**AFTER RECORDING RETURN TO:**

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# *AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR MOUNTAIN SIDE P.U.D.*

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# *AMENDED AND RESTATED*
# *DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS*
# *FOR*
# *MOUNTAIN SIDE P.U.D.*

THIS AMENDED AND RESTATED DECLARATION is effective upon recording.

*RECITALS:*

A. On December 22, 1982, the Miner's Creek Associates, a Colorado limited partnership, submitted the real property described in that certain Declaration of Covenants, Conditions, and Restrictions for Mountain Side P.U.D. recorded in the real property records of Summit County, Colorado, at Reception No. 248786, as amended and supplemented by documents of record ("Original Declaration") to its covenants, conditions and restrictions;

B. The Owners within the Mountain Side P.U.D. Community desire to amend and restate the Original Declaration by virtue of this Amended and Restated Declaration of Covenants, Conditions, and Restrictions for Mountain Side P.U.D. ("Declaration"), and intend, upon the recording of this Declaration, that all prior recorded declarations, amendments and supplements thereto shall be superseded and replaced by this Declaration; and

C. The Original Declaration provides for and allows for this Declaration in Section 8.3, which provides as follows:

> This Declaration may be amended during the first 20-year period by an instrument signed by the Owners of not less than seventy-five percent (75%) of the Residential Units and thereafter by an instrument signed by the Owners of not less than fifty percent (50%) of the Residential Units;

D. All Owners are aware of the provisions of the Original Declaration allowing for amendment, by virtue of the record notice of the Original Declaration, by acts and disclosures, newsletters or notices of the Association and by other means;

E. The amendments within this Declaration have been prepared and determined by the Association and by the Owners that have approved this Declaration to be reasonable and not burdensome;

F. The purposes of the amendments in this Declaration are to remove unreasonable restrictions on the community, remove developer "boilerplate" language that is no longer applicable to the Community, remove provisions that do not allow the Board to efficiently operate the community or deal with community concerns, remove provisions that do not comply with current state law, add provisions that provide the proper tools for

the Association to effectively solve problems, add provisions to provide the Association with sufficient power to create and successfully enforce Rules and Regulations, and add provisions that reflect beneficial state law provisions.

G. The purpose of the Association as provided in the Declaration is to preserve the value and desirability of the Community and the Lots and Residential Units and to further the interests of the residents of the Community and Members of the Association; and

H. Pursuant to the requirements set forth in Section 8.3 of the Original Declaration, Owners of not less than 50% of the Residential Units subject to the Original Declaration have approved this Declaration (as demonstrated by the instruments signed by the Owners and attached as **Exhibit B** of this Declaration). Alternatively, a court order entered by the District Court for Summit County, Colorado pursuant to C.R.S. §38-33.3-217(7), has been entered approving this Declaration.

NOW THEREFORE, the Original Declaration is replaced and superseded by the covenants, servitudes, easements and restrictions set forth below:

## ARTICLE 1 DEFINED TERMS

Section 1.1 Defined Terms.

Each capitalized term in this Declaration shall have the meaning specified or used in the Act, unless otherwise defined in this Declaration or the context requires otherwise:

(a) Act shall mean the Colorado Common Interest Ownership Act, *C.R.S. §38-33.3-101 et. seq.*, as it may be amended.

(b) Architectural Review Committee or Committee means the committee appointed by the Board of Directors for the purpose of implementing the architectural review provisions of this Declaration and architectural guidelines for the Community to ensure proper use, appropriate improvement, and harmonious additions, alterations and improvements within the Community.

(c) Assessment shall include all Common Expense Assessments and any other expense levied to Lots and Residential Units pursuant to this Declaration or the Act, including interest, late fees, attorney fees, fines, and costs.

(d) Association shall mean Mountain Side Homeowners Association, a Colorado nonprofit corporation, and its successors and assigns.

(e) Board or Board of Directors shall mean the body, regardless of name, designated in the Governing Documents to act on behalf of the Association.

(f) Common Area or Common Elements shall mean all real property owned by the Association for the common use and enjoyment of the Owners.

(g) Common Expenses shall mean and refer to all expenditures made and liabilities incurred by or on behalf of the Association, together with any allocation by the Association to reserves.

(h) Community or Mountain Side P.U.D. Community or Planned Community shall mean the planned community known as "Mountain Side P.U.D.," and the real property subject to this Declaration and as further defined by the recorded Plats and the legal descriptions contained in this Declaration, and the Members of the Association.

(i) Condominium Declaration shall mean that certain Condominium Declaration for Mountain Side Condominium on December 22, 1982 at Reception No. 249737 in the Office of the Clerk and Recorder for Summit County, State of Colorado, as amended and supplemented by documents of record.

(j) Declaration shall mean and refer to this Amended and Restated Declaration of Covenants, Conditions, and Restrictions for Mountain Side P.U.D., as amended, recorded in the office of the Clerk and Recorder of Summit County, Colorado.

(k) Governing Documents shall mean this Declaration, the Plat, the Articles of Incorporation, the Bylaws, any Maps and any Rules and Regulations of the Association, as all of the foregoing may be amended from time to time.

(l) Lot shall mean and refer to any plot of land shown upon any recorded Plat of the Property with the exception of Common Areas.

(m) Member shall mean any Owner. The terms "Member" and "Owner" may be used interchangeably.

(n) Owner shall mean the owner of record title, whether one or more persons or entities, to any Lot or Unit which is a part of the Property, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

(o) Pet shall mean and include cats, dogs, birds, reptiles or other household animals, as may be further defined in or supplemented by the Rules and Regulations.

(p) Plat or Map shall mean and refer to the plat(s) and/or map(s) of the Property and improvements that are subject to this Declaration and which are designated in the Plat or Map recorded in the records of the Office of the Clerk and

Recorder of Summit County. More than one plat, map or supplement thereto may be recorded, and, if so, then the term "Plat" or "Map" shall collectively mean and refer to all of such plats, maps and supplements thereto.

(q) Property shall mean the property described in or which is subject to the Declaration together with all easements, rights, and appurtenances thereto and the buildings and improvements erected or to be erected thereon.

(r) Rules and Regulations shall mean any written instruments, however identified, which are adopted by the Association for the regulation and management of the Community and/or clarification of the Governing Documents, including any amendment to those instruments.

(s) Residential Unit means any single family dwelling unit constructed on the Property and shall include, without limitation, condominium units, single family houses, and each unit constructed on a duplex, triplex, or fourplex site.

## ARTICLE 2 NAMES & DESCRIPTION OF PROPERTY/EASEMENTS

Section 2.1 Name and Type.

The type of Common Interest Community is a Planned Community. The name of the Planned Community is Mountain Side P.U.D. The name of the Association is the "Mountain Side Homeowners Association".

Section 2.2 Property.

The Planned Community is located in Summit County, State of Colorado. The Property of the Planned Community is described in **Exhibit A** of this Declaration, in the Original Declaration, in the Condominium Declaration, in the Plat, and/or is consistent with the common scheme and plan for the creation and operation of the Community.

The number of Lots and Residential Units currently included in the Community is 287.

Easements for utilities and other purposes over and across the Lots, Residential Units, and any Common Area may be as shown upon a recorded Plat and on any recorded Map of the Planned Community, and as may be established pursuant to the provisions of this Declaration, or granted by authority reserved in any recorded document.

Some Property in the Community is also subject to the Condominium Declaration, as further set forth in such Condominium Declaration.

Section 2.3 Owners' Easements of Enjoyment.

Every Owner shall have a right and easement of enjoyment in and to any Common Area and such easement shall be appurtenant to and shall pass with the title to every Lot and Residential Unit, subject to the following provisions:

(a) the right of the Association to promulgate and publish Rules and Regulations with which each Owner and their tenants, invitees, licensees and guests shall strictly comply;

(b) the right of the Association, to suspend the voting rights and the right to use of any Common Area and recreational facilities for a period not to exceed 60 days or during any period of violation of any other provision of the Governing Documents, whichever is greater; provided that suspension of voting and use rights shall be automatic during any period that an Owner is in default in payment of any Common Expense Assessment;

(c) the right, power and authority of the Association to grant any easement, right-of-way, license, lease, dedication or similar interest through, over or in the Common Area, including the right to rent the second floor of the clubhouse in the Community for private events;

(d) the right of the Association to transfer or convey ownership of any Common Area, subject to amendment of the Declaration and/or Plat Map;

(e) the right of the Association to close or limit the use of any Common Area while maintaining, repairing and making replacements in any Common Area; and

(f) the right of the Association to change use of, add, or remove improvements to the Common Area.

Section 2.4 Delegation of Use.

Owners may delegate their right of enjoyment to any Common Area and facilities to the members of their family, their tenants, guests, or contract purchasers who reside at their Residential Unit. If the Owner delegates rights to use the Common Area and facilities to tenants or contract purchasers who reside at their Residential Unit, the Owner shall not be entitled to use the Common Area and facilities. The Board of Directors shall have the express right to limit Owners' ability to delegate their right to use the recreational amenities of the Community through Rules and Regulations and/or to charge reasonable fees charged for such use.

Section 2.5 Disclaimer of Liability.

The Association shall be and remain wholly free and clear of any and all liability to, or claims by, all Owners and all persons and entities, of whatever kind or character, whether sounding in contract or tort, deriving from the occurrence of any injury or damage to any person or property on, or in respect to the use and operation of, the Common Area or any of its improvements, fixtures, and facilities. It shall be the affirmative duty and responsibility of each Owner, and each user of the Common Area, to continuously inspect the same for any defects or perils or other unsafe conditions or circumstances, prior to and during such use or enjoyment thereof; and all users of, and visitors to, the Common Area and its improvements and facilities shall use, enjoy, and visit, the same at their own risk and peril.

Section 2.6 Easements for the Association.

Each Lot and Residential Units shall be subject to an easement in favor of the Association, acting through the Board of Directors (including its agents, employees and contractors) to allow for their performance of obligations in this Declaration, provided that the easement granted and the use thereof shall not unreasonably interfere with or impair the use of any improvements constructed on a Lot or Residential Units and shall be exercised only after reasonable notice to the Owner of the Lot or Residential Units.

Section 2.7 Utility, Plat, and Plat Easements.

Easements for utilities and other purposes over and across the Lots, Residential Units, and Common Areas may be as shown upon the Plat or Map of the Community, and as may be established pursuant to the provisions of this Declaration, or granted by authority reserved in any recorded document.

Section 2.8 Use of Common Area by Non-Owners.

The Association shall make the amenities constructed on the Common Area, including, but not limited to, the clubhouse with sauna and spa and outdoor pool facilities and access to the lake for all permitted recreational activities, available to a limited number of non-Owners on the basis of irrevocable passes issued pursuant to this paragraph. Passes issued to non-Owner users shall be irrevocable except for nonpayment of the monthly use fee, shall be non-transferable, and shall entitle the holder to use the amenities to be constructed on the Common Area subject to the same Rules and Regulations as shall apply to Owners. The Association shall promulgate a procedure for the surrender, collection and termination of passes issued to non-Owner users, for the determination, assessment, and collection of a monthly use fee from non-Owner users (which shall not exceed the Assessment imposed on Owners), and shall maintain a list of non-Owner users and their registered mailing addresses. A non-Owner user shall not become a Member of the Association or be entitled to any other rights or benefits under this Declaration solely by their receipt of a pass to the Common Area and payment of the monthly use fee.

## ARTICLE 3 THE ASSOCIATION

Section 3.1 Membership.

Every person who is a record Owner of a fee interest in any Lot or Residential Unit which is subject to this Declaration shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot or Residential Units. Ownership of such Lot or Residential Units shall be the sole qualification for such membership. Each Lot or Residential Unit shall be allocated voting rights pursuant to the allocated interests section of this Declaration. Fractional and cumulative voting shall be prohibited.

Section 3.2 General Purposes and Powers of the Association.

The Association, through its Board of Directors, shall perform functions and manage the Mountain Side P.U.D. Community as provided in this Declaration so as to protect the value and desirability of the Mountain Side P.U.D. Community, the Lots, and the Residential Units.

The Association shall be responsible for the maintenance, repair, replacement and improvement of all Common Area in the Community

Any purchaser of a Lot or Residential Units shall be deemed to have assented to, ratified and approved such designation and management. The Association shall have all power necessary or desirable to effectuate such purposes.

Section 3.3 Authority of the Association.

The business affairs of the Community shall be managed by the Association. The Association shall be governed by the Act, to the extent it applies to communities created prior to July 1, 1992, this Declaration, the Plat or Map, its Articles of Incorporation and Bylaws, and any Rules and Regulations adopted by the Board of Directors. All corporate or other powers of the Association, unless otherwise specified or expressly reserved to the Members in the Governing Documents, shall be exercised by or under the authority of the Board of Directors, and the business and affairs of the Association shall be managed under the direction of the Board of Directors. The Board of Directors may, by written resolution, delegate authority to a managing agent for the Association, provided no such delegation shall relieve the Board of final responsibility. The Association may exercise any right or privilege and shall perform all duties and obligations expressly granted or reasonably necessary or implied in the Governing Documents to effect such right or privilege or to satisfy such duty or obligation.

Section 3.4 Allocated Interests.

The Common Expense liability and votes in the Association allocated to each Lot and Residential Unit are set as follows:

(a) the percentage of liability for Common Expenses, equally (i.e. 1/287);

(b) the number of votes in the Association, equally, with one vote per Lot or Residential Unit.

Section 3.5 Managing Agent.

The Association may employ or contract for the services of a managing agent to whom the Board may delegate certain powers, functions, or duties of the Association, as provided in the Bylaws of the Association. The Board shall not be liable for any omission or improper exercise by a managing agent of any duty, power, or function so delegated by written instrument executed by or on behalf of the Board.

Section 3.6 Right to Notice.

Notice of matters affecting the Community, via any means of communication, may be provided to Owners and any occupants as determined by the Board of Directors in its sole discretion.

Section 3.7 Indemnification.

To the full extent permitted by law, each officer, manager, or committee member of the Association and other volunteer appointed by the Board of Directors shall be indemnified by the Association against all expenses and liabilities including attorney fees, reasonably incurred by or imposed upon them in any proceeding to which they may be a party, or in which they may become involved, by reason of being or having been an officer, manager, committee member or volunteer of the Association, or any settlements thereof, whether or not they are an officer, manager, committee member or volunteer at the time such expenses are incurred, pursuant to the indemnification provisions set forth in the Bylaws and by Colorado law.

Section 3.8 Security Disclaimer.

The Association may, but shall not be required to, from time to time, provide measures or take actions which directly or indirectly improve security in the Community, including but not limited to security cameras, as further set forth in the Rules and Regulations. However, each Owner, for themselves and their tenants, guests, licensees and invitees, acknowledges and agrees that the Association is not a provider of security and shall have no duty to provide security in the Community. Furthermore, the Association does not guarantee that non-residents will not gain access to the Community and commit criminal acts in the Community, nor does the Association guarantee that criminal acts in the Community will not be committed by residents. It shall be the responsibility of each Owner to protect their person and property and all responsibility to provide such security shall lie solely with each Owner. The Association shall not be held liable for any loss or damage by reason of failure to provide security or the ineffectiveness of measures taken.

Section 3.9 Education and Training.

As a Common Expense, the Association shall, in accordance with the Act, provide education and training opportunities for Owners, residents and occupants, including providing funding and permitting use of facilities for such purposes. The Association shall provide education and training activities as a tool for fostering Owner, resident and occupant awareness of governance, operations and concerns of the Community and of the Association. Appropriate educational topics include dispute or conflict resolution, issues involving the Governing Documents, and education or topics benefitting or contributing to operation or governance of the Community and the rights and responsibilities of Owners and the Association. The Association may also fund and support education and training for officers and managers.

## ARTICLE 4 ASSESSMENTS

Section 4.1 Creation of Association Lien and Personal Obligation to Pay Assessments.

Each Owner, by acceptance of a deed for a Lot or Residential Unit, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay to the Association annual Assessments for Common Expenses and such other Assessments as imposed by the Association. The Association annual Common Expense Assessments and such other Assessments as imposed by the Association, including fees, charges, late fees, attorney fees, fines and interest charged by the Association, and additional fees charged by the managing agent, including but not limited to, administration and witness fees, and/or any other charges that may be assessed and/or levied or may be agreed to in the process of collecting past due Assessments, including but not limited to, credit card convenience fees from whatever source, shall be a charge on each Residential Unit and shall be a continuing lien upon the Lot or Residential Units against which each such Assessment or charge is made. If any Assessment is payable in installments, the full amount of the Assessment is a lien from the time the first installment becomes due. The personal obligation to pay any past due sums due the Association shall not pass to a successor in title unless expressly assumed by them.

No Owner may become exempt from liability for payment of the Assessments for Common Expenses by waiver of the use or enjoyment of the Common Area or by abandonment of the Lot or Residential Unit against which the Assessments for Common Expenses are made. All Assessments shall be payable in the amounts specified in the levy thereof, and no offsets or reduction thereof, except as provided in this Declaration, shall be permitted by any reason including, without limitation, any claim that the Association or the Board of Directors is not properly exercising its duties and powers under this Declaration.

Except as provided in this Declaration, all Assessments for Common Expenses shall be assessed against all Lot and Residential Units equally.

Section 4.2 Basis of Assessments.

Common Expense Assessments may be made on an annual basis against all Lots and Residential Units and shall be based upon the Association's advance budget of the cash requirements needed by it to provide for the administration and performance of its duties during such Assessment year.

Section 4.3 Annual Assessment.

The budget for annual Assessments shall be submitted to the Owners for ratification pursuant to Section 303(4) of the Act and as set forth in the Bylaws, as the Bylaws may be amended from time to time. The budget may be vetoed by a majority of the total Association vote. Assessments for Common Expenses shall be due and payable in monthly, quarterly, or annual installments, or in any other manner, as determined by the Board of Directors. The omission or failure of the Board of Directors to levy the Assessment for any period shall not be deemed a waiver, modification or a release of the Owners from their obligation to pay.

Section 4.4 Special Assessments.

In addition to other authorized Assessments, the Association may levy Special Assessments from time to time to cover previously unbudgeted expenses or expenses in excess of those budgeted, including, without limitation, the costs of any construction, restoration, or unbudgeted repairs or replacements of capital improvements that are not covered by the general reserve fund. The proposed Special Assessment shall be submitted to the Owners for ratification pursuant to Section 303(4) of the Act and as set forth in the Bylaws, as the Bylaws may be amended from time to time. The proposed Special Assessment may be vetoed by a majority of the total Association vote. Special Assessments may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved. The Board shall have the right to require that Special Assessments be paid in advance of the provision of the subject services or materials.

Section 4.5 Supplemental Assessments.

The Association shall have the right to add to any Owner's Assessment as provided in this Article the following:

(a) Those amounts expended by the Association for the benefit of any individual Lot or Residential Unit or any occupant thereof, or group of Lots or Residential Units, including but not limited to: improvement, repair, replacement, or maintenance specific to a Lot or Residential Unit and/or shared irrigation expenses which are not appurtenant to all Lots or Residential Units;

(b) Improvement, repair, replacement or maintenance caused by the negligent or willful acts of any Owner, their guest, employee, licensee, lessee or invitee as set forth in this Declaration;

(c) All fines and costs assessed against an Owner pursuant to the Governing Documents; and

(d) Any other expenditures or charges which the Board, in its sole discretion, chooses to allocate to a Lot or Residential Unit and are reasonably determined to be allocable to a particular Lot or Residential Unit.

Section 4.6 Application of Payments.

All payments received on an account of any Owner or the Owner's Lot or Residential Unit shall be applied first to the payment of any delinquent Assessments, then to payment of any and all legal fees and costs (including attorney fees), expenses of enforcement and collection, late fees, returned check fees, lien fees and other costs owing or incurred with respect to such Owner pursuant to the Governing Documents.

Section 4.7 Effect of Non-Payment of Assessments.

(a) Any Assessment, charge, or fee provided for in this Declaration, or any monthly or other installment thereof, which is not fully paid within 30 days after the due date thereof, as established by the Board of Directors, shall bear interest at the rate established by the Board of Directors which may not exceed 8% per annum, or such higher amount allowed by law, to accrue monthly from the due date. The Association may also assess a reasonable late fee thereon as determined by the Board of Directors.

(b) Failure to make payment within 60 days of the due date thereof shall cause the total amount of such Owner's Common Expense Assessment for the remainder of that fiscal year to become immediately due and payable at the option of the Board. The Board may, in its discretion, decelerate the Member's annual Assessment.

(c) Further, the Association may bring an action at law or in equity, or both, against any Owner personally obligated to pay such overdue Assessments, charges or fees, or monthly or other installments thereof, and may also proceed to foreclose its lien against such Owner's Lot or Residential Unit. An action at law or in equity by the Association against an Owner to recover a money judgment for unpaid Assessments, charges or fees, or monthly or other installments thereof, may be commenced and pursued by the Association without foreclosing, or in any way waiving the Association's lien therefor.

(d) Foreclosure or attempted foreclosure by the Association of its lien shall not be deemed to estop or otherwise preclude the Association from thereafter again foreclosing or attempting to foreclose its lien for any subsequent Assessment, charges or fees, or monthly or other installments thereof, which are not fully paid when due. The Association shall have the power and right to bid on or purchase any Lot or Residential Unit at foreclosure or other legal sale, and to acquire and

hold, lease, mortgage, convey or otherwise deal with the same. If a foreclosure action is filed to foreclose any Assessment lien, and an Owner abandons or leaves vacant their Lot or Residential Unit, the Board may take possession and rent said Lot or apply for the appointment of a receiver for the Lot or Residential Unit without prior notice to the Owner. The rights of the Association shall be expressly subordinate to the rights of any holder of a first lien security interest as set forth in its deed of trust or mortgage (including any assignment of rents), to the extent permitted under the Act.

Section 4.8 Lien Priority.

The lien of the Association under this Section is prior to all other liens and encumbrances on a Lot or Residential Unit except: (1) liens and encumbrances recorded before the recordation of the Declaration; (2) a first lien security interest on the Lot or Residential Unit (except as allowed by the Act with regard to the limited lien priority allowed to the Association); and (3) liens for real estate taxes and other governmental assessments or charges against the Lot or Residential Unit. This Section does not affect the priority of mechanics' or materialmen's liens. The lien of the Association under this Article is not subject to the provision of any homestead exemption as allowed under state or federal law. Sale or transfer of any Lot or Residential Unit shall not affect the lien for said Assessments or charges except that sale or transfer of any Lot or Residential Unit pursuant to foreclosure of any first lien security interest, or any proceeding in lieu thereof, including deed in lieu of foreclosure, or cancellation or forfeiture shall only extinguish the lien of Assessment charges as provided by applicable state law. No such sale, transfer, foreclosure, or any proceeding in lieu thereof, including deed in lieu of foreclosure, nor cancellation or forfeiture shall relieve any Lot or Residential Unit from continuing liability for any Assessment charges thereafter becoming due, nor from the lien thereof.

Section 4.9 Borrowing.

The Association shall have the power to assign its right to future income, including the right to assign its right to receive Assessments for Common Expenses, but only upon the affirmative vote of a majority of the Owners present and voting at a meeting called for that purpose.

## ARTICLE 5 RESTRICTIONS

Section 5.1 Flexible Application of the Subsequent Covenants and Restrictions.

All Lot and Residential Units within the Community shall be held, used and enjoyed subject to the following limitations and restrictions. The strict application of the following limitations and restrictions in any specific case may be modified or waived, in whole or in part, by the Board of Directors or by an appropriate committee (subject to review by the Board of Directors) if such strict application would be unreasonable or unduly harsh under the circumstances. Any such modification or waiver must be in writing.

Section 5.2 Authority.

All provisions of the Governing Documents shall apply to Owners and their guests, tenants, invitees and licensees. Owners and their successors and assigns, by acceptance of a deed to their Lot or Residential Unit, acknowledge that they have been given notice, and that:

(a) The ability of Owners to use their Lot or Residential Unit may be limited by the provisions in the Governing Documents.

(b) The Board may, from time to time, adopt and amend definitions of words, phrases and terms used in this Declaration and other Governing Documents.

(c) The Board may establish penalties for the infraction of the Governing Documents and/or regulations, and Owners will be responsible for fines assessed against them based on violations committed by their tenants, guests, and invitees for violations.

(d) All fines imposed are collectable as Assessments.

Section 5.3 Acquisition of Multiple Lots and/or Residential Units.

No Owner who owns or controls four or more Lots and Residential Units (combined total) in the Community, directly or indirectly through an affiliate of the Owner, shall acquire, whether directly or indirectly through an affiliate of the Owner, any interest in any additional Lot or Residential Unit in the Community, whether through purchase, trade, gift, inheritance, lease, merger, consolidation or other means of acquisition. Notwithstanding anything in this Declaration to the contrary, this restriction on acquisition of Residential Units shall not apply to a mortgagee acquiring title to a Lot or Residential Unit subject to a mortgage by foreclosure or deed in lieu of foreclosure. This restriction shall be enforceable by the Association or any Owner by means of an action for injunction to restrain any future acquisition or to require an Owner who has violated this restriction to divest any interest so acquired.

Section 5.4 Use/Occupancy.

All Lots and Residential Units within the Community shall be used only for those uses and/or purposes as allowed by this Declaration, subject to any Rules and Regulations adopted by the Association. Lots and Residential Units shall not be used for any purpose other than a residential dwelling except as set forth in this Section.

Home occupations shall be allowed pursuant to Colorado law. External advertising of any kind is prohibited. Uses which have one or more of the following characteristics are not permitted: (a) manufacturing or fabrication of any kind; (b) storage of hazardous materials; (c) increased traffic or parked vehicles beyond that reasonable and customary to a residential dwelling use; (d) permanent or long term parking of heavy equipment,

including semi trailers; (e) the use or rental of any structure on a Lot or Residential Unit for any transient, hotel, motel, bed and breakfast, restaurant, bar or other commercial purposes.

Section 5.5 Maintenance of Lots and Residential Units and Improvements.

Owners are responsible for the maintenance, repair, and replacement of the property and improvements located within their Lot or Residential Unit boundaries. The Association, and its agents, shall have the authority, after giving the Owner 30 days written notice, to enter, replace, maintain, repair and clean up Lots or Residential Units which do not conform to the provisions of this Section, and to charge and collect from the Owner thereof all reasonable costs related thereto as an Assessment hereunder. Additional maintenance obligations for Residential Units bound by the Condominium Declaration are further set forth in the Condominium Declaration.

Section 5.6 Landscaping Requirements and Restrictions.

All landscaping in the Community shall be maintained by the responsible party in a good, neat, attractive and well-kept condition, whether xeriscaped or with turf, which shall include lawns mowed, hedges, shrubs, and trees pruned and trimmed, and removal of weeds and debris.

Section 5.7 Restrictions on Pets.

Up to three (3) Pets per Residential Unit may be kept on a Residential Unit, if the Pet is not a nuisance to other residents. No resident shall maintain or keep any Pet which, in the sole discretion of the Board, is considered to be a danger to the Owners, management staff or occupants in the Community or is otherwise considered to be a dangerous breed, as may be further defined in the Rules and Regulations. If a Pet is deemed a nuisance by the Association, the resident having control of the Pet shall be given a written notice to correct the problem and if not corrected, that resident will be required to remove the Pet from the Community pursuant to, and in accordance with, any dispute resolution procedures as may be set forth in this Declaration or the Rules and Regulations, if any. Pets may not be kept for any commercial purposes. Animals are not permitted in the recreational areas. When on other Common Area, Pets must be on a leash and under control. Feces left by Pets upon the Common Area must be removed promptly by the owner of the Pet or the person responsible for the Pet. Owners shall hold the Association harmless from any claim resulting from any action of their Pets or the Pets of their tenants, guests or other invitees.

Section 5.8 Antennae.

"Permitted Antennas" are defined as (a) an antenna which is less than one meter in diameter and is used to receive direct broadcast satellite service, including direct-to-home satellite services, or is used to receive or transmit fixed wireless signals via satellite; (b) an antenna which is one meter or less in diameter and is used to receive video programming services via multipoint distribution services, including multichannel multipoint distribution services, instruction television fixed services, and local multipoint distribution

services or is used to receive or transmit fixed wireless signals other than via satellite; (c) an antenna which is designed to receive or broadcast television signals; or (d) other antennas which are expressly permitted under applicable federal statutes or regulations. In the event a Permitted Antenna is no longer expressly permitted under applicable federal statutes or regulations, such antenna will no longer be a Permitted Antenna for purposes of this Section.

Permitted Antennas shall be installed in the least conspicuous location available on a Lot which permits acceptable signals, without unreasonable delay or increase in the cost of installation, maintenance or use of the Permitted Antenna. The Association may adopt rules regarding location and installation of Permitted Antennas, subject to limitations of applicable federal law. Except as allowed by federal statutes and regulation, no exterior television or any other antennae, microwave dish, satellite dish, satellite antenna, satellite earth station, or similar device of any type shall be erected, installed, or maintained on a Lot.

Section 5.9 Tanks.

No storage tanks of any kind (either elevated or buried), except for small portable tanks associated with an outdoor gas grill shall be erected, placed or permitted upon any Lot without the prior written approval of the Association.

Section 5.10 Nuisances.

No nuisance shall be permitted within the Community, nor any use, activity or practice which is the source of unreasonable annoyance or embarrassment to, or which unreasonably offends or disturbs, any Owner or which may unreasonably interfere with the peaceful enjoyment or possession or the proper use of a lot or Residential Unit or any Common Area, or any portion of the Community by residents. Nuisance shall be further defined in the Rules and Regulations.

Section 5.11 Vehicular Parking, Storage, and Repairs.

Parking upon any Common Area shall be regulated by the Association. No more than four (4) vehicles per Lot are permitted in the Community. This limitation is just on the Lots

(a) No abandoned, unlicensed, or inoperable automobiles or vehicles of any kind shall be stored or parked within the Community unless parked or stored within a garage. An "abandoned or inoperable vehicle" shall be defined by Colorado statutes governing inoperable or abandoned vehicles on public streets, or as defined by rule or regulation adopted by the Association.

(b) No parked vehicle may impede the safe and efficient use of the streets by residents, obstruct emergency access to/from the Community, or interfere with

the reasonable needs of other residents to use their driveway, Community streets or guest parking, if any.

(c) No activity such as, but not limited to, maintenance, repair, rebuilding, dismantling, repainting, or servicing of any kind of vehicle, trailer or boat, may be performed or conducted outside of garages. This provision shall not be deemed to prevent washing and polishing of a vehicle, together with those activities normally incident and necessary to such washing and polishing, provided washing is done with a hose with a shut off valve to prevent waste of water. Minor repairs may be performed, provided they may be completed the day commenced, there is no damage (e.g., oil, residue) to paved areas, and all equipment and parts are removed upon completion of the work. No vehicles may be left unattended on jacks or jack stands.

(d) Parking in fire lanes (as designated by the Association or as designated by local government or a local fire protection authority) shall be prohibited.

(e) If any vehicle is parked on any portion of the Community in violation of this Section or in violation of the Association's Rules and Regulations, the Board may place a notice on the vehicle specifying the nature of the violation and stating that after 72 hours the vehicle may be towed or booted. The notice shall include the name and telephone number of a person to contact regarding the alleged violation. A notice also shall be conspicuously placed at the Community stating the name and telephone number of the person or entity which will do the towing and/or booting hereunder. If 72 hours after such notice is placed on the vehicle the violation continues or thereafter occurs again within six months of such notice, the vehicle may be towed or booted in accordance with the notice, without further notice to the vehicle owner or user, and the owner thereof shall be solely responsible for all towing and storage charges.

(f) A vehicle towed immediately, if allowed per state law, and no notice shall be required.

(g) If a vehicle is towed or booted in accordance with this subparagraph, neither the Association nor any officer or agent of the Association shall be liable to any person for towing and storage costs or for any claim of damage as a result of the towing or booting activity. The Association's right to tow or boot is in addition to, and not in limitation of all other rights of the Association, including the right to assess fines. Notwithstanding anything to the contrary in this Section, the Board may elect to impose fines or use other available sanctions, rather than exercise its authority to tow or boot.

Section 5.12 Use of Common Area.

There shall be no obstruction of any Common Area, nor shall anything be kept or stored on any part of any Common Area without the prior written approval of the Association. Nothing shall be altered on, constructed in, or removed from any Common Area without the prior written approval of the Association.

Section 5.13 No Annoying Lights, Sounds, or Odors.

No light shall be emitted from any portion of the Community which is unreasonably bright or causes unreasonable glare, and no sound or odor shall be emitted from any portion of the Community which would reasonably be found by others to be noxious or offensive as further defined in the Rules and Regulations. Without limiting the generality of the foregoing, no exterior spot lights, searchlights, speakers, horns, whistles, bells or other light or sound devices shall be located or used on any portion of the Community except with the prior written approval of the Association.

Section 5.14 No Hazardous Activities.

No activity shall be conducted on and no improvement shall be constructed on any Property within the Community which is or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms shall be discharged upon any Property within the Community. No open fires shall be lighted or permitted on any Property within the Community except in a contained barbeque unit while attended and in use for cooking purposes or within an interior or exterior fireplace designed to prevent dispersal of burning embers unless otherwise prohibited by governmental ordinances. No Owner or Owners shall permit any condition on their Lot or Residential Unit which creates a fire hazard or is in violation of applicable fire prevention regulations.

Section 5.15 Restrictions on Clotheslines and Storage.

Except for retractable clotheslines which comply with reasonable aesthetic regulations adopted by the Board and except as otherwise permitted by Colorado law, no clotheslines, drying areas or yards, service yards, shops, equipment, storage or storage areas shall be installed, allowed, kept, maintained or permitted on any Lot or Residential Unit unless the same, in each instance, is expressly permitted in writing by the Association. Owners shall deem to hold the Association harmless from any claim resulting from any clotheslines, drying areas or yards, service yards, shops, equipment, storage or storage areas maintained on their Lot or Residential Unit.

Section 5.16 Restriction on Signs and Flags.

Signs, posters, billboards, and flags (including flag poles) may be displayed in accordance with Colorado law. The Association may prohibit signs and flags bearing commercial messages, and may establish reasonable, content-neutral regulations addressing the number, placement, or size of the signs and flags, and other objective factors as permitted by Colorado law.

Section 5.17 Outbuildings and Temporary Structures.

An "outbuilding" shall mean an enclosed or covered structure not directly attached to the dwelling it serves. No outbuilding or temporary structure, including sheds, trailers, mobile homes, tents, shacks, barns, or detached garages or carports, shall be allowed on any Lot unless approved in writing by the Board of Directors or the Architectural Review Committee. Further, no outbuilding or temporary structure shall be used on any Lot at any time for residential purposes, either temporarily or permanently.

Section 5.18 Trash Removal Restriction.

No garbage, refuse, rubbish, or cuttings shall be deposited on any street, road or any Common Area or on any Lot, unless placed in a suitable container suitably located. All equipment for the storage or disposal of such materials shall be kept in a clean and sanitary condition. No garbage cans, trash cans or receptacles shall be maintained in an exposed or unsightly manner. The Association shall have the exclusive right to engage a trash removal contractor on behalf of the Owners.

Section 5.19 Smoking and Vaping Prohibition.

(a) Definitions. For the purposes of this Section, the following terms shall be defined as follows:

(i) "Smoking" shall mean and include the inhaling, exhaling, burning or carrying of any lighted cigarette, cigar or other tobacco product, marijuana or any other legal or illegal substance.

(ii) "Vaping" shall mean and include the inhaling and exhaling of vapor through the mouth from a battery or other operated electronic device (such as an electronic cigarette or JUUL) that heats up and vaporizes a liquid or solid.

(b) Smoking and Vaping Prohibition. No Owner, guest, family member, tenant, resident, business invitee or visitor shall smoke cigarettes, vaping devices, cigars, other tobacco products and/or any other legal or illegal substance within the Common Area in the Community or within ten (10) feet of a building.

(c) Disclosure Requirement. Any Owner who rents their Residential Unit or otherwise allows someone other than the Owner to reside within or occupy the Residential Unit shall disclose to all persons residing within the Residential Unit that Smoking and Vaping is prohibited on all Common Area, prior to their residency or occupancy.

Section 5.20 Prohibited Activities.

No Owner or occupant of a Residential Unit may engage in hoarding, creating conditions conducive to indoor fires, allowing Residential Units to fall into a state of disrepair to the point that rodents or other pests enter, or any other conditions which could cause damage or harm to other Residential Units in the Community.

Section 5.21 Insect, Bedbug, and Vermin Infestations.

Each Owner shall be required to take necessary measures, as determined in the sole discretion of the Board of Directors, to retard and prevent insect, bedbug, and vermin infestations, including but not limited to, rodents, termites, lice, cockroaches, mice, and rats from accumulating in the Lot or Residential Unit. Owners shall immediately notify the Board in writing of the following: (a) any evidence of an insect, bedbug, and/or vermin infestation in a Lot or Residential Unit; and (b) all steps taken to remove insects and vermin in a Lot or Residential Unit. Owners shall be responsible for treatment and removal of insect, bedbug, and/or vermin infestations immediately upon the discovery of the same. The receipt of notice of an insects and/or vermin infestation in a Lot or Residential Unit by the Association shall not create any additional Association maintenance responsibility other than those set forth in this Declaration. Owners must provide written confirmation to the Association that all insect, bedbug, and/or vermin infestations have been removed from the Lot or Residential Unit upon completion of the remediation process and must provide evidence and documentation to the Association of such removal. Failure by any Owner to comply with this Section shall entitle the Association to perform all necessary remediation and collect any amounts expended for such remediation as an Assessment. Owners shall be responsible for any damages to their Lots or Residential Units, personal property, to any other Lots or Residential Units, or the Common Area, as well as any injury to residents and guests resulting from the Owner's failure to comply with this Section. Any fees or costs incurred by the Association or other Owners as a result of violation of this Section shall be the obligation of the infested Residential Unit Owner to pay.

Section 5.22 Rules and Regulations.

In furtherance of the provisions of this Declaration, and the general plan, Rules and Regulations concerning and governing the Community or any portion thereof may be adopted, amended, or repealed from time to time by the Board of Directors. The Board of Directors may establish and enforce penalties for the infraction thereof.

Section 5.23 Compliance with Governing Documents.

Each Owner shall comply strictly with the provisions of this Declaration, the Articles of Incorporation, Bylaws, and the Rules and Regulations of the Association, as amended.

Section 5.24 Restriction on Mining and Drilling.

No Property within the Community shall be used for the purpose of mining, quarrying, drilling, boring or exploring for or removing oil, gas, or other hydrocarbons, minerals, rocks, stones, gravel or earth.

Section 5.25 Use of the Words Mountain Side P.U.D. and Mountain Side Homeowners Association.

No Owner or resident shall use the words Mountain Side P.U.D. or Mountain Side Homeowners Association or the logo of the Community or Association, if any, or any derivative thereof, in connection with any goods, materials or services, the use of which is likely to cause confusion, mistake or deception as to the source or origin of such goods, materials or services, without the prior written consent of the Association.

## ARTICLE 6 ARCHITECTURAL REVIEW

Section 6.1 Required Approval.

No structures, including residences, outbuildings, accessory buildings, tennis courts, swimming pools, antennas (except as otherwise permitted in this Declaration), flag poles (except as otherwise permitted by the Act), fences, walls, exterior lighting, landscaping, or any other improvements shall be constructed, erected, relocated, removed or installed on a Lot or Residential Unit, nor shall any painting, alteration or change to the exterior of the improvements, the exterior of a residence, to a Lot or Residential Unit, or to any structure or any attachment to the exterior of a residence (including paint, awnings, patios, decks, or shutters) be commenced unless complete plans and specifications shall have been first submitted to and approved in writing by the Architectural Review Committee ("Committee") as may be outlined in the Rules and Regulations.

No alteration, improvement, or change to the interior of a residence which affects the exterior appearance of the residence shall be commenced unless complete plans and specifications shall have been first submitted to and approved in writing by the Committee. The Committee may require that applications of Owners and their plans and specifications show exterior design, height, materials, color, location of the structure or addition to the structure or proposed improvement (plotted horizontally and vertically), location and size of driveways, walls, windbreaks and grading plan, as well as such other materials and information as may be required by the Committee.

Section 6.2 Acknowledgment of Owners.

Owners acknowledge, accept and agree to the following:

(a) Owners will not commence construction or installation of an improvement until they have submitted improvement plans and specifications and received written approval from the Committee;

(b) Owners shall immediately comply with any request by the Association for additional information relating to an improvement prior to the Committee's approval of a request and/or prior to the completion of an improvement. Failure to comply with such a request by an Owner shall result in the withdrawal of Committee approval, if previously granted;

(c) Committee approval does not constitute approval of the local building or zoning department, drainage design or structural soundness;

(d) Owners, by submitting an application for approval, hereby certify: (i) they will construct or modify improvements located only on their own Lot or upon Property which they have permission to construct, modify or improve; and (i) they will not violate any easements, rights-of-way, or other rights appurtenant to such Property.

(e) Owners shall notify the Committee of completion of the improvement's installation or construction within fourteen days of such completion;

(f) Upon completion of an improvement, Owners authorize the Committee or its representative(s) to enter onto the Lot for exterior inspection;

(g) Failure of an Owner to notify the Committee of completion of an approved improvement, or refusal to allow inspection, shall result in the withdrawal of the Committee's approval;

(h) If the improvement as built does not conform to the improvement as approved by the Committee, the Committee's approval will be deemed withdrawn, and upon written request of the Committee, Owners shall, at their own expense and cost, promptly bring the improvement into compliance with the submitted and approved plans and specifications;

(i) In the event of withdrawal of Committee approval for any reason(s) cited in this Section, and upon written request from the Committee, the Owner, at their expense and cost, shall promptly restore the Lot to substantially the same condition as it existed prior to commencement of the improvement's installation or construction, and such withdrawal will be deemed to toll the statute of limitations as it pertains to the improvement until such time as the improvement is brought into compliance.

Section 6.3 Architectural Criteria.

The Committee shall exercise its reasonable judgment to the end that all attachments, improvements, construction, landscaping and alterations to improvements on a Lot or landscaping of a Lot shall comply with the requirements set forth in this Declaration. The approval or consent of the Committee on matters properly coming before it shall not be unreasonably withheld, and actions taken shall not be arbitrary or capricious. Approval shall be based upon, but not limited to, conformity and harmony of the exterior appearance of structures with neighboring structures, effective location and use of improvements on nearby Lots, preservation of aesthetic beauty, and conformity with the specifications and purposes generally set out in this Declaration. Upon its review of such plans, specifications and submittals, the Committee may require that the applicant(s) reimburse the Board for actual expense incurred by it in its review and approval process.

Section 6.4 Establishment of the Committee.

The Committee shall consist of a minimum of three members appointed by the Board of Directors. The Board shall have the authority to remove any members of the Committee at their sole discretion. All Committee members shall be Owners.

Section 6.5 Architectural Guidelines.

The Committee may propose architectural guidelines from time to time, which guidelines may be approved by the Board of Directors and included in or with any Rules and Regulations of the Association.

Section 6.6 Reply and Communication.

The Committee shall reply to all submittals of plans made in accordance herewith in writing within 30 days after receipt. In the event the Committee fails to take any action on submitted plans and specifications within 30 days after the Committee has received the plans and specifications, approval shall be deemed to be denied. All communications and submittals shall be addressed to the Committee in care of the Association.

Section 6.7 Conditions of Approval.

In the discretion of the Board or the Committee, an Owner may be required to enter into a written agreement establishing the approval of the application in recordable form acknowledged by such Owner on behalf of themselves and all successors-in-interest. As a condition of approval for a requested architectural change, modification, addition or alteration, an Owner, on behalf of themselves and their successors-in-interest, affirms and shall assume, unless otherwise agreed in writing, all responsibilities for maintenance, repair, replacement and insurance to and on such change, modification, addition or alteration.

Section 6.8 Commencement and Completion of Construction.

All improvements approved by the Committee must be commenced within one year from the date of approval. If not commenced within such time, then such approval shall be deemed revoked by the Committee, unless the Committee gives a written extension for commencing the work. Additionally, except with written Committee approval otherwise, and except for delays caused by strikes, fires, national emergencies, critical materials shortages or other intervening forces beyond the control of the Owner, all work approved by the Committee shall be completed within one year of commencement.

Section 6.9 Variances.

The Committee may grant reasonable variances or adjustments from any conditions and restrictions imposed by this Declaration in order to overcome practical difficulties and unnecessary hardships arising by reason of the application of the conditions and restrictions contained in this Declaration or in architectural guidelines.

Section 6.10 Right to Appeal.

If the Board of Directors is not acting as the Committee, an Owner whose plans have been disapproved or conditionally approved may appeal any decision of the Committee to the Committee and then to the Board of Directors if the Committee does not change its position. The Board of Directors shall review the decision of the Committee pursuant to the criteria set forth in this Article and/or the architectural guidelines. Any decision of the Committee may be overruled and reversed on appeal by a majority of the Directors by a written decision setting forth the reasons for the reversal when the Directors conclude that the Committee's decision was inconsistent with the criteria set forth in this Article and the guidelines.

Section 6.11 Waivers.

The approval or consent of the Committee, or appointed representative thereof, to any application for architectural approval shall not be deemed to constitute a waiver of any right to hold or deny approval or consent by the Committee as to any application or other matters subsequently or additionally submitted for approval or consent.

Section 6.12 Liability.

The Committee and the members thereof, as well as any representative of the Board designated to act on its behalf, shall not be liable in damages to any person submitting requests for approval or for any approval, or failure to approve or disapprove in regard to any matter within its jurisdiction under these covenants. Neither the Board nor the Committee shall bear any responsibility for ensuring the design, quality, structural integrity or soundness of approved construction or modifications, nor for ensuring compliance with building codes, zoning regulations and other governmental requirements. The Association will not make any investigation into title, ownership, easements, rights-of-

way, or other rights appurtenant to Property with respect to architectural requests and shall not be liable for any disputes relating to the same.

Section 6.13 Enforcement.

Enforcement of these covenants, restrictions, charges and other provisions, as amended, may be by any proceeding at law or in equity against any person or persons violating or attempting to violate any such provision. The Association shall have the right, but not the obligation, to institute, maintain and prosecute any such proceedings. In any action instituted or maintained under this Section, the Association may be entitled to recover its costs and reasonable attorney fees incurred pursuant thereto, as well as any and all other sums awarded by the court. Failure of the Association to enforce any covenant or restriction contained in this Section shall in no event be deemed a waiver of the right to do so thereafter. In addition, or in the alternative, the Association shall have all other enforcement rights as set forth in this Declaration.

## ARTICLE 7 INSURANCE/CONDEMNATION

Section 7.1 Insurance.

Each Owner has the responsibility to obtain hazard insurance covering loss, damage or destruction by fire or other casualty to the improvements, installed or made to their Lot, and Residential Unit, or other property of that Owner located on such Lot or Residential Unit, and liability insurance covering any injuries occurring to persons or property damages on a Lot or Residential Unit. Insurance on Residential Units encumbered by the Condominium Declaration is set forth more fully in the Condominium Declaration.

Section 7.2 Insurance to be Carried by the Association.

The Association shall obtain and maintain in full force and effect, to the extent reasonably available and at all times, the insurance coverage set forth in this Declaration and as set forth in the Act, which insurance coverage shall include the following terms and shall be provided by financially responsible and able companies duly authorized to do business in the State of Colorado.

Section 7.3 Hazard Insurance on Common Area.

The Association shall obtain hazard insurance covering loss, damage or destruction by fire or other casualty to any insurable improvements installed or made to any Common Area and the other property of the Association.

Section 7.4 Association Liability Insurance.

The Association shall obtain public liability and property damage liability insurance covering any Common Area, in such limits as the Board may determine from time to time, and in all cases covering all claims for bodily injury or property damage. Coverage shall

include, without limitation, liability for personal injuries and operation of automobiles on behalf of the Association.

Section 7.5 Association Fidelity Insurance.

The Association shall obtain fidelity coverage or fidelity bonds to protect against dishonest acts on the parts of its officers, directors, trustees and employees and on the part of all others who handle or are responsible for handling the funds of the Association, including persons who serve the Association with or without compensation. The fidelity coverage or bonds should be in an amount sufficient to cover the maximum funds that will be in the control of the Association, its officers, directors, trustees and employees, as required by law.

Section 7.6 Association Worker's Compensation and Employer's Liability Insurance.

The Association shall obtain worker's compensation and employer's liability insurance and all other similar insurance with respect to employees, if any, in the amounts and forms as may now or hereafter be required by law.

Section 7.7 Directors' and Officers' Personal Liability Insurance.

The Association shall obtain directors' and officers' personal liability insurance to protect the officers, managers, committee members and any person acting at the discretion of the Board from personal liability in relation to their duties and responsibilities in acting as officers and directors on behalf of the Association.

Section 7.8 Miscellaneous Terms Governing Insurance Carried by the Association.

The Association shall maintain, to the extent reasonably available, insurance policies with the following terms or provisions:

(a) All policies of insurance shall provide that each Owner is an insured under the policy with respect to liability arising out of such Owner's membership in the Association.

(b) All policies of insurance shall contain waivers of subrogation against any Owner or member of their household.

(c) All policies of insurance shall contain waivers of subrogation and waivers of any defense based on invalidity arising from any acts of an Owner and shall provide that such policies may not be canceled or modified without prior written notice to all of the Owners as provided by Colorado law and to the Association.

(d) If requested, duplicate originals of all policies and renewals thereof, together with proof of payments of premiums, shall be delivered to all holders of

first lien security interests at least 10 days prior to the expiration of the then-current policies.

(e) All liability insurance shall name the Association, the Board, the manager or managing agent, if any, the officers of the Association, holders of first lien security interests, their successors and assigns and Owners as insureds.

(f) Prior to the Association obtaining any blanket policy of casualty insurance on any Common Area, the Board may obtain an appraisal from a duly qualified real estate or insurance appraiser, which appraiser shall reasonably estimate the full replacement value of any Common Area and any improvements thereon, without deduction for depreciation, and/or consider other factors, for the purpose of determining the amount of the insurance to be effected pursuant to the provisions hereof. In the event the Association obtains casualty insurance on the Lots, then in no event shall that casualty insurance policy contain a co-insurance clause.

(g) All policies of insurance of the Association shall be primary, providing the primary insurance of the loss, if there is other insurance in the name of the Owner.

(h) All policies of insurance shall provide that the insurance thereunder shall not be invalidated, suspended, voidable or have any condition of recovery due to an act or omission by any Owner.

Section 7.9 Other Association Insurance.

The Association may obtain insurance against such other risks, of similar or dissimilar nature, including flood insurance, as it shall deem appropriate with respect to the Association responsibilities and duties.

Section 7.10 Insurance Premium.

Insurance premiums for insurance provided by the Association shall be a Common Expense to be included as a part of the annual Assessments levied by the Association.

Section 7.11 Annual Insurance Review.

The Board shall review the insurance carried by and on behalf of the Association at least annually, for the purpose of determining the amount of insurance required.

Section 7.12 Adjustments by the Association.

Any loss covered by an insurance policy described above shall be adjusted by the Association, and the insurance proceeds for that loss shall be payable to the Association and not to any holder of a first lien security interest. The Association shall hold any insurance proceeds in trust for the Association, Owners and holders of first lien security

interests as their interests may appear. The proceeds must be distributed first for the repair or restoration of the damaged property, and the Association is not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the damaged property has been completely repaired or restored.

Section 7.13 Duty to Repair.

Any portion of the Community for which the Association is required to insure under this Article which is damaged or destroyed must be repaired or replaced promptly by the Association, except as provided in the Act.

Section 7.14 Condemnation and Hazard Insurance Allocations and Distributions.

In the event of a distribution of condemnation proceeds or hazard insurance proceeds to the Owners, the distribution shall be as the parties with interests and rights are determined or allocated by record and pursuant to the Act.

Section 7.15 Responsibility for Payment of Deductible Amount.

Whether the Board, in its discretion, chooses to submit a claim under the Association insurance policies or not, the Association shall pay or absorb the deductible amount for any work, repairs or reconstruction for damage to Common Area or other property insured by the Association unless the damage is caused by the negligent or willful act or omission of an Owner, their family, guests, renters, or invitees, in which case the Association shall seek reimbursement of the deductible amount in compliance with and under the terms of the Declaration.

Section 7.16 Insurance Assessments.

If the proceeds of insurance are not sufficient to defray the costs of reconstruction and repair due to deductibles allocated to the Association or failure of the Association to maintain coverage to defray costs of repair and reconstruction which in the absence of insurance would be the maintenance responsibility of the Association, the deductible or additional cost shall be a Common Expense. This Insurance Assessment shall not be considered an Assessment as discussed in this Declaration and shall not require any vote or ratification of the Owners.

Section 7.17 Damage to or Destruction on Lots.

In the event of damage to or destruction of structures or improvements on a Lot, the Owner shall proceed promptly to repair or to reconstruct the damaged structure and improvements in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with this Declaration**,** unless a determination not to rebuild is made by the Owner in cases of substantial damage or destruction. If the structure is substantially destroyed and a determination is made not to rebuild or to reconstruct, the Owner shall clear the Lot of all debris and return it to substantially the natural state in which it existed prior to the beginning of construction,

and, thereafter, the Owner shall continue to maintain the Lot in a neat and attractive condition consistent with this Declaration.

## ARTICLE 8 GENERAL PROVISIONS

Section 8.1 Compliance and Enforcement.

(a) Every Owner and occupant of a Residential Unit shall comply with the Governing Documents, and each Owner shall have the right to enforce the covenants and restrictions, as set forth in this Declaration.

(b) The Association may enforce all applicable provisions of this Declaration, and may impose sanctions for violation of the Governing Documents. Such sanctions may include, without limitation:

(i) imposing reasonable monetary fines, after notice and opportunity for a hearing, which fine shall constitute a lien upon the violator's Lot or Residential Unit;

(ii) suspending the right to vote and the right to use Common Area;

(iii) exercising self-help (including, but not limited to, performing such maintenance responsibilities which are the Owner's responsibility under this Declaration and assessing all costs incurred by the Association against the Lot or Residential Unit and the Owner as an Assessment) or taking action to abate any violation of the Governing Documents;

(iv) requiring an Owner, at the Owner's expense, to remove any structure or improvement on such Owner's Lot or Residential Unit in violation of the Governing Documents and to restore the Lot or Residential Unit 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, at the Owner's expense, and any such action shall not be deemed a trespass, with all fees and costs in connection with such removal and restoration to be assessed to the Owner as an Assessment under the terms of this Declaration;

(v) without liability to any person, the Association precluding any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of this Declaration from continuing or performing any further activities in the Community;

(vi) levying specific Assessments to cover costs incurred by the Association to bring a Lot or Residential Unit into compliance with the Governing Documents; and

(vii) bringing suit at law or in equity to enjoin any violation or to recover monetary damages or both.

(c) In addition to any other enforcement rights, if an Owner fails to properly perform their maintenance responsibility, or otherwise fails to comply with the Governing Documents, the Association may record a notice of violation against the Owner and the Lot or Residential Unit.

(d) All remedies set forth in the Governing Documents shall be cumulative of any remedies available at law or in equity. In any action to enforce the Governing Documents, the prevailing party shall be entitled to recover all costs, including, without limitation, attorney fees and court costs, reasonably incurred in such action.

(e) The decision of the Association to pursue enforcement action in any particular case shall be left to the Board's discretion, subject to the duty to exercise judgment and be reasonable, as provided for in this Declaration, and further restricted in that the Board shall not be arbitrary or capricious in taking enforcement action. A decision of the Association to not pursue enforcement action shall not be construed as a waiver of the Association's right to enforce such provisions at a later time under other circumstances or preclude the Association from enforcing any other covenant, restriction or rule.

Section 8.2 Attorney Fees.

If an Owner fails to pay any Assessment as provided in this Declaration, the Association may require reimbursement for reasonable attorney fees and costs without the necessity of commencing a legal proceeding. If an Owner or an Owner's family member, guest, tenant, invitee or licensee fails to comply with any other provision of the Governing Documents, the Association may seek reimbursement for reasonable attorney fees and costs incurred as a result of such failure to comply, without the necessity of commencing a legal proceeding. In a legal proceeding in any way related to the Governing Documents or the Community, the court shall award to the prevailing party reasonable attorney fees and costs incurred in asserting or defending the claim. Such reasonable attorney fees and costs, if awarded against an Owner shall be charged as an Assessment and shall constitute a lien against the Lot or Residential Unit.

Section 8.3 Severability.

Each of the provisions of this Declaration shall be deemed independent and severable. If any provision of this Declaration or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of this Declaration which can be given effect without the invalid provisions or applications.

Section 8.4 Term of Declaration.

The covenants and restrictions of this Declaration shall run with and bind the land in perpetuity.

Section 8.5 Amendment of Declaration by Owners.

Any provision, covenant, condition, restriction or equitable servitude contained in this Declaration may be amended, revised, removed or repealed, and new provisions, covenants, conditions, restrictions or equitable servitudes may be added, at any time and from time to time upon approval of Members holding at least more than 50% of the total votes in the Association and with the written consent of the Association. Notice of any meeting at which a proposed amendment will be considered shall state the fact of consideration and the subject matter of the proposed amendment. The amendment or repeal shall be effective upon the recordation in the office of the Clerk and Recorder of Summit County of a certificate setting forth the amendment in full and certifying that the amendment has been approved as set forth above, and containing the written consent and approval of the Association.

Section 8.6 Captions.

All captions and titles used in this Declaration are intended solely for convenience of reference and shall not enlarge, limit or otherwise affect that which is set forth in any paragraph, section or article hereof.

Section 8.7 Interpretation.

The provisions of this Declaration shall be construed to effectuate their purposes of creating a uniform plan for promoting and effectuating the fundamental concepts as set forth in this Declaration. The Board of Directors shall have the authority to interpret the meaning of any provision contained in this Declaration. This Declaration shall be construed and governed under the laws of the State of Colorado.

Section 8.8 Singular Includes the Plural.

Unless the context otherwise requires, the singular shall include the plural, and the plural shall include the singular, and each gender referral shall be deemed to include the masculine, feminine and neutral.

Section 8.9 Challenge to this Amendment.

All challenges to the validity of this amendment or any future amendments must be made within one year after the date or recording of this document. The covenants and restrictions of this Declaration shall run with and bind the land in perpetuity.

Section 8.10 Non-Waiver.

Any forbearance or failure to enforce any provisions of this Declaration shall not operate as a waiver of any such provision or of any other provision of this Declaration or of any subsequent enforcement of such provision.

Section 8.11 Conflict of Provisions.

In case of conflict between this Declaration and the Articles or Bylaws, this Declaration shall control. In the case of conflict between the Articles and Bylaws, the Articles shall control.

The undersigned, being the President and the Secretary of Mountain Side Homeowners Association, hereby certify that the Association has obtained written approval of this Declaration from Owners of not less than 50% of the Residential Units subject to the Original Declaration (as demonstrated by the instruments signed by the Owners and attached as **Exhibit B** of this Declaration). Alternatively, a court order entered by the District Court for Summit County, Colorado pursuant to C.R.S. §38-33.3-217(7), has been entered approving this Declaration. Approvals obtained shall remain in effect until this Declaration is approved unless approval is expressly revoked in writing.

**MOUNTAIN SIDE HOMEOWNERS ASSOCIATION,**
a Colorado nonprofit corporation,

By: _____
President

**ATTEST:**

_____
Secretary

STATE OF COLORADO )
) ss.
COUNTY OF _____ )

The foregoing Declaration was acknowledged before me by _____, as President and by _____, as Secretary, of Mountain Side Homeowners Association, a Colorado nonprofit corporation, on this _____day of _____, 20___.

_____
Notary Public

My commission expires: _____

STATE OF COLORADO )
) ss.
COUNTY OF _____ )

The foregoing Declaration was acknowledged before me by _____, as Secretary, of Mountain Side Homeowners Association, a Colorado nonprofit corporation, on this _____day of _____, 20___.

_____
Notary Public

My commission expires: _____

**EXHIBIT A**
**PROPERTY**

Mountain Side P.U.D., as amended, according to all recorded Plats and Replats thereof, County of Summit,
State of Colorado,

Including all property set forth in the recorded condominium maps for Mountain Side Condominiums recorded in the County of Summit, State of Colorado.

**EXHIBIT B**
**OWNER APPROVALS**

[to be attached]