

**SECOND
AMENDED AND RESTATED
ARTICLES OF INCORPORATION
FOR
MOUNTAIN SIDE HOMEOWNERS ASSOCIATION
(A Colorado Nonprofit Corporation)**

The undersigned signs and acknowledges, for delivery to the Secretary of State of Colorado, these Second Amended and Restated Articles of Incorporation under the Colorado Revised Nonprofit Corporation Act.

RECITALS

Mountain Side Homeowners Association, a Colorado nonprofit corporation ("Association"), certifies to the Secretary of State of Colorado that:

By their signature below, the president and secretary of the Board of Directors certify these Amended and Restated Articles of Incorporation received the affirmative vote of Members holding at least a majority of the total votes in the Association entitled to be cast who were present and voting, in person or by proxy, at a regular or special meeting of the Members at which a quorum was present;

The provisions set forth in these Amended and Restated Articles of Incorporation supersede and replace the existing Articles of Incorporation and all amendments;

The Association desires to amend and restate its Articles of Incorporation currently in effect as set forth below and that the Articles of Incorporation of the Association are hereby amended by striking in their entirety Articles I through XII, inclusive, and by substituting the following:

**ARTICLE 1
NAME**

The name of the corporation is Mountain Side Homeowners Association (the "Association").

**ARTICLE 2
DURATION**

The duration of the Association shall be perpetual.

ARTICLE 3 DEFINITIONS

The definitions set forth in the Declaration of Covenants, Conditions, and Restrictions for Mountain Side P.U.D., as amended, ("Declaration") shall apply to all capitalized terms contained in these Articles of Incorporation, unless otherwise noted.

ARTICLE 4 NONPROFIT

The Association shall be a nonprofit corporation, without shares of stock.

ARTICLE 5 PURPOSES AND POWERS OF ASSOCIATION

The purposes for which the Association is formed are as follows:

- (a) To operate and manage the common interest community known as "Mountain Side P.U.D.," a planned community, and to own, operate and manage the Property and Common Recreational Area and pedestrian easements included within the Community, situated in Summit County, State of Colorado, subject to the Declaration, Plats, Maps, Bylaws, and such Rules and Regulations as the Board of Directors may from time to time adopt, for the purposes of enhancing and preserving the value of the Property;
- (b) To maintain Mountain Side P.U.D. as a community of the highest quality and value, and to enhance and protect the Property's value, desirability and attractiveness;
- (c) To perform all acts and services and exercise all powers and duties in accordance with the requirements for an association of owners charged with the administration of the Property under the terms of the Colorado Common Interest Ownership Act, as amended (the "Act") and as applicable to common interest communities created prior to July 1, 1992, and as set forth in the Declaration;
- (d) To provide for administration, maintenance, preservation, improvement, and architectural review as contained in the Declaration; and
- (e) To do any and all permitted acts suitable or incidental to any of the foregoing purposes and objects to the fullest extent permitted by law, and do any and all acts that, in the opinion of the Board, will promote the common benefit and enjoyment of the Owners and residents within the Mountain Side P.U.D. Community, and to have and to exercise any and all powers, rights, and privileges which are granted under the Act, the Declaration, Bylaws, and the laws applicable to a nonprofit corporation of the State of Colorado.

The purposes and powers stated in each clause shall not be limited or restricted by reference to or inference from the terms or provisions of any other clause, but shall be broadly construed as independent purposes and powers.

ARTICLE 6 ELIMINATION OF CERTAIN LIABILITIES OF DIRECTORS

There shall be no liability, either direct or indirect, of any Director acting within the scope of their duties as a Director, or any other person serving the Association at the direction of the Board of Directors, without compensation, to the Association or to its Members for monetary damages for breaches of fiduciary duties arising out of such services. Notwithstanding the foregoing, this provision shall not eliminate the liability of a Director to the Association or its Members for any breach, act, omission, or transaction for which the Act or the Colorado Revised Nonprofit Corporation Act expressly prohibits elimination of liability.

ARTICLE 7 MEMBERSHIP RIGHTS AND QUALIFICATIONS

There shall be one membership for each Residential Unit owned within the Community. This membership shall be automatically transferred upon the conveyance of that Residential Unit. The authorized number and qualifications of Members of the Association, the voting and other rights and privileges of Members, Members' liability for Assessments, and the method of collection of Assessments shall be contained in the Declaration, the Articles of Incorporation, and Bylaws of the Association.

ARTICLE 8 PRINCIPAL OFFICE AND REGISTERED AGENT

The current principal office of the Association is 611 East Main Street, Frisco, CO 80443. The current registered agent of the Association is Summit Resort Group at the registered address of 611 East Main Street, Frisco, CO 80443. The principal office and the registered agent and office of the Association may change from time to time, by action of the Board of Directors.

ARTICLE 9 BOARD OF DIRECTORS

The business and affairs of the Association shall be conducted, managed and controlled by a Board of Directors. The specific number is set forth in the Bylaws.

ARTICLE 10 AMENDMENT

Amendment of these Articles of Incorporation, except for amendments that may be adopted by the Board of Directors pursuant to the Colorado Revised Nonprofit Corporation Act, shall require the affirmative vote of Members holding at least a majority of the total votes in the Association entitled to be cast who are present and voting, in person or by proxy, at a

regular or special meeting of the Members at which a quorum is present or via written ballot authorized by Colorado law; *provided, however*, that no amendment to these Articles of Incorporation shall be contrary to or inconsistent with the provisions of the Declaration.

**ARTICLE 11
DISTRIBUTION OF ASSETS UPON DISSOLUTION**

In the event of the dissolution of the Association as a corporation, either voluntarily or involuntarily by the Members, by operation of law, or otherwise, the assets of the Association shall be distributed in accordance with the Colorado Revised Nonprofit Corporation Act.

**ARTICLE 12
INTERPRETATION**

The terms and provisions of the Declaration are incorporated by reference when necessary to interpret, construe or clarify the provisions of these Articles. In the event of conflict, the terms and provisions of the Declaration shall control over these Articles of Incorporation.

IN WITNESS WHEREOF, the undersigned has signed these Second Amended and Restated Articles of Incorporation on this ____ day of _____, 20__.

MOUNTAIN SIDE HOMEOWNERS ASSOCIATION,
a Colorado nonprofit corporation

_____, President

_____, Secretary

The name and mailing address of the individual who causes this document to be delivered for filing, and to whom the Secretary of State may deliver notice if filing of this document is refused is: Maris Davies, Altitude Community Law P.C., 555 Zang Street, Suite 100, Lakewood, Colorado 80228-1011.

**COMPARISON OF ARTICLES OF INCORPORATION FOR
MOUNTAIN SIDE HOMEOWNERS ASSOCIATION**

Provision	New	Existing	Summary of Changes
Name	Article 1	Article I	No substantive changes.
Duration	Article 2	Article II	No substantive changes.
Definitions	Article 3	N/A	Added to refer to the Declaration for defined terms used in the document.
Nonprofit	Article 4	Article XI	No substantive changes.
Purpose and Powers of Association	Article 5	Articles III and IV	Simplifies current powers and duties and moves specifics to A&R Bylaws.
Elimination of Certain Liabilities of Directors	Article 6	N/A	Added pursuant to Colorado law.
Membership Rights and Qualifications	Article 7	Article V	Simplifies voting and membership requirements pursuant to Colorado law and moves specifics to the A&R Bylaws.
Principal Office and Registered Agent	Article 8	N/A	Updated pursuant to Colorado law to reflect the information currently of record with the Colorado Secretary of State.

Provision	New	Existing	Summary of Changes
Board of Directors	Article 9	Article VI	Revised to remove references to the Declarant and to set a range in the number of Board members instead of the specific number. Provisions regarding removal and vacancies moved to the A&R Bylaws.
Amendment	Article 10	Article X	Revised to add an Owner approval requirement pursuant to Colorado law.
Distribution of Assets Upon Dissolution	Article 11	Article XII	Revises dissolution requirement in accordance with Colorado law.
Interpretation	Article 12	N/A	Adds provisions regarding interpretation and conflict pursuant to Colorado law.
Officers	Removed	Article VII	Moved to A&R Bylaws.
Conveyances and Encumbrances	Removed	Article VIII	Moved to A&R Declaration.

**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;
- (e) to own, operate, and govern the common recreation area;

- (f) to maintain the pedestrian easements; and
- (g) 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 Residential Unit. Ownership of a 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 60 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 Residential unit is present at a meeting of the Association, the Owner present is entitled to cast the vote allocated to such Residential Unit.
- (c) If more than one of the Owners is present, the vote allocated to the 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 Residential Unit without protest being made promptly to the person presiding over the meeting by another Owner of the Residential Unit. 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 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 Residential Unit 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 Residential Unit 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 Residential Unit 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 Lots within the P.U.D. Community.

Owners who only own Units in the Mountain Side Condominium Association may not be elected as the four P.U.D. 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 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), Vacant Lot, 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 where a quorum is present called pursuant to these Bylaws, with or without cause, by a vote of a majority of the Members present at the meeting. 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 Meeting 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: _____

**COMPARISON OF BYLAWS FOR
MOUNTAIN SIDE HOMEOWNERS ASSOCIATION**

Provision	New	Existing	Summary of Changes
Introduction, Purposes and Definitions	Article 1	Article 1	Incorporates more detailed purposes and powers from the Articles of Incorporation.
Membership	Article 2		
-Membership and Voting	Section 2.1	Sections 2.1 through 2.4	Simplifies voting provisions to move to the A&R Declaration.
-Suspension of Voting Rights and Use Rights	Section 2.2	N/A	Added to allow suspension for up to 60 days or for as long as a violation continues.
-Member Voting	Section 2.3	Section 3.7	Updates provisions clarifying how votes may be registered when there are multiple owners or corporate owners.
-Transfer of Membership	Section 2.4	N/A	Adds requirement for evidence of transfer of ownership of a Unit.
Meetings of Members	Article 3		
-Annual Meeting	Section 3.1	Section 3.2	No substantive changes.
-Budget Meetings	Section 3.2	Article 13	Updates requirements for holding budget meetings pursuant to Colorado law.
-Special Meetings	Section 3.3	Section 3.3	Expanded to provide more guidance regarding calling special meetings.

Provision	New	Existing	Summary of Changes
-Notice of Meetings	Section 3.4	Sections 3.4 and 3.5	Changes notice requirement to 10 to 50 days, pursuant to Colorado law.
-Place of Meetings	Section 3.5	Section 3.1	No substantive changes.
-Quorum of Members	Section 3.6	Section 3.10	No substantive changes.
-Proxies for Members Meetings	Section 3.7	Sections 3.8 and 3.9	Expands current provisions to address revocation, disagreement of multiple owners, and termination of proxies.
-Order of Business	Section 3.8	N/A	Adds provisions to establish the order of business for meetings.
-Waiver of Objection of Notice	Section 3.9	N/A	Adds authority of owners to waive notice of meetings pursuant to Colorado law.
-Voting Procedures/Secret Balloting	Section 3.10	Sections 3.11 through 3.14	Revises secret ballot requirements pursuant to Colorado law.
-Voting by Mail Ballot	Section 3.11	Section 3.15	Updated pursuant to Colorado law.
- Telephone or Electronic Communication in Lieu of Attendance	Section 3.12	N/A	Adds the authority to attend meetings using electronic or telephonic means.
-Voting in Elections of Directors/Other Voting	Section 3.13	Sections 3.11 and 3.12	No substantive changes.
-Acceptance or Rejection of Individual Votes	Section 3.14	Section 3.9	No substantive changes.

Provision	New	Existing	Summary of Changes
-Counting of Ballots	Section 3.15	N/A	Adds procedures for counting ballots pursuant to Colorado law.
Board	Article 4		
-Number	Section 4.1	Section 4.1	No substantive changes.
-Qualification	Section 4.2	Section 4.1	Expands and revises director qualifications.
-Term of Office for Directors	Section 4.3	Sections 4.1 and 4.2	No substantive changes.
-Resignation of Directors	Section 4.4	N/A	Adds resignation procedures for directors.
-Removal of Directors	Section 4.5	Section 4.3	Revised to increase Owner vote required to remove Directors from a majority of a quorum to a majority of all Owners.
-Vacancies	Section 4.6	Section 4.4	Revised to clarify vacancies of Directors caused by removal of the Members shall be replaced by a vote of the Members.
-Compensation	Section 4.7	Section 4.10	No substantive changes.
Meetings of Directors	Article 5		
-Regular Meeting	Section 5.1	Section 4.6	No substantive changes.
-Special Meetings	Section 5.2	N/A	Adds procedures for conducting special meetings of the Board.
-Notice of Board Meetings	Section 5.3	Section 4.6	Adds notice requirements for Board meetings.

Provision	New	Existing	Summary of Changes
-Location of Meetings and Open Meetings	Section 5.4	Section 4.6	Adds requirement for open meetings of the Board pursuant to Colorado law.
-Waiver of Notice	Section 5.5	Section 4.6	Gives Board members the authority to waive notice of meetings.
-Quorum	Section 5.6	Section 4.5	No substantive changes.
-Proxies for Board Meetings	Section 5.7	N/A	Adds authority for directors to vote via proxies pursuant to Colorado law.
-Consent to Corporate Action	Section 5.8	N/A	Adds procedures for the Board to take action outside of a meeting pursuant to Colorado law.
-Telephone Communication in Lieu of Attendance	Section 5.9	Section 4.6	No substantive changes.
-Unit Owner Participation	Section 5.10	N/A	Adds procedures regarding owners speaking at meetings pursuant to Colorado law.
Powers and Duties of Board of Directors	Article 6		
- Powers and Duties	Section 6.1	Section 4.8	Expands and updates powers and duties of the Board pursuant to Colorado law.
- Managing Agent	Section 6.2	Section 4.10	No substantive changes.
- No Waiver	Section 6.3	N/A	Clarifies obligations of the Board and managing agent.

Provision	New	Existing	Summary of Changes
Officers and Their Duties	Article 7		
-Enumeration of Offices	Section 7.1	Sections 5.1 and 5.7	Revised to require the Vice President to be a member of the Board.
-Election of Officers	Section 7.2	Sections 5.2 and 5.3	Revises terms from two years to one year.
-Special Appointments	Section 7.3	Section 5.4	No substantive changes.
-Resignation and Removal	Section 7.4	Section 5.5	No substantive changes.
-Vacancies	Section 7.5	Section 5.6	No substantive changes.
-Duties	Section 7.6	Section 5.8	No substantive changes.
-Delegation	Section 7.7	N/A	Adds authority of officers to delegate duties to the Board or managing agent.
Committees	Article 8	Article 7	Requires open committee meetings as provided by applicable law.
Books and Records	Article 9	N/A	Adds procedures for the maintenance and retention of the Association's books and records pursuant to Colorado law.
Amendments	Article 10	Article 16	Revised to clarify in which instances the Board cannot amend the Bylaws without Owner approval pursuant to Colorado law.
Indemnifications	Article 11	Article 6	Updates indemnification procedures pursuant to Colorado law.

Provision	New	Existing	Summary of Changes
Miscellaneous	Article 12	Article 11 and Section 17.2	Adds other provisions applicable to homeowner associations pursuant to Colorado law.
Conduct of Meetings	Removed	Section 4.7	Provision removed from Bylaws and moved to the Association's policies.
Conflict of Interest for Members of the Board of Directors	Removed	Section 4.11	Provision removed from Bylaws and moved to the Association's policies.
Records Retention and Disclosure	Removed	Article 8	Provision removed from Bylaws and moved to the Association's policies.
Inspection of Association Records	Removed	Article 9	Provision removed from Bylaws and moved to the Association's policies.
Financial Review or Audit	Removed	Article 12	Provision removed from Bylaws and moved to the Association's policies.
Investment of Reserves	Removed	Article 14	Provision removed from Bylaws and moved to the Association's policies.
Corporate Seal	Removed	Article 10	Removed as no longer required or applicable.
Rules and Regulations	Removed	Article 15	Provision removed from the Bylaws and moved to the A&R Declaration

AFTER RECORDING RETURN TO:

Altitude Community Law P.C.
555 Zang Street, Suite 100
Lakewood, CO 80228

**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:

WHEREAS

A. On December 22, 1982, the Miner's Creek Associates, a Colorado limited partnership, submitted the real property described in Exhibit A to 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. 249736, as amended and supplemented by documents of record ("Original Declaration") to the covenants, conditions and restrictions, easements, charges, assessments and liens set forth therein;

B. The Owners of the Property described on Exhibit A hereto ("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. This Declaration has 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 this Declaration include but are not limited to removing certain unreasonable restrictions on the community present in the Original Declaration, removing developer "boilerplate" language that is no longer applicable to the Community that is present in the Original Declaration, removing certain provisions that do not allow the Board to efficiently operate the community or deal with community concerns that is present in the

Original Declaration, removing certain provisions that do not comply with current state law that are present in the Original Declaration, adding certain provisions not present in the Original Declaration that provide the proper tools for the Association to effectively solve problems, adding certain provisions not present in the Original Declaration to provide the Association with sufficient power to create and successfully enforce Rules and Regulations, and adding certain provisions not present in the Original Declaration that reflect beneficial state law provisions.

G. The Owners desire to continue to enhance, protect, establish and maintain the character, value, desirability and attractiveness of the Property described on Exhibit A hereto ("the Property") and to continue to maintain the same as part of a common development scheme as reflected in the recorded plats described in Exhibit A hereto and in these Declarations;

H. The Owners desire to continue to provide for the operation and maintenance of the common recreational and other related amenities, including but not limited to Outlot A and Bill's Lake thereon, Outlot B, and all of the pedestrian easements contained within the Property set forth on the recorded plats described in Exhibit A hereto;

I. The Owners desire to continue to operate the Association which is delegated and assigned the powers and duties of owning and maintaining certain common recreational areas and amenities including but not limited to Outlot A and Bill's Lake thereon, Outlot B, and the pedestrian easements set forth on the recorded plats described in Exhibit A hereto, and administering and enforcing the covenants, conditions, restrictions, easements, charges, assessments and liens set forth herein, and collecting and disbursing the assessments and charges created hereby;

J. The Owners deem it necessary and desirable, for the welfare of Owners of Residential Units in the Community (as hereafter defined) and the Association and its Members, to preserve the value and desirability of the Community and the Residential Units and Common Recreational Units and to further the interests of the Owners of Residential Units, the Association, and the Members of the Association, to subject the Property to the covenants, conditions, restrictions, easements, charges, assessments and liens shall be burdens upon and benefits to the Residential Units, and Common Recreational Areas including but not limited to Outlot A and Outlot B, and Owners thereof, and their respective successors, heirs, executors, administrators, devisees, grantees and assigns, all of the above running with the land; and

K. Pursuant to the requirements set forth in Section 8.3 of the Original Declaration, Owners of not less than 50% of the Residential Units 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 Owners hereby declare that the Original Declaration is replaced and superseded by the covenants, conditions, restrictions, easements, charges, assessments and liens set forth below, and that Property described in Exhibit A, shall be held, sold and conveyed subject to the following covenants, conditions, restrictions, easements, charges, assessments and

liens and those set forth in the recorded plats described on Exhibit A hereto, which are for the purpose of protecting the value and desirability of, and which shall run with the Property and shall be binding on all parties having any right, title or interest in the Property or any part thereof, their heirs, successors and assigns:

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 Lots 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 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, and to perform the obligations of the Association relative to the ownership and operation of the Common Recreational Areas.

(f) Common Area of Common Recreational Areas shall mean all real property owned by the Association for the common use and enjoyment of the Owners, including but not limited to Outlots A and B of the Mountain Side P.U.D., which Outlots are collectively referred to hereinafter as the "Common Recreational Area." The common amenity on Outlot A include Bill's Lake and the pedestrian easements on and around Outlot A. The common amenities located on Outlot B include but are not limited to a clubhouse with sauna, spa, laundry, a pool, and related amenities. The Association shall be responsible for the ownership, operation, upkeep, repair and maintenance of Outlot A and Bill's Lake and pedestrian easements located thereon and Outlot B and the recreational facilities located thereon on behalf of all Owners. This does not include condominium common areas, which are managed by the Condominium Association.

(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 and condominium land. Lots include single-family homes, each side of a duplex, and vacant lots.

(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 Residential 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 including, but not limited to, the property as described on Exhibit A hereto,

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 or vacant lot and shall include, without limitation, condominium units, single family houses, each side of a duplex, vacant lots and each unit constructed on a 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 Residential Units currently included in the Community is 287.

Easements for utilities and other purposes over and across the Residential Units, and any Common Recreational 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.

Outlot A and Outlot B of the Mountain Side P.U.D. are owned by the Association and shall be, and are hereby, reserved as Common Recreational Areas.

Section 2.3 Owners' Easements of Enjoyment.

Every Owner shall have a right and easement of enjoyment in and to any Common Area, including, but not limited to, Outlot A, Outlot B, and all pedestrian easements set forth on the recorded Plats described in Exhibit A hereto and such easement shall be appurtenant to and shall pass with the title to every 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, or any portion thereof, subject to the prior approval of 67% of the total votes in the Association and subject 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 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 and shall be exercised only after reasonable notice to the Owner of the Lot.

Section 2.7 Utility, Plat, and Plat Easements.

Easements for utilities, pedestrians, and other purposes over and across the Lots, and Common Areas including, but not limited to, Outlot A and Outlot B as shown upon the Plat described in Exhibit A hereto, or Map of the Community, and additionally as may be established pursuant to the provisions of this Declaration, or granted by authority reserved in any recorded document. The Property is subject to these easements which burden and benefit the owners of Residential Units. These easements run with the Property and are binding on all parties having any right, title or interest in the Property or any part thereof, their heirs, successors, and assigns. The Association has the duty to maintain all pedestrian easements within the project to further the interests of all Owners.

Section 2.8 Use of Common Area by Non-Owners.

The Association may allow access to the lake for all permitted recreational activities, available to a limited number of non-Owners on the basis of revocable licenses issued pursuant to this paragraph. Lake license holders will access the amenities at their own risk. These licenses will include an initial fee and a monthly use fee. Initial fees may be waived for previous license holders. Licenses issued to non-Owner users shall be revocable for nonpayment of the monthly use fee or at the sole discretion of the Board, shall be non-transferable, and shall entitle the holder to use the lake amenity 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 Lake licenses issued to non-Owner users, for the determination, assessment, and collection of a monthly use fee from non-Owner users 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 license to the lake 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 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 Residential Units. Ownership of such Residential Units shall be the sole qualification for such membership. Each 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 is formed as a Colorado nonprofit corporation, to, among other things, own the Common Recreational Areas and to maintain the common amenities located thereon and all pedestrian easements within the Property. The Association shall act 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 Residential Units, and the Common Recreational Areas.

The Association shall be responsible for the upkeep, maintenance, repair, operation, replacement and improvement of all Common Areas in the Community including, but not limited to, Outlots A and Bill's Lake located thereon, Outlot B and the recreational amenities located thereon, and all pedestrian easements and other easements within the Mountain Side P.U.D. and to otherwise further the interests of the Owners. The Association shall have the right to select, from time to time, a person or persons to operate and maintain the Common Recreational Area, provided that such selection will not diminish its obligations to maintain and operate the Common Recreational Area.

Any purchaser of a Residential Unit 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 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 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 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 Residential Unit 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 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 Residential Units equally.

Section 4.2 Basis of Assessments.

Common Expense Assessments may be made on an annual basis against all 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 and funding of reserves for current and future capital expenditures.

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 or bill for 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 Residential Unit or any occupant thereof, or group of Residential Units, including but not limited to: improvement, repair, replacement, or maintenance specific to a Residential Unit, ARC Review costs, and/or shared irrigation expenses which are not appurtenant to all 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;
- (d) Trash services allocated to improved Residential Units only; and

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

Section 4.6 Application of Payments.

All payments received on an account of any Owner or the Owner's 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 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 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 Residential Unit, the Board may take possession and rent said Unit or apply for the appointment of a receiver for the 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 Residential Unit except: (1) liens and encumbrances recorded before the recordation of the Declaration; (2) a first lien security interest on the 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 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 Residential Unit shall not affect the lien for said Assessments or charges except that sale or transfer of any 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 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 in which a quorum is present.

ARTICLE 5 RESTRICTIONS

Section 5.1 Flexible Application of the Subsequent Covenants and Restrictions.

All 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 Residential Unit, acknowledge that they have been given notice, and that:

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

- (c) All fines imposed are collectable as Assessments.

Section 5.3 Acquisition of Multiple Residential Units.

No Owner who owns or controls four or more 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 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 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 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. 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 for any transient, hotel, motel, bed and breakfast, restaurant, bar or other commercial purposes.

Section 5.5 Maintenance of Lots and Improvements.

Owners are responsible for the maintenance, repair, and replacement of the property and improvements located within their Lot 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 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 Lot may be kept, 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 within Outlot B (which includes the clubhouse, hot tub, patio, and tennis courts) or on the volleyball court. 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 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.

(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 and pedestrian easements by residents, obstruct emergency access to/from the Community, or interfere with the reasonable needs of other residents to use their driveway, Community streets, pedestrian easements 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) and pedestrian easements 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 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 or pedestrian easement, nor shall anything be kept or stored on any part of any Common Area or pedestrian easement without the prior written approval of the Association. Nothing shall be altered on, constructed in, or removed from any Common Area or pedestrian easement 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 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 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.

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. Improved Lot Owners have access to Condominium dumpsters. The Association levies a supplemental assessment for this access.

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 Outlot B (which includes the clubhouse, hot tub, patio and tennis courts).

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 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 5.22 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 5.23 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 5.24 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 OF LOTS

Architectural Review for Condominium Units is set forth more fully in the Condominium Declaration and Condominium Architectural Review Guidelines.

Section 6.1 Required Approval.

No structures, including residences, outbuildings, accessory buildings, tennis courts, swimming pools, hot tubs, 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, nor shall any painting, alteration or change to the exterior of the improvements, the exterior of a residence, to a Lot, 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 Lot 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 Lot Owners.

Lot 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; and (ii) 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 Lot 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, utility 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. The committee shall review any encroachments or other potential violations of pedestrian easements 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 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 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 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 in violation of the Governing Documents and to restore the Lot to its previous condition and, upon failure of the Owner to do so, the Board or its designee shall have the right to enter the property, remove the violation and restore the property to substantially the same condition as previously existed, 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 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 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. 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.

Section 8.12 No Public Dedication.

Nothing contained in this Declaration shall be deemed a gift or dedication of any portion of the Property to the Town of Frisco or the general public for its use, it being the intention of the Owners that this Declaration will be strictly limited to the purposes expressed herein.

[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

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 (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

STATE OF COLORADO)
) ss.
COUNTY OF _____)

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

Notary Public

My commission expires: _____

ATTEST:

Secretary

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 recorded plat 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]

**COMPARISON OF DECLARATION
FOR MOUNTAIN SIDE P.U.D.**

Provision	New	Existing	Summary of Changes
Defined Terms	Article 1	Article I	Updates and expands definitions pursuant to CCIOA.
Names/Description of Property	Article 2		
- Name and Type	Section 2.1	N/A	Added to set forth name of Community and Association.
- Property	Section 2.2	Sections 1.1(j), Article III, and Section 5.3	Revised and expanded to clarify the number of Lots in the Community.
- Owners' Easements of Enjoyment	Section 2.3	N/A	Added to establish additional rights of the Association with respect to Common Area.
- Delegation of Use	Section 2.4	N/A	Added to authorize Owners to delegate their rights of enjoyment of Common Elements to family, guests, etc.
- Disclaimer of Liability	Section 2.5	N/A	Added pursuant to Colorado law.
- Easements for the Association	Section 2.6	Article III	No substantive changes.

Provision	New	Existing	Summary of Changes
- Utility, Plat, and Plat Easements	Section 2.7	N/A	Added to reference easements of record on the Plat.
- Use of Common Area by Non-Owners	Section 2.8	Section 5.2	No substantive changes.
The Association	Article 3		
- Membership	Section 3.1	Section 4.2	No substantive changes.
- General Purposes and Powers of the Association	Section 3.2	Sections 4.1, 5.1, and 5.3	No substantive changes. Simplified to remove legalese with more specific powers and duties moved to A&R Bylaws.
- Authority of the Association	Section 3.3	Sections 4.1 and 4.5	No substantive changes.
- Allocated Interests	Section 3.4	Section 4.3	No substantive changes.
- Managing Agent	Section 3.5	N/A	Added to authorize a managing agent for the Association.
-Right to Notice	Section 3.6	N/A	Added pursuant to Colorado law.
- Indemnification	Section 3.7	N/A	Added pursuant to Colorado law.
- Security Disclaimer	Section 3.8	N/A	Added pursuant to Colorado law.
- Education and Training	Section 3.9	N/A	Added pursuant to Colorado law.

Provision	New	Existing	Summary of Changes
Assessments	Article 4		
- Creation of Association Lien and Personal Obligation to Pay Assessments	Section 4.1	Sections 5.3, 6.1, and 6.4	Expanded to add additional provisions authorized by Colorado law.
- Basis of Assessments	Section 4.2	Section 6.1	No substantive changes.
- Annual Assessment	Section 4.3	Section 6.1	Revised to adopt the CCIOA budget process and other beneficial provisions of Colorado law.
- Special Assessments	Section 4.4	N/A	Revised pursuant to Colorado law and to adopt the CCIOA budget process.
- Supplemental Assessments	Section 4.5	N/A	Added to authorize the Association to assess individual Owners for maintenance or repair to a Unit that benefits only their Units and does not benefit the entire community or that results from their negligence or willful acts.
- Application of Payments	Section 4.6	N/A	Added pursuant to Colorado law.

Provision	New	Existing	Summary of Changes
- Effect of Non-Payment of Assessments	Section 4.7	Sections 6.2 and 6.3	Expanded and updated to add all authority of the Association to collect Assessments pursuant to Colorado law.
- Lien Priority	Section 4.8	Section 6.3	Expanded and updated to add all authority of the Association to place and enforce liens pursuant to Colorado law.
- Borrowing	Section 4.9	N/A	Added to authorize the Association to borrow money.
Restrictions	Article 5		
- Flexible Application of the Subsequent Covenants and Restrictions	Section 5.1	N/A	Added to give the Board discretion and flexibility in the application of the use restrictions.
- Authority	Section 5.2	N/A	Added to expressly state the Board's authority to adopt Rules and Regulations and to impose penalties for violations.
- Acquisition of Multiple Lots and/or Residential Units	Section 5.3	N/A	Added to restrict the number of Lots that one Owner may own.

Provision	New	Existing	Summary of Changes
- Use/Occupancy	Section 5.4	N/A	Added to restrict the use and occupancy of Lots in accordance with Colorado law.
- Maintenance of Lots and Residential Units and Improvements	Section 5.5	N/A	Added to specify maintenance obligations of the Owners.
- Landscaping Requirements and Restrictions	Section 5.6	Section 5.1	Expanded and updated pursuant to Colorado law.
- Restrictions on Pets	Section 5.7	Section 7.5	Adds additional pet restrictions in Community, including a restriction on the number of Pets permitted per Lot.
- Antennae	Section 5.8	N/A	Added to comply with federal law.
- Tanks	Section 5.9	N/A	Added to restrict storage tanks in the Community.
- Nuisances	Section 5.10	Section 7.7	No substantive changes.
- Vehicular Parking, Storage, and Repairs	Section 5.11	N/A	Added to impose parking and vehicle restrictions in accordance with Colorado law.
- Use of Common Area	Section 5.12	N/A	Added to restrict use of Common Area.

Provision	New	Existing	Summary of Changes
- No Annoying Lights, Sounds, or Odors	Section 5.13	Section 7.7	No substantive changes.
- No Hazardous Activities	Section 5.14	N/A	Added to prohibit hazardous activity in the Community.
- Restrictions on Clotheslines and Storage	Section 5.15	N/A	Added to restrict clotheslines and storage in the Community.
- Restrictions on Signs and Flags	Section 5.16	Section 7.2	Updated to comply with Colorado law.
- Outbuildings and Temporary Structures	Section 5.17	Section 7.1	Revised to allow outbuildings with Committee approval.
- Trash Removal Restriction	Section 5.18	Section 7.4	Expanded to allow the Association to contract for trash removal services in the Community.
- Smoking/Vaping Prohibition	Section 5.19	N/A	Added to restrict smoking/vaping in the Community.
- Prohibited Activities	Section 5.20	N/A	Added to prohibit activity in Units which could cause harm or damage to other Units or Owners (i.e. hoarding).

Provision	New	Existing	Summary of Changes
- Insect, Bedbug, and Vermin Infestations	Section 5.21	N/A	Added to require Owners to report insect, bedbug, and vermin infestations on a Lot to the Association and for Owners to remediate the same.
- Rules and Regulations	Section 5.22	N/A	Added to authorize Rules and Regulations and for enforcement of penalties for violation of the same.
- Compliance with Governing Documents	Section 5.23	Section 4.4	No substantive changes.
- Restrictions on Mining and Drilling	Section 5.24	Section 7.3	No substantive changes.
- Use of the Words Mountain Side P.U.D. and Mountain Side Homeowners Association	Section 5.25	N/A	Added to prevent residents from using the Association or Community name in connection with personal business uses not associated with the operation of the Association or the Community.

Provision	New	Existing	Summary of Changes
Architectural Review	Article 6		
- Required Approval	Section 6.1	Section 2.2.1	Expanded to better address and define items needing Architectural Review Committee approval.
- Acknowledgment of Owners	Section 6.2	N/A	Added to authorize inspection and correction of approved improvements for compliance with guidelines.
- Architectural Criteria	Section 6.3	Sections 2.2.2 and 2.2.3	Expanded to require that Owners cover any actual expenses incurred by the Committee in reviewing the proposed plans for improvements.
- Establishment of Committee	Section 6.4	Section 2.1	Simplified to allow more flexibility and remove provisions which are no longer applicable.
- Architectural Guidelines	Section 6.5	Section 2.2.4	No substantive changes.
- Reply and Communication	Section 6.6	N/A	Added to set forth deadline for the Committee to review and respond to applications.

Provision	New	Existing	Summary of Changes
- Conditions of Approval	Section 6.7	N/A	Added to required written agreements establishing the approval of applications in recordable form, if needed, for changes, modifications, additions, or alterations of improvements.
- Commencement and Completion of Construction	Section 6.8	Section 7.6	Revised to require Owners to commence approved Improvements within one year of approval, and to complete approved Improvements within one year of commencement.
- Variances	Section 6.9	Section 2.2.4(c)	Revised to allow more flexibility.
- Right to Appeal	Section 6.10	N/A	Added to allow Owners to appeal decisions of the Committee to the Board of Directors.

Provision	New	Existing	Summary of Changes
- Waivers	Section 6.11	N/A	Added to prevent against arguments of the precedent set by a decision in a particular case on architectural approval or denial.
- Liability	Section 6.12	N/A	Added to limit liability of the Committee and Board for architectural decisions.
- Enforcement	Section 6.13	N/A	Added to authorize enforcement of violations of architectural review procedures and requirements.
Insurance/Condemnation	Article 7		Added to set forth insurance obligations of the Owners and the Association.
General Provisions	Article 8		
- Compliance & Enforcement	Section 8.1	Section 8.1	Expanded to set forth all enforcement authority permitted under Colorado law.
- Attorney Fees	Section 8.2	N/A	Added to authorize attorney fees pursuant to Colorado law.
- Severability	Section 8.3	Section 8.2	No substantive changes.

Provision	New	Existing	Summary of Changes
- Term of Declaration	Section 8.4	Section 8.3	Revised to provide that the Declaration shall run with and bind the land in perpetuity.
- Amendment of Declaration by Owners	Section 8.5	Section 8.3	No substantive changes.
- Captions	Section 8.6	N/A	Added to clarify captions and titles used in the Declaration are intended solely for convenience of reference.
- Interpretation	Section 8.7	N/A	Added to clarify how the Declaration shall be interpreted.
- Singular Includes the Plural	Section 8.8	N/A	Added pursuant to Colorado law.
- Challenge to this Amendment	Section 8.9	N/A	Added pursuant to Colorado law.
- Non-Waiver	Section 8.10	N/A	Added pursuant to Colorado law.
- Conflict of Provisions	Section 8.11	N/A	Added pursuant to Colorado law.
Expansion	Removed	Section 8.4	Removed.