that the person is or was a Director, officer or committee member of the Association; provided the person is or was serving at the request of the Association in such capacity; and provided that the person:

(i) acted in good faith, and;

(ii) in a manner that the person reasonably believed to be in the best interests of the Association, and;

(iii) with respect to any claimed criminal action or proceeding, had no reasonable cause to believe the conduct was unlawful.

The determination of any action, suit or proceeding by judgment, order, settlement or conviction, or upon a plea of *nolo contendere* or its equivalent, shall not of itself create a presumption that the person did not act in good faith and in a manner reasonably believed to be in the best interests of the Association and, with respect to any criminal action or proceeding, had no reasonable cause to believe the conduct was unlawful.

(b) Notwithstanding anything in subsection (a) above, unless a court of competent jurisdiction determines that, in view of all circumstances of the case, the person is fairly and reasonably entitled to expenses, no indemnification shall be made:

(i) In connection with a proceeding by or in the right of the Association, where the person has been adjudged to be liable to the Association; or

(ii) In connection with any other proceeding charging that the person received an improper personal benefit, whether or not involving action in an official capacity, the person has been adjudged liable on the basis the person received an improper personal benefit.

(c) To the extent that the person has been wholly successful on the merits in defense of any action, suit or proceeding as described above, the person shall be indemnified against actual and reasonable expenses (including expert

witness fees, attorney fees and costs) incurred in connection with the action, suit or proceeding.

Section 11.2 Determination Required.

(a) The Board of Directors shall determine whether the person requesting indemnification has met the applicable standard of conduct set forth above. The determination shall be made by the Board of Directors by a majority vote of a quorum consisting of those members of the Board of Directors who were not parties to the action suit or proceeding.

(b) If a quorum cannot be obtained as contemplated above or if a quorum has been obtained and the Board so directs, a determination may be made, at the discretion of the Board, by:

(i) independent legal counsel selected by a majority of the full Board; or

(ii) by the voting members, but voting members who are also at the same time seeking indemnification may not vote on the determination.

Section 11.3 Payment in Advance of Final Disposition.

The Association shall pay for or reimburse the reasonable expenses as described above in advance of final disposition of the action, suit or proceeding if the person requesting indemnification provides the Board of Directors with:

(a) A written affirmation of that person's good faith belief that they have met the standard of conduct described above; and

(b) A written statement that the person shall repay the advance if it is ultimately determined that they did not meet the standard of conduct described above.

Section 11.4 No Limitation of Rights.

The indemnification provided in this Article shall not be deemed exclusive of nor a limitation upon any other rights to which those indemnified may be entitled under any bylaw, agreement, vote of the Members or disinterested members of the Board of Directors, or otherwise, nor by any rights which are granted pursuant to C.R.S. §38-33.3-101, *et seq*., and the Colorado Revised Nonprofit Corporation Act, as those statutes may be amended from time to time.

Section 11.5 Directors and Officers Insurance.

The Association shall purchase and maintain insurance on behalf of any person who is or was a member of the Board of Directors, the manager, committee members, or anyone acting at the direction of the Board, covering defense and liability expenses arising out of any action, suit or proceeding asserted against the person by virtue of the person's actions on behalf of the Association or at the direction of the Board, whether or not the Association would have the power to indemnify the person against liability under provisions of this Article.

ARTICLE 12 MISCELLANEOUS

Section 12.1 Fiscal Year.

The Board has the right to establish and, from time to time, change the fiscal year of the Association.

Section 12.2 Notices.

All notices to the Association or the Owners shall be delivered in accordance with Colorado law.

Section 12.3 Conflicts.

In the case of any conflicts between the Declaration and these Bylaws or the Articles of Incorporation, the terms of the Declaration shall control. In the case of any conflicts between the Articles of Incorporation and these Bylaws, the terms of the Articles of Incorporation shall control.

CERTIFICATION

By signature below, the secretary of the Board of Directors certifies these Amended and Restated Bylaws received the affirmative vote of a majority of a quorum of the Owners present at a regular or special meeting of the Owners called for such purpose.

MOUNTAIN SIDE HOMEOWNERS ASSOCIATION,
a Colorado nonprofit corporation

By: _____
Secretary

Date: _____