

**BYLAWS**  
**OF**  
**MOUNTAIN TRACE TOWNHOMES OWNERS ASSOCIATION**

(Adopted \_\_, 2008)

**ARTICLE 1 - INTRODUCTION**

These are the Bylaws of Mountain Trace Townhomes Owners Association, a Colorado nonprofit corporation (the "Association"), which is the owners association for the Common Interest Community known as Mountain Trace Townhomes (the "Community"). Initial capitalized terms not otherwise defined herein are defined in Article II of the Declaration of Covenants, Conditions, and Restrictions for Mountain Trace Townhomes, as recorded in the real estate records in the Office of the Clerk and Recorder of La Plata County, Colorado (the "Declaration") on \_\_\_\_\_ as Reception No. \_\_\_\_\_.

**ARTICLE 2 – BOARD OF DIRECTORS**

Section 2.1 Number and Qualification; Elections; Term.

A. The Association shall be governed by a Board of Directors, which during the Class “B” Control Period shall consist of three (3) Directors. Upon termination of the Class “B” Control Period, the number of Directors on the Board may be increased to five (5) or seven (7) by resolution of the Board.

B. All Directors (excepting the Directors appointed by the Declarant as the Class “B” Member) shall be Owners. If any Unit is owned by a partnership, corporation, or other entity, any officer, partner or employee of such entity shall be eligible to serve as a Director and shall be deemed to be an Owner for the purposes of the preceding sentence.

C. Except for those Directors appointed by the Declarant acting as the Class “B” Member, the Directors shall be elected by the Owners at the annual meetings of the Owners. If there are more candidates for a Director position than there are vacant Director positions, the election shall be held by secret ballot. At any meeting at which Directors are to be elected, the Owners may, by resolution, adopt specific procedures that are not inconsistent with these Bylaws or the Colorado Revised Nonprofit Corporation Act for conducting the elections.

D. The Directors shall take office upon election and shall hold such offices for a term of two (2) years, or until their successors are duly elected and qualified, or until removed pursuant to the Declaration, these Bylaws or Colorado law.

B. During the Class “B” Control Period as defined in the Declaration, the Directors on the Board shall

be appointed by the Declarant. Upon the termination of the Class "B" Control Period as provided in the Declaration, the Association shall call a meeting and give not less than ten (10) days nor more than fifty (50) days' prior notice to the Owners for this purpose. This meeting may be called and the notice given by any Owner if the Association fails to do so.

Section 2.2 Powers and Duties. The Board may act in all instances on behalf of the Association, except as provided in the Declaration, these Bylaws or the Colorado Common Interest Ownership Act, as set forth in §§ 38-33.3-101, *et seq.*, C.R.S. (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, which shall include the powers set forth in Article VII of the Declaration and shall include, but not be limited to, the following powers:

- A. to adopt and amend Bylaws, Restrictions and Rules, and other policies, resolutions and regulations;
- B. to adopt and amend budgets for revenues, expenditures and reserves;
- C. to collect General, Special, and Specific Assessments from Owners;
- D. to hire and terminate managing agents;
- E. to hire and terminate independent contractors, employees and agents other than managing agents;
- F. to institute, defend or intervene in litigation or administrative proceedings in the Association's name on behalf of the Association or two or more Owners on matters affecting the Community;
- G. to make contracts and incur liabilities;
- H. to regulate the use, maintenance, repair, replacement and modification of the Area of Common Responsibility;
- I. to cause additional improvements to be made as a part of the Common Elements;
- J. to acquire, hold, encumber and convey, in the Association's name, any right, title or interest to real estate or personal property; however, Common Elements may be conveyed or subjected to a security interest only pursuant to Section 312 of the Act;
- K. to grant easements, leases, licenses, and concessions through or over the Common Elements;
- L. to impose and receive a payment, fee or charge for the use, rental or operation of the Common Elements and for services provided to Owners;
- M. to impose a reasonable charge for late payment of Assessments, recover reasonable attorney fees

and other legal costs for collection of Assessments and other actions to enforce the power of the Association, regardless of whether suit was initiated, and after Notice and Hearing (in accordance with Article 8 hereof), levy reasonable fines for violations of the Declaration, Bylaws, Restrictions and Rules, and other policies, resolutions and regulations of the Association;

N. to impose a reasonable charge for the preparation and recording of amendments to the Declaration and for a statement of unpaid assessments;

O. to provide, at the option of the Board, for the indemnification of the Association's officers and Board and to maintain directors' and officers' liability insurance;

P. to assign the Association's right to future income, including the right to receive Assessments;

Q. to exercise any other powers conferred by the Declaration, these Bylaws or the Act;

R. to exercise any other power that may be exercised in this state by a nonprofit corporation;

S. to exercise any other power necessary and proper for the governance and operation of the Association; and

T. by resolution, to establish permanent and standing committees of Directors and Owners to perform any of the above functions under specifically delegated administrative standards, as designated in the resolution establishing the committee. All committees must maintain and publish notice of their actions to Owners and the Board. However, actions taken by a committee may be appealed to the Board by any Owner within 45 days of publication of the notice. If an appeal is made, the committee's action must be ratified, modified or rejected by the Board at its next regular meeting.

Section 2.3 Manager. The Board may employ a Manager for the Community, at a compensation established by the Board, to perform duties and services authorized by the Executive Board. The Board may delegate to the Manager only the powers granted to the Board by these Bylaws under subsections 2.2(C), (E), and (H) above. The Manager, pursuant to specific resolutions of the Board, may execute licenses, concessions and contracts. The Association's contract with the Manager shall be terminable for cause without penalty to the Association. The Manager shall maintain all funds and accounts of the Association separate from all other accounts of other associations managed by the Manager and shall maintain all reserve accounts of the Association separate from the operational accounts. The Manager shall prepare, or shall cause a certified public accountant to prepare, and shall present to the Association an annual accounting for Association funds and an annual financial statement.

Section 2.4 Removal of Directors. The Owners, by a two-thirds vote of all persons present and entitled to vote, at any meeting of the Owners at which a quorum is present, may remove any Director (other than a Director appointed by the Declarant) from the Board, with or without cause.

Section 2.5 Vacancies. Vacancies on the Board, caused by any reason other than the removal of a

Director by a vote of the Owners, may be filled at a special meeting of the Board held for that purpose at any time after the occurrence of the vacancy, even though the Directors present at that meeting may constitute less than a quorum. These appointments shall be made in the following manner:

A. as to vacancies of Directors whom Owners elected, by a majority of the remaining elected Directors constituting the Board; and

B. as to vacancies of Directors whom the Declarant/Class "B" Member has the right to appoint, by the Declarant.

Each person so elected or appointed shall be a Director for the remainder of the term of the Director so replaced.

Section 2.6 Regular Meetings. Regular meetings of the Board shall be held immediately following each annual meeting of the Owners. No notice of such regular annual meetings shall be necessary to the newly elected Directors in order to legally constitute such meeting, provided that a majority of the Directors are present. The Board may set a schedule of additional regular meetings by resolution, and no further notice is necessary to constitute regular meetings.

Section 2.7 Special Meetings. Special meetings of the Board may be called by the President or by a majority of the Directors on at least three (3) business days' notice to each Director. The notice shall be hand-delivered or mailed and shall state the time, place and purpose of the meeting.

Section 2.8 Location of Meetings. All meetings of the Board shall be held in La Plata County, Colorado, unless all Directors consent in writing to another location.

Section 2.9 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 such meeting.

Section 2.10 Quorum of Directors; Majority Vote. At all meetings of the Board, a majority of the Directors shall constitute a quorum for the transaction of business, and 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. If, at any meeting, there shall be less than a quorum present, a majority of those present may adjourn the meeting. At any adjourned meeting at which a quorum is present, any business that might have been transacted at the meeting originally called may be transacted without further notice.

Section 2.11 Conduct of Board Meetings. Except as otherwise provided in this Section 2.11, all meetings of the Board shall be open to all Owners and to any person designated in writing by an Owner as the Owner's representative. The Board shall afford Owners a reasonable opportunity to speak to the Board regarding any issue under consideration by the Board prior to a vote on the issue. The Board may hold an executive or "closed door" session and may restrict attendance to Directors and other persons requested by the Directors only, in order to discuss those matters set forth in Section 308(4) of the Act.

Section 2.12 Board Action Without Meeting. Any action otherwise required or permitted to be taken at a Board meeting may be taken without a meeting; provided, however, that each and every Director, in writing, either votes for such action, against such action, or abstains from voting and waives the right to demand that action not be taken without a meeting. Action taken without a meeting pursuant to this Section 2.12 shall be valid only if the affirmative vote for such action equals or exceeds 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. The Secretary shall file all written instruments necessary for an action taken pursuant to this Section 2.12 with the minutes of the meetings of the Board.

Section 2.13 Telephone Communication in Lieu of Attendance. A Director may attend a meeting of the Executive 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 Executive Board. The Director's vote shall be counted and the presence noted as if that Director were present in person on that particular matter.

Section 2.14 Compensation. No Director shall receive any compensation from the Association for acting as a director; however, a Director may receive reimbursement for necessary expenses actually incurred in connection with the Director's duties.

### **ARTICLE 3 - UNIT OWNERS**

Section 3.1 Annual Meetings. Annual meetings of Owners shall be held at such place and date as are set forth in the annual meeting notice. Election of Directors shall occur at the annual meetings. The Owners may also transact other business as may properly come before them at these meetings.

Section 3.2 Budget Meetings. Meetings of the Owners to consider proposed budgets shall be called in accordance with Section 8.2 of the Declaration and in accordance with the Act. The budget may be considered at an Annual or Special Meeting called for other purposes as well, so long as the procedures for calling a budget meeting set forth in the Declaration and in the Act are followed.

Section 3.3 Special Meetings. The President may call special meetings of the Owners, by a majority of the members of the Executive Board or by Owners comprising twenty percent (20%) of the votes in the Association.

Section 3.4 Place of Meetings. Meetings of the Owners shall be held in La Plata County, Colorado or may be adjourned to a suitable place convenient to the Owners, as may be designated by the Executive Board or the President.

Section 3.5 Notice of Meetings. Except for budget meetings, which will be noticed not less than fourteen (14) nor more than fifty (50) days after the mailing of the summary, the Secretary shall cause notice to be hand-delivered or sent prepaid by first class United States mail to the mailing address of each Unit or to the mailing address designated in writing by the Owner, not less than ten (10) nor more than fifty (50) days

in advance of a meeting. The notice of any meeting shall also be physically posted in a conspicuous place within the Community, if feasible and practicable. In addition, if the Association desires to establish and maintain a web site for posting of Community and Association matters, the notice shall be posted on such web site and provided by electronic mail to those Owners providing the Association with valid electronic mail addresses. The notice shall state the time and place of the meeting and the items on the agenda. No action shall be adopted at a meeting except as stated in the notice.

Section 3.6 Waiver of Notice. Any Owner may, at any time, waive notice of any meeting of the Owners in writing, and the waiver shall be deemed equivalent to the receipt of notice.

Section 3.7 Adjournment of Meeting. At any meeting of Owners, a majority of the Owners who are present at that meeting, either in person or by proxy, may adjourn the meeting to another time.

Section 3.8 Order of Business. The order of business at all meetings of the Owners shall be as follows:

- A. roll call (or check-in procedure);
- B. proof of notice of meeting;
- C. reading of minutes of preceding meeting;
- D. reports;
- E. establish number and term of memberships of the Executive Board (if required and noticed);
- F. election of inspectors of election (when required);
- G. election of Directors of the Executive Board (when required);
- H. ratification of budget (if required and noticed);
- I. unfinished business; and
- J. new business.

Section 3.9 Conduct of Meetings. All meetings of Owners and meetings are open to every Owner or to any person designated in writing by an Owner as the Owner's representative.

Section 3.10 Classes of Membership; Class "B" Control Period. There shall be two classes of membership in the Association as follows:

A. Class "A". Class "A" is comprised of all Owners of Units, including the Declarant if the Declarant owns one or more Units.

B. Class "B". Class "B" is comprised solely of the Declarant.

During the Class "B" Control Period, the Declarant, as the Class "B" Member, is entitled to appoint a majority of the members of the Board. The Class "B" Control Period begins on the date of the Association's incorporation and terminates upon the first of the following to occur:

A. 60 days after the date on which 75% of the total number of Units that may be created in all phases

of the Community have been issued certificates of occupancy for a dwelling and have been conveyed to persons other than the Declarant or a Declarant Affiliate; or

B. such earlier date as the Class "B" Member, in its sole discretion, executes and records a written notice voluntarily terminating the Class "B" Control Period.

Section 3.11 Voting; Proxies.

A. Each Unit owned by a Class "A" Member is assigned one vote equal to that of every other Unit owned by a Class "A" Member. If there is more than one Owner of a particular Unit, the vote shall be exercised as the co-Owners determine among themselves and advise the Secretary of the Association in writing prior to the vote being taken. Absent such advice, the Unit's vote shall be suspended if more than one Person seeks to exercise it.

B. The vote allocated to a Unit may be cast under a proxy duly executed by an Owner. Appointment of a proxy shall be accomplished as provided in § 7-127-203, C.R.S. An Owner may revoke a proxy given under this section only by actual notice of revocation to the person presiding over a meeting of the Association. A proxy is void if it is not dated or purports to be revocable without notice. A proxy terminates one year after its date, unless it specifies a shorter term.

C. The membership rights of an Owner that is not a natural person may be exercised by any officer, director, partner or trustee, or by the individual designated from time to time by the Owner in a written instrument provided to the Secretary of the Association.

D. The vote allocated to any Unit owned by the Association may not be cast.

E. The Class "B" Member shall not have Class "B" voting rights relative to the number of Units it owns; rather, the consent of the Class "B" Member shall be required for various actions of the Executive Board, the membership and committees, as specifically provided in the Declaration. In addition, the Class "B" Member may appoint a majority of the members of the Executive Board during the Class "B" Control Period.

Section 3.12 Quorum. Except as otherwise provided in these Bylaws, the Owners present in person or by proxy at any meeting of Owners, representing not less than thirty percent (30%) of the Units, shall constitute a quorum at that meeting.

Section 3.13 Required Vote. The affirmative vote of a majority of the Class "A" Owners present in person or by proxy at a meeting at which a quorum is present, and the affirmative vote of the Class "B" Member during the Class "B" Control Period, shall be required for any action to be approved by the Owners, except where a higher percentage vote is required in the Declaration, these Bylaws or by other applicable law.

## ARTICLE 4 - OFFICERS

Section 4.1 Designation. The principal officers of the Association shall be the president, the vice president, the secretary and the treasurer, all of whom shall be elected by the Executive Board. The Executive Board may appoint an assistant treasurer, an assistant secretary and other officers as it finds necessary. The president and vice president, but no other officers, need to be Directors. Any two offices may be held by the same person, except the offices of president and secretary. The office of vice president may be vacant.

Section 4.2 Election of Officers. The officers of the Association shall be elected annually by the Board at the organizational meeting of each new Board. The officers shall hold office at the pleasure of the Board.

Section 4.3 Removal of Officers. Upon the affirmative vote of a majority of the Directors, any officer may be removed, either with or without cause. A successor may be elected at any regular meeting of the Board or at any special meeting of the Board called for that purpose.

Section 4.4 President. The president shall be the chief executive officer of the Association. The president shall preside at all meetings of the Owners and of the Board. The president shall have all of the general powers and duties which are incident to the office of president of a non-profit corporation organized under the laws of the State of Colorado, including but not limited to the power to appoint committees from among the Owners from time to time as the president may decide is appropriate to assist in the conduct of the affairs of the Association. The president may fulfill the role of treasurer in the absence of the treasurer. The president may cause to be prepared and may execute amendments, attested by the secretary, to the Declaration and these Bylaws on behalf of the Association, following authorization or approval of the particular amendment as applicable.

Section 4.5 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 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 or by the president.

Section 4.6 Secretary. The secretary shall keep the minutes of all meetings of the Owners and the Board. The secretary shall have charge of the Association's books and papers as the Board may direct and shall perform all the duties incident to the office of secretary of a non-profit corporation organized under the laws of the State of Colorado. The secretary may cause to be prepared and may attest to execution by the president of amendments to the Declaration and the Bylaws and may record same on behalf of the Association, following authorization or approval of the particular amendment as applicable.

Section 4.7 Treasurer. The treasurer shall be responsible for Association funds and securities, for keeping full and accurate financial records and books of account showing all receipts and disbursements and for the preparation of all required financial data. This officer shall be responsible for the deposit of all monies and other valuable effects in depositories designated by the Board and shall perform all the duties

incident to the office of treasurer of a non-profit corporation organized under the laws of the State of Colorado. The treasurer may endorse on behalf of the Association, for collection only, checks, notes and other obligations and shall deposit the same and all monies in the name of and to the credit of the Association in banks designated by the Board. Except for reserve funds described below, the treasurer may have custody of and shall have the power to endorse for transfer, on behalf of the Association, stock, securities or other investment instruments owned or controlled by the Association or as fiduciary for others. Reserve funds of the Association shall be deposited in segregated accounts or in prudent investments, as the Board decides. Funds may be withdrawn from these reserves for the purposes for which they were deposited, by check or order, authorized by the treasurer, and executed by two Directors, one of whom may be the treasurer if the treasurer is also a Director.

Section 4.8 Agreements, Contracts, Deeds, Checks, etc. Except as otherwise provided in these Bylaws, all agreements, contracts, deeds, leases, checks and other instruments of the Association shall be executed by any officer of the Association or by any other person or persons designated by the Board.

Section 4.9 Compensation. No officer shall receive any compensation from the Association for acting as an officer; however, an officer may receive reimbursement for necessary expenses actually incurred in connection with the officer's duties.

Section 4.10 Statements of Unpaid Assessments. The treasurer, assistant treasurer, a manager employed by the Association or, in their absence, any officer having access to the books and records of the Association may prepare, certify, and execute statements of unpaid assessments, in accordance with Section 316(8) of the Act. The Association may charge a reasonable fee for preparing statements of unpaid assessments. The amount of this fee and the time of payment shall be established by resolution of the Board. The Association may refuse to furnish statements of unpaid assessments until the fee is paid. Any unpaid fees may be assessed as a Common Expense against the Unit for which the statement is furnished.

## **ARTICLE 5 – INDEMNIFICATION**

Section 5.1 Definitions. As used in this Article:

A. "Director" means an individual who is or was a director of the Association or an individual who, while a director of the Association, is or was serving at the Association's request as a director, officer, partner, trustee, employee, fiduciary, or agent of another domestic or foreign corporation or other person. "Director" includes, unless the context requires otherwise, the estate or personal representative of a deceased director.

B. "Expenses" includes attorney fees.

C. "Liability" means the obligation incurred with respect to a proceeding to pay a judgment, settlement, penalty, fine, or reasonable expenses.

D. "Official capacity" means, when used with respect to a director, the office of director in the

Association, and, when used with respect to a person other than a director as contemplated by Section 5.7, the office of the Association held by the officer or the employment, fiduciary or agency relationship undertaken by the employee, fiduciary or agent on behalf of the Association.

E. "Party" includes a person who was, is or is threatened to be made a named defendant or respondent in a proceeding.

F. "Proceeding" means any threatened, pending, or completed action, suit or proceeding, whether civil, criminal, administrative, or investigative and whether formal or informal.

#### Section 5.2 Authority to Indemnify Directors.

A. Except as provided in Section 5.2(D), the Association may indemnify a person made a party to a proceeding because the person or was a director against liability incurred in the proceeding if (1) the person's conduct was in good faith; and (2) the person reasonably believed: (i) in the case of conduct in an official capacity with the Association, that the conduct was in the Association's best interest; and (ii) in all other cases, that the conduct was at least not opposed to the Association's best interest; and (3) in the case of any criminal proceeding, the person had no reasonable cause to believe the conduct was unlawful.

B. The termination of a proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent is not, of itself, determinative that the director did not meet the standard of conduct described in Section 5.2(A).

C. The Association may not indemnify a director under this Section 5.2 if the proceeding is one which is: (1) in connection with a proceeding by or in the right of the Association in which the director was adjudged liable to the Association; or (2) in connection with any other proceeding charging that the director derived an improper personal benefit, whether or not involving action in an official capacity, in which proceeding the director was adjudged liable on the basis that he or she derived an improper personal benefit.

D. Indemnification permitted under this Section 5.2 in connection with a proceeding by or in the right of the Association is limited to reasonable expenses incurred in connection with the proceeding.

Section 5.3 Mandatory Indemnification of Directors. The Association shall indemnify a person who is wholly successful, on the merits or otherwise, in the defense of any proceeding to which the person was a party because the person is or was a director, against reasonable expenses incurred by the person in connection with the proceeding.

#### Section 5.4 Advance of Expenses to Directors.

A. The Association may pay for or reimburse the reasonable expenses incurred by a director who is a party to a proceeding in advance of final disposition of the proceeding if:

(1) The director furnishes to the Association a written affirmation of the director's good faith

belief that he or she met the standard of conduct described in Section 5.2(A);

(2) The director furnishes to the Association a written undertaking, executed personally or on the director's behalf, to repay the advance if it ultimately determined that he or she did not meet the standard of conduct described in Section 5.2(A); and

(3) A determination is made that the facts then known to those making the determination would not preclude indemnification under this Article.

B. The undertaking required by Section 5.4(A)(2) shall be an unlimited general obligation of the director but need not be secured and may be accepted without reference to financial ability to make repayment.

C. Determinations and authorizations of payments under Section 5.4 shall be made in the manner specified in Section 5.6.

Section 5.5 Court-Ordered Indemnification of Directors. A director who is or was a party to a proceeding may apply for indemnification to the court conducting the proceeding or to another court of competent jurisdiction. On receipt of an application, the court, after giving any notice the court considers necessary, may order indemnification in the following manner:

(1) If it determines that the director is entitled to mandatory indemnification under Section 5.3, the court shall order indemnification, in which case the court shall also order the Association to pay the director's reasonable expenses incurred to obtain court-ordered indemnification.

(2) If it determines that the director is fairly and reasonably entitled to indemnification in view of all the relevant circumstances, whether or not the director met the standard of conduct set forth in Section 5.2(A) or was adjudged liable in the circumstances described in Section 5.2(D), the court may order such indemnification as the court deems proper; except that the indemnification with respect to any proceeding in which liability shall have been adjudged and the circumstances described in Section 5.2(D) is limited to reasonable expenses incurred in connection with the proceeding and reasonable expenses incurred to obtain court-ordered indemnification.

Section 5.6 Determination and Authorization of Indemnification of Directors.

A. The Association may not indemnify a director under Section 5.2 unless authorized in a specific case after a determination has been made that indemnification of the director is permissible in the circumstances because the director has met the standard of conduct set forth in Section 5.2(A). The Association shall not advance expenses to a director under Section 5.4 unless authorized in the specific case after the written affirmation and undertaking required by Section 5.4(A)(1) and 5.4(A)(2) are received and the determination required by Section 5.4(A)(3) has been made.

B. The determinations required by Section 5.6(A) shall be made:

(1) By the board of directors by a majority vote of those present at the meeting at which a quorum is present, and only those directors not parties to the proceeding shall be counted in satisfying the quorum; or

(2) If a quorum cannot be obtained, by independent legal counsel selected by a majority vote of the full board of directors; or

(3) By the Owners, but any Owners who are directors and who are seeking indemnification may not vote on the determination.

C. Authorization of indemnification and advance of expenses shall be made in the same manner as the determination that indemnification or advance of expenses is permissible; except that if the determination that indemnification or advance of expenses is permissible is made by independent legal counsel, authorization of indemnification and advance of expenses shall be made by the body that selected such counsel.

#### Section 5.7 Indemnification of Officers, Employees, Fiduciaries and Agents.

A. An officer is entitled to mandatory indemnification under Section 5.3 and is entitled to apply for court-ordered indemnification under Section 5.5 in each case to the same extent as a director;

B. The Association may indemnify and advance expenses to an officer, employee, fiduciary, or agent of the Association to the same extent as to a director; and

C. The Association may also indemnify and advance expenses to an officer, employee, fiduciary, or agent who is not a director to a greater extent than is provided in these Bylaws, if not inconsistent with public policy and if provided for by a general or specific action of its board of directors or shareholders or by contract.

Section 5.8 Insurance. The Association may purchase and maintain insurance on behalf of a person who is or was a director, officer, employee, fiduciary, or agent of the Association or who while a director, officer, employee, fiduciary, or agent of the Association is or was serving at the request of the Association as a director, officer, partner, trustee, employee, fiduciary, or agent of another domestic or foreign corporation or other person, against liability asserted against or incurred by the person in that capacity or arising from his or her status as a director, officer, employee, fiduciary, or agent, whether or not the Association would have power to indemnify the person against the same liability under Section 5.2, 5.3, or 5.7. Any such insurance may be procured from any insurance company designated by the board of directors, whether such insurance company is formed under the laws of this state or any other jurisdiction of the United States or elsewhere, including any insurance company in which the corporation has an equity or any other interest through stock, ownership or otherwise.

#### Section 5.9 Notice to Owners of Indemnification of Director. If the Association indemnifies or

advances expenses to a director under this Article in connection with a proceeding by or in the right of the Association, the Association shall give written notice of the indemnification or advance to the Owners with or before the notice of the next Owners' meeting. If the next action taken by the Owners is taken without a meeting at the instigation of the board of directors, such notice shall be given to the Owners at or before the time the first Owner signs a writing consenting to such action.

## **ARTICLE 6 – STANDARDS OF CONDUCT**

Section 6.1 Duties of Directors and Officers. Each Director and officer shall discharge his duties in good faith, with the care an ordinarily prudent person in a like position would exercise under similar circumstances, and in a matter he reasonably believes to be in the best interests of the Association. In discharging his duties, a Director or officer is entitled to rely on information, opinions, reports, or statements, including financial statements, prepared or presented by legal counsel, a public accountant, or any other person as to matters he believes are within such person's professional or expert competence.

Section 6.2 Conflicting Interest Transaction. A "conflicting interest transaction" shall mean a contract, transaction, or other financial relationship between the Association and a Director, between the Association and a party related to a Director, or between the Association and an entity in which a Director is a director or officer or has a financial interest. A conflicting interest transaction shall be voidable, unless the material facts regarding the transaction and the Director's interest are disclosed to the Board and the Board in good faith authorizes, approves, or ratifies the transaction in accordance with § 7-128-501, C.R.S.

Section 6.2 No Loans. No loans shall be made by the Association to its Directors or officers.

## **ARTICLE 7 - RECORDS**

Section 7.1 Records and Audits. The Association shall maintain financial records. The financial records may be audited in the discretion of the Board and shall be audited if requested as provided in Section 303 of the Act. The cost of the audit shall be a Common Expense unless otherwise provided in the Documents.

Section 7.2 Records. The Association shall keep the following records:

A. an account for each Unit, which shall designate the name and address of each Owner, the name and address of each mortgagee who has given notice to the Association that it holds a mortgage on the Unit, the amount of each Common Expense assessment, the dates on which each assessment comes due, the amounts paid on the account and the balance due;

B. an account for each Owner showing any other fees payable by the Owner;

C. a record of any capital expenditures in excess of \$5,000 approved by the Board for the current and next two succeeding fiscal years;

- D. a record of the amount and an accurate account of the current balance of any reserves for capital expenditures, replacement and emergency repairs, together with the amount of those portions of reserves designated by the Association for a specific project;
- E. the annual accountings for Association funds and financial statements for the past three years;
- F. the current operating budget adopted pursuant to Section 315(1) of the Act and ratified pursuant to the procedures of Section 303(4) of the Act;
- G. all financial audits or reviews during the past three years;
- H. its most recent annual report, if any;
- I. minutes of all meetings of Owners, the Board of Directors, and committees, a record of all actions taken without a meeting, and all waivers of notice;
- J. a list of all names and address of all Owners showing the number of votes each Owner is entitled to vote;
- K. a list of the names and addresses of all current Directors and officers;
- L. all written communications to Owners within the past three years; and
- N. a copy of the most current versions of the Articles of Incorporation, the Declaration, Bylaws, Rules and Restrictions, and resolutions of the Board, along with their exhibits and schedules.

Section 7.3 Examination. All records maintained by the Association or the Manager shall be available for examination and copying by any Owner, any mortgagee, or by any of their duly authorized agents or attorneys, at the expense of the person examining the records, during normal business hours and after reasonable notice. The Association may impose a copying fee for copies of Association records not to exceed the Association's actual cost per page.

## **ARTICLE 8 – NOTICE AND HEARING**

Section 8.1 Compliance and Enforcement. The Board may impose sanctions for violation of the Governing Documents as set forth in Section 7.4 of the Declaration after providing the Owner with notice and a hearing in accordance with this Article 8.

Section 8.2 Notice and Hearing. The Board shall give written notice of the proposed sanction to all Owners or occupants of Units whose interest would be significantly affected by the proposed sanction. The notice shall include a general statement of the proposed sanction and the date, time and place of the hearing, which shall be not less than fifteen (15) days after the date of the notice. At the hearing, the affected person (Owner or tenant) shall have the right, personally or by a representative, to give testimony orally, in writing

or both (as specified in the notice), subject to reasonable rules of procedure established by the Board to assure a prompt and orderly resolution of the issues. Any evidence shall be duly considered, but is not binding in making the decision. The affected person shall be notified of the decision in the same manner in which notice of the meeting was given.

## **ARTICLE 9 – INSURANCE**

Section 9.1 Coverage. To the extent reasonably available, the Association shall obtain and maintain insurance coverage as set forth in this Article. If such insurance is not reasonably available, and the Association determines that any insurance described in this Article will not be maintained, the Association shall cause notice of that fact to be hand delivered or sent prepaid by United States mail to all Unit Owners and at their last known addresses. The Association shall obtain and maintain:

A. Property Insurance. Property insurance that will cover the Common Elements, the exteriors (including the roofs) of all Units, the Party Walls, and any personal property owned by the Association, for broad form covered causes of loss. The property insurance will be for an amount equal to 100 percent of the full insurable replacement cost at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations, and other items normally excluded from property policies. The maximum deductible shall be the lesser of \$10,000 or one percent of the policy face amount.

B. Liability Insurance. The Association shall obtain and maintain commercial general liability insurance against claims and liabilities arising in connection with the ownership, existence, use, or management of the Common Elements in an amount to be determined by the Association, but in no event shall it be less than \$1,000,000 in respect to bodily injury or death to any one person or \$5,000,000 in respect to bodily injury or death to any number of persons arising out of one accident or disaster nor less than \$500,000 in respect to property damage. The insurance shall cover all occurrences commonly insured against for death, bodily injury, and property damage arising out of or in connection with the use, ownership, or maintenance of the Common Elements and the activities of the Association.

Insurance policies required by this Section shall provide that: (a) the insurer waives the right to subrogation under the policy against an Owner or member of his household; (b) an act or omission of an Owner will not void the policy or be a condition of recovery under the policy; (c) if at the time of loss, there is other insurance in the name of an Owner which covers the same risk, the Association's policy provides primary insurance; (d) losses must be adjusted with the Association; (e) insurance proceeds shall be paid to the Association, or its designated Trustee, to be held in trust for each Owner; and (f) the insurer may not cancel or refuse to renew the policy until 30 days after notice of the proposed cancellation or nonrenewal has been mailed to the Association.

Section 9.2 Fidelity Insurance. A blanket fidelity bond or dishonesty insurance coverage may be provided at the option of the Association to protect against dishonest acts on the part of its officers, Directors, trustees, and employees, and on the part of all others who handle or who are responsible for handling the funds belonging to or administered by the Association. In addition, if responsibility for handling funds is delegated to a Manager, such bond shall be obtained for the Manager and its officers,

employees, and agents, as applicable. Such fidelity coverage shall name the Association as an obligee and shall be written in an amount equal to at least 150% of the estimated annual operating expenses of the Association, including reserves, or \$50,000, whichever amount is higher. Such bonds shall contain waivers by the issuers of all defenses based upon the exclusion of persons serving without compensation from the definition of “employees”, or similar terms or expressions.

Section 9.3 Personal Liability Insurance of Officers and Directors. As set forth in Section 5.8, to the extent obtainable at reasonable cost, appropriate personal liability insurance may be maintained by the Association to protect the officers and Directors from personal liability in relation to their duties and responsibilities in acting as such officers and directors on behalf of the Association.

Section 9.4 Other Insurance. The Association may obtain insurance against such other risks of a similar or dissimilar nature as it shall deem appropriate with respect to the Association’s responsibilities and duties.

Section 9.5 General Insurance Provisions. All insurance coverage obtained by the Association shall be governed by the following provisions:

A. As long as Declarant owns any Units, Declarant shall be protected by all such policies as an Owner. The coverage provided to Declarant under the insurance policies obtained in compliance with this Article shall not be deemed to protect or be for the benefit of any general contractor engaged by Declarant, nor shall such coverage be deemed to protect Declarant for with respect to such claims.

B. The deductible amount, if any, on any insurance policy purchased by the Association may be treated as a Common Expense payable from Assessments, or as an item to be paid from working capital reserves established by the Association; or alternatively, the Association may treat the expense as an assessment against an Owner whose Unit is specifically affected by the damage or whose negligence or willful act resulted in damage.

C. The insurance coverage described in this Article shall be considered minimum coverage and the Association shall be obligated to secure and maintain such other or additional coverage as may be required by law, including, without limitation, Section 313 of the Act.

D. Except as otherwise provided by the Association pursuant to this Article, insurance premiums shall be a Common Expense to be paid by regular Assessments levied by the Association.

E. The named insured under any such policies shall include Declarant, until all the Units have been conveyed, and the Association, as a trustee for the Owners and their mortgagees, as their interests may appear, or the authorized representative of the Association who shall have exclusive authority to negotiate losses and receive payments under such policies.

F. In no event shall the insurance coverage obtained and maintained pursuant to this Article be brought into contribution with insurance purchased by the Owners or their Mortgagees.

## ARTICLE 10 - MISCELLANEOUS

Section 10.1 Notices. All notices to the Association or the Board shall be delivered to the office of the Manager, or, if there is no Manager, to the office of the Association, or to such other address as the Board may designate by written notice to all Owners and to all mortgagees of Units who have notified the Association that they hold a mortgage on a Unit. Except as otherwise provided, all notices to any Owner shall be sent to the Owner's address as it appears in the records of the Association. All notices to mortgagees shall be sent, except where a different manner of notice is specified elsewhere in the Documents, by registered or certified mail to their respective addresses, as designated by them in writing to the Association. All notices shall be deemed to have been given when mailed, except notices of changes of address, which shall be deemed to have been given when received.

Section 10.2 Fiscal Year. The Board shall establish the fiscal year of the Association.

Section 10.3 Waiver. No restriction, condition, obligation or provision contained in these Bylaws shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

Section 10.4 Office. The principal office of the Association shall be at such place as the Board may from time to time designate.

Section 10.5 Amendments. The Bylaws may be amended in accordance with Part 2 of Article 130 of Title 7, C.R.S.

ATTEST: Certified to be the Bylaws adopted by consent of the Directors of Mountain Trace Townhomes Owners' Association, dated \_\_\_\_\_, 2008.

\_\_\_\_\_  
Secretary