

DECLARATION OF COVENANTS, CONDITIONS AND  
RESTRICTIONS

FOR

*MOUNTAIN TRACE TOWNHOMES*

NOTICE

In the event this Declaration is superseded, as set forth herein, this Declaration shall terminate and be of no further effect and the subsequent Declaration, duly approved and recorded shall govern. In order to reduce irrelevant paperwork and subsequent confusion, title examiners should refrain from listing such superseded Declarations as exceptions to title.

Not all documents that govern the Association or property within Mountain Trace Townhomes are recorded. It is the responsibility of each Owner to obtain and comply with the most current Governing Documents of the Association. Current Governing Documents may be obtained from the Mountain Trace Townhomes Owners Association or its designated agent.

TABLE OF CONTENTS

	<u>PAGE</u>
Article I	<b>Creation of the Community ..... 1</b>
1.1.	<u>Purpose and Intent</u> ..... 1
1.2.	<u>Binding Effect</u> ..... 1
1.3.	<u>Governing Documents</u> ..... 2
Article II	<b>Concepts and Definitions ..... 3</b>
2.1.	<u>Defined Terms</u> ..... 3
2.2.	<u>Interpretation of Certain References</u> ..... 6
Article III	<b>Use and Conduct..... 6</b>
3.1.	<u>Use, Occupancy, and Transfer of Interests in Units</u> ..... 6
3.2.	<u>Rulemaking Authority and Procedures</u> ..... 9
3.3.	<u>Owners' Acknowledgment and Notice to Purchasers</u> ..... 10
3.4.	<u>Protection of Owners and Others</u> ..... 10
3.5.	<u>Party Walls</u> ..... 11
3.6.	<u>Alan Road</u> ..... 13
3.7	<u>Limited Common Elements</u> ..... 12
Article IV	<b>Alterations and Landscaping..... 13</b>
4.1.	<u>General</u> ..... 13
4.2.	<u>Approval Required</u> ..... 13
4.3.	<u>Guidelines and Procedures</u> ..... 14
4.4.	<u>Construction of Improvements</u> ..... 14
4.5.	<u>Non-Liability of DRC Members</u> ..... 14
Article V	<b>Maintenance and Repair of Units and Limited Common Elements ..... 15</b>
5.1.	<u>Maintenance by Owners</u> ..... 15
5.2.	<u>Maintenance by the Association</u> ..... 15
5.3.	<u>Responsibility for Repair and Replacement</u> ..... 15
5.4.	<u>Insurance</u> ..... 16
Article VI	<b>The Association and its Members ..... 16</b>
6.1.	<u>Function of Association</u> ..... 16
6.2.	<u>Membership</u> ..... 17
6.3.	<u>Voting</u> ..... 17
Article VII	<b>Association Powers and Responsibilities..... 18</b>
7.1.	<u>Acceptance and Control of Association Property</u> ..... 18
7.2.	<u>Maintenance of Area of Common Responsibility</u> ..... 18
7.3.	<u>Insurance; Repair after Loss or Damage</u> ..... 19
7.4.	<u>Compliance and Enforcement</u> ..... 20
7.5.	<u>Implied Rights; Board Authority</u> ..... 22
7.6.	<u>Provision of Services to Units</u> ..... 22

7.7.	<u>Relationships with Other Properties</u> .....	23
7.8.	<u>Education and Training</u> .....	23
<b>Article VIII</b>	<b>Association Finances</b> .....	<b>23</b>
8.1.	<u>Authority to Levy Assessments for Association Expenses</u> .....	23
8.2.	<u>Budgeting and Allocating Association Expenses</u> .....	24
8.3.	<u>Special Assessments</u> .....	25
8.4.	<u>Specific Assessments</u> .....	25
8.5.	<u>Payment of Assessments</u> .....	26
8.6.	<u>Lien for Assessments</u> .....	26
8.7.	<u>Capitalization of Association</u> .....	27
<b>Article IX</b>	<b>Expansion of the Community</b> .....	<b>28</b>
<b>Article X</b>	<b>Additional Rights Reserved to Declarant</b> .....	<b>29</b>
10.1.	<u>Development and Sales Activities</u> .....	29
10.2.	<u>Right to Veto Changes in Standards</u> .....	29
10.3.	<u>Right to Transfer or Assign Declarant Rights</u> .....	29
10.4.	<u>Exclusive Rights To Use Name of Community</u> .....	28
10.5.	<u>Right to Notice of Design or Construction Claims</u> .....	30
10.6	<u>Termination</u> .....	29
<b>Article XI</b>	<b>Easements</b> .....	<b>30</b>
11.1.	<u>Easements in Common Elements</u> .....	30
11.2.	<u>Easements of Encroachment and Fence Maintenance</u> .....	31
11.3.	<u>Easements for Utilities, Etc.</u> .....	31
11.4.	<u>Easements for Maintenance, Emergency and Enforcement</u> .....	32
11.5.	<u>Easement to Inspect and Right to Correct</u> .....	32
<b>Article XII</b>	<b>Dispute Resolution</b> .....	<b>33</b>
12.1	<u>Statement of Clarification</u> .....	33
12.2	<u>Alternative Method for Resolving Disputes</u> .....	31
12.3	<u>Claims</u> .....	33
12.4	<u>Claims Subject to Approval</u> .....	33
12.5	<u>Notice of Claim</u> .....	34
12.6	<u>Timely Initiation</u> .....	34
12.7	<u>Right to be Heard</u> .....	35
12.8	<u>Right to Inspect</u> .....	35
12.9	<u>Good Faith Negotiations</u> .....	36
12.10	<u>Mediation</u> .....	36
12.11	<u>Consensus for Association Arbitration or Litigation</u> .....	37
12.12	<u>Arbitration</u> .....	35
12.13	<u>Binding Effect</u> .....	37
12.14	<u>Amendment</u> .....	37

Article XIII Mortgagee Provisions.....	<b>37</b>
13.1. <u>Notices of Action</u> .....	37
13.2. <u>No Priority</u> .....	38
13.3. <u>Notice to Association</u> .....	38
Article XIV Changes in Ownership of Units.....	<b>38</b>
14.1. <u>Notice of Transfer</u> .....	38
14.2. <u>Administrative Transfer Fee</u> .....	38
Article XV Changes in Common Elements.....	<b>39</b>
15.1. <u>Partition</u> .....	39
15.2. <u>Mortgaging, Conveyance or Dedication of Common Elements</u> .....	39
Article XVI Amendment of Declaration.....	<b>39</b>
16.1. <u>By Declarant</u> .....	39
16.2. <u>By Members</u> .....	40
16.3. <u>Validity and Effective Date</u> .....	40
16.4. <u>Exhibits</u> .....	40
Article XVII Termination of Declaration.....	<b>40</b>

- TABLE OF EXHIBITS -

<u>Exhibit Subject Matter</u>	<u>Mentioned</u>	Page First
"A"	Land Initially Submitted	1
"B"	Annexable Property	26
"C"	Table of Allocated Interests	3
"D"	Initial Restrictions and Rules	8

# DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

FOR

## *MOUNTAIN TRACE TOWNHOMES*

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS is made by Mountain Trace, LLC, a Colorado limited liability company (the "Declarant"), on behalf of itself, its successors and assigns.

### Article I      Creation of the Community

#### 1.1.      Purpose and Intent.

Declarant, as the owner of the real property described in Exhibit "A," intends by this Declaration to establish a general plan of development for the phased, planned community with a maximum number of 78 Units known as Mountain Trace Townhomes. An integral part of the development plan is the creation of Mountain Trace Townhomes Owners Association, an association comprised of all owners of real property in Mountain Trace Townhomes, to maintain certain community improvements, to provide services to the owners and their property, and to administer and enforce this Declaration and the other Governing Documents referenced in this Declaration.

The community established by recording of this Declaration is a "planned community" and a "phased community" as both terms are defined in the Colorado Common Interest Ownership Act, C.R.S. §38-33.3-101, *et seq.* ("Act").

#### 1.2.      Binding Effect.

All property described in Exhibit "A" (such property being referred to in this Declaration as the "Community" or "Mountain Trace Townhomes") shall be owned, conveyed and used subject to this Declaration, which shall run with the title to such property and shall be binding upon all Persons having any right, title, or interest in any portion of such property, their heirs, successors, successors-in-title, and assigns.

This Declaration, as it may be amended in accordance with the procedures set forth in Article XVI, is intended to have perpetual duration, subject to the right of the Owners to terminate this Declaration and the planned community established by this Declaration in accordance with the procedures set forth in Article XVII.

### 1.3. Governing Documents.

The governing documents for Mountain Trace Townhomes consist of the following, as they may be amended and supplemented ("Governing Documents"):

- **Declarations**  
Declaration of CC&Rs for Mountain Trace Townhomes: creates obligations which are binding upon the Association and all present and future owners of property in Mountain Trace Townhomes (recorded by the Declarant in the office of the La Plata County Clerk and Recorder).
- **Restrictions and Rules**  
Governs the use of the property, activities, and conduct within Mountain Trace (Board of Directors adopt, subject to members' right to veto; initial restrictions and rules are attached as Exhibit "D").
- **Articles of Incorporation**  
Establishes the Association as a nonprofit corporation under Colorado law (filed with the Secretary of State).
- **By-Laws**  
Governs the Association's internal affairs, such as voting, elections, meetings, etc. (Board of Directors adopts).
- **Board Resolutions**  
Establishes policies and procedures for internal governance, operation of Common Elements (if any), and interpretation and application of the Governing Documents, among other things (Board of Directors adopts).

In the event of a conflict between or among any of the Governing Documents and Colorado law, Colorado law shall control. Otherwise, the documents shall be given priority in the order listed above, except that in the event that one document is more restrictive than another on a particular matter, the more restrictive provision shall control.

All Owners and occupants of property within Mountain Trace Townhomes, as well as their respective tenants, guests and invitees, are bound by the Governing Documents. Each Owner is responsible for obtaining a copy of, reviewing, and complying with the Governing Documents and for ensuring that the occupants of such Owner's Unit, including any tenant, and all guests, invitees, contractors, subcontractors, and agents of the Owner or any tenant, also comply with the Governing Documents.

The Association, the Declarant, and every Owner shall have the right to take legal action to enforce the Governing Documents. The Association shall have the specific enforcement powers

and remedies described in Section 7.4 of this Declaration and elsewhere in the Governing Documents.

If any court should determine that any provision of this Declaration is invalid, or invalid as applied in a particular instance, such determination shall not affect the validity of other provisions or applications of such provision.

## Article II Concepts and Definitions

### 2.1. Defined Terms.

The terms used in the Governing Documents shall generally be given their natural, commonly accepted definitions unless otherwise specified. Capitalized terms shall be defined as described in the section where they first appear in bold print, or as set forth below.

"Allocated Interests": The amount of each Unit's liability for the Common Expenses, as defined herein, represented as a percentage calculated by dividing the Unit's average gross square footage by floor plan type (i.e., "A", "B", "C", "D", or "E" Unit floor plan type) by the total gross square footage of all Units in the Project by floor plan type, as set forth on the attached Exhibit "C". The allocated voting interests shall be one vote per Unit.

"Area of Common Responsibility": The Common Elements, together with such other areas for which the Association has or assumes responsibility pursuant to the terms of this Declaration or other applicable covenants, contracts, or agreements.

"Articles": the Articles of Incorporation of Mountain Trace Townhomes Owners Association, filed with the Colorado Secretary of State, as they may be amended.

"Assessments": The fees and charges that the Association is authorized to levy against a Unit pursuant to the Governing Documents, payment of which is the personal obligation of the Owner and secured by a lien against the Unit.

"Association": Mountain Trace Townhomes Owners Association, a Colorado nonprofit corporation, its successors or assigns.

"Board of Directors" or "Board": The body responsible for administration of the Association, selected as provided in the By-Laws and generally serving the same role as the board of directors under Colorado corporate law.

"By-Laws": The By-Laws of Mountain Trace Townhomes Owners Association, as they may be amended.

"Class 'A' Member": Each Owner, including the Declarant if the Declarant owns a Unit.

"Class 'B' Member": The Declarant.

"Class "B" Control Period": The period of time during which the Declarant, as the Class "B" Member, is entitled to appoint a majority of the members of the Board, as provided in Article 3 of the By-Laws. 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.

"Common Elements": Any real or personal property, including easements, which the Association owns or leases, or in which it otherwise holds possessory or use rights for the common benefit of the Owners.

"Common Expenses": The actual and estimated expenses which the Association incurs, or expects to incur, for the general benefit of all Owners, including any reasonable reserve, as the Board may find necessary or appropriate pursuant to the Governing Documents.

"Community" or "Mountain Trace Townhomes": The real property described on Exhibit "A," and any additional real property annexed to the Community pursuant to Article IX.

"Community-Wide Standard": The standard of conduct, maintenance, or other activity generally prevailing in Mountain Trace Townhomes, or the minimum standards established pursuant to this Declaration, the Restrictions and Rules, and Board resolutions, whichever is the highest standard. Declarant initially shall establish such standard and it may contain both objective and subjective elements. The Community-Wide Standard may evolve as development progresses and as the needs and desires within Mountain Trace Townhomes change.

"Declarant": Mountain Trace, LLC, a Colorado limited liability company, or any successor or assign who takes title to any portion of the Community for the purpose of development and/or sale and who the immediately preceding Declarant designates as Declarant in a recorded instrument.

"Declarant Affiliate": Any Person that controls, is controlled by, or is under common control with the Declarant, and any Person that is an owner, a member, a partner, or a shareholder of the Declarant.

"Development and Sale Period": The period of time during which Declarant or any Declarant Affiliate owns property subject to this Declaration for development and sale in the ordinary course of its business.

**"General Assessment"**: Assessments levied on all Units subject to assessment under Article VIII to fund Common Expenses for the general benefit of all Units, as determined in accordance with Section 8.2.

**"Governing Documents"**: A collective term referring to this Declaration and the By-Laws, the Articles, the Restrictions and Rules, and Board resolutions, all as they may be amended.

**"Improvements"**: Any site work, construction, installation or modifications of structures or landscaping on a Unit, or placement of objects on a Unit outside of enclosed structures.

**"Limited Common Elements"**: Any portion of the Common Elements allocated for the exclusive use of one or more, but fewer than all, Units, as shown on the Plat or as otherwise identified in this Declaration. The Limited Common Elements are further described in Section 3.7 of this Declaration.

**"Member"**: A Person subject to membership in the Association pursuant to Section 6.2.

**"Mortgage"**: A mortgage, a security deed, a deed of trust, or any other form of security instrument affecting title to any Unit. The term "Mortgage" shall refer to a beneficiary or holder of a Mortgage.

**"Owner"**: One or more Persons who hold the record title to any Unit, but excluding in all cases any party holding an interest merely as security for the performance of an obligation. If a Unit is sold under a recorded contract of sale, and the contract specifically so provides, the purchaser (rather than the fee owner) will be considered the Owner.

**"Plat"**: The final plat of the Mountain Trace Townhomes Phase 1 As-Built Plat, recorded with the La Plata County, Colorado Clerk and Recorder, on \_\_\_\_\_, 2008, under Reception No. \_\_\_\_\_, and any As-Built, Amended, or Supplemental Plat.

**"Person"**: A natural person, a corporation, a partnership, a limited liability company, a trust, or any other legal entity.

**"Special Assessment"**: Assessments levied in accordance with Section 8.3.

**"Specific Assessment"**: Assessments levied in accordance with Section 8.4.

**"Unit"**: A lot shown on a recorded plat of the Community, whether improved or unimproved, intended for development, use, and occupancy as residence for a single family and allowed home occupation. The term shall refer to the land, if any, which is part of the Unit as well as any improvements thereon.

Units may be combined and boundary lines of Units may be changed only by recording of a plat or other legal instrument reflecting such combination or change. In the absence of

recording such a legal instrument, ownership of adjacent Units by the same Owner shall not permit such Units to be treated as a single Unit for purposes of voting and assessment, notwithstanding that such Units may be improved with a single dwelling.

2.2. Interpretation of Certain References.

(a) Recording. All references in the Governing Documents to a "recorded" legal instrument, or to the recording of a legal instrument, shall refer to an instrument filed, or the filing of an instrument, in the Office of the Clerk and Recorder for La Plata County, Colorado, or such other place as may be designated as the official location for filing documents affecting title to real estate in La Plata County in order to make them a matter of public record.

(b) Consent or Approval. All references in the Governing Documents to "consent" or "approval" shall refer to permission or approval that, unless otherwise expressly qualified in the specific provision, may be granted or withheld in the discretion of the Person whose consent or approval is required.

(c) Discretion and Determinations. All references in the Governing Documents to "discretion" or to the right to "determine" any matter shall refer to the sole and absolute power or right to decide or act and, unless otherwise expressly limited in the Governing Documents, a Person entitled to exercise discretion or make a determination may do so without regard to the reasonableness of, and without the necessity of justifying, the decision, determination, action or inaction.

(d) Time Periods. All references in the Governing Documents to a number of days shall refer to calendar days unless expressly described as business days. Business days shall mean Monday through Friday, except bank holidays.

Article III Use and Conduct

3.1. Use, Occupancy, and Transfer of Interests in Units.

(a) Residential and Ancillary Uses. Units may be used only for residential and related purposes, except as the Declarant may otherwise authorize with respect to its construction, marketing and sale activities and as otherwise authorized in this Article. Otherwise, a business activity may be conducted in and from a Unit only if conducted by a person or persons residing in the Unit and only if the business activity:

- (i) is not apparent or detectable by sight, sound, or smell from outside of a permitted structure;
- (ii) complies with applicable zoning requirements; and
- (iii) is consistent with the residential character of that portion of the Mountain Trace Townhomes within which the Unit is located and does not constitute a nuisance or a

hazardous or offensive use, or threaten the security or safety of others, as the Board determines in its discretion.

"Business" shall have its ordinary, generally accepted meaning and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves providing goods or services to Persons other than the family of the producer and for which the producer receives a fee, compensation, or other form of consideration, regardless of whether (i) such activity is engaged in full or part time; (ii) such activity is intended to or does generate a profit; or (iii) a license is required.

Leasing a Unit for residential purposes shall not be considered a "business" within the meaning of this subsection, provided that such leasing complies with Section 3.1(b).

(b) Leasing. For purposes of this Declaration, the terms "Lease" and "Leasing" shall refer to the regular, exclusive occupancy of a Unit by any Person other than the Owner, for which the Owner receives any consideration or benefit. Leasing of Units shall be prohibited except in strict compliance with all of the following:

(i) Any dwelling that is leased shall be leased only in its entirety; separate rooms, floors, or other areas within a dwelling may not be separately leased.

(ii) No signs shall be posted on the Unit, elsewhere within Mountain Trace Townhomes, or on right-of-way adjacent to Mountain Trace Townhomes, advertising the availability of the Unit for rent or for lease; however, the Association may provide a common sign and/or designate a common location for posting information regarding Units being offered for lease;

(iii) All leases shall be in writing and shall disclose that the tenants and all occupants of the leased Unit are bound by and obligated to comply with the Governing Documents. However, the Governing Documents shall apply regardless of whether such a provision is specifically set forth in the lease.

(iv) All leases shall have a minimum initial term of at least three (3) months and no more than 3 leases for any Unit shall be allowed in any calendar year. No Unit may be sub-leased and no lease may be assigned during such minimum initial term. In the event of termination of a lease after the tenant has taken occupancy and prior to the end of such minimum initial term, the Owner may not enter into a new lease with a term commencing prior to the date on which the previous lease would have expired without prior approval of the Board, which shall not be granted unless the Board determines, after consideration of the facts and circumstances, that the Owner acted in good faith, with no intent to circumvent the requirements of this subsection (b), and could not reasonably have anticipated the early termination of the previous lease at the time the lease was signed.

(v) Within 10 days of a lease being signed, the Owner of the leased Unit shall notify the Board or the Association's managing agent of the lease and provide the name, address, phone number and any additional information about the lessee the Board may reasonably require.

- (vi) The Owner must give the tenant copies of the Governing Documents.

In addition to, but consistent with, this subsection, the Association may adopt Rules governing leasing and subleasing pursuant to Sections 3.2, 3.3, and 3.4.

(c) Transfer of Title. Any Owner, other than the Declarant during the Development and Sale Period, desiring to sell or otherwise transfer title to his or her Unit shall give the Board at least seven days' prior written notice of the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the Board may reasonably require. The Person transferring title shall continue to be jointly and severally responsible with the Person accepting title for all obligations of the Owner, including assessment obligations, until the date upon which the Board receives such notice, notwithstanding the transfer of title.

(d) Subdivision and Combination of Units. No Person may subdivide a Unit. No Person may change the boundary lines of any Unit or combine Units without the Declarant's prior written approval during the Development and Sale Period and the Board's prior written approval thereafter, and then only upon recording of a plat or other legal instrument reflecting the new boundaries of the affected Unit(s). Unless a revised or amended plat reflecting a boundary change has been approved and recorded pursuant to this subsection, adjacent Units owned by the same Owner shall continue to be treated as separate Units for purposes of voting and assessment, even though such Units may be improved with a single dwelling; therefore, the Owner of such adjacent Units shall be responsible for separate assessments for each such Unit.

(e) Decks. Decks (of Units), if any, shall not be used for storage of any kind, including, but not limited to, bicycles, kayaks, rafts, and firewood. No use of charcoal grills shall be allowed in Decks. Use of gas stoves or grills is permitted within Decks. It shall be permissible to maintain patio furniture and planters within Decks so long as same are maintained in a neat an orderly condition.

(f) Animals. No animals, livestock, or poultry of any kind shall be raised, bred or kept in the Units except common household pets, including dogs and cats. No household pets shall be kept, maintained or bred at Mountain Trace Townhomes for commercial purposes. There shall be no more than two (2) dogs and two (2) cats and no combination of dogs and cats exceeding three (3) in any one Unit.

(g) Noxious or Offensive Activity; Compliance with Laws. No noxious or offensive activity shall be conducted in any Unit, nor shall anything be done or placed within a Unit that is or may become a nuisance or cause embarrassment, disturbance, or annoyance to others. No lights shall be emitted from any Unit that are unreasonably bright or cause unreasonable glare; no sound shall be emitted from any Unit that is unreasonably loud or annoying; and no odor shall be emitted from any Unit that is noxious or unreasonably offensive to other Owners. No immoral, improper, offensive or unlawful use may be made of any Unit. Owners shall comply with and conform to all applicable laws and regulations of the United States and of the State of Colorado and all ordinances, rules and regulations of the County of La Plata and City of Durango. Any

violating Owner shall hold the Association and other Owners harmless from all fines, penalties, costs and prosecutions for any violation or noncompliance.

### 3.2. Rulemaking Authority and Procedures.

The Governing Documents establish, as part of the general plan of development for Mountain Trace Townhomes, a framework of affirmative and negative covenants, easements and restrictions that govern Mountain Trace Townhomes. Within that framework, the Association must have the ability to respond to unforeseen problems and changes in circumstances, conditions, needs, desires, trends, and technology. Therefore, this Article establishes rulemaking authority and procedures for superseding, amending, modifying and expanding the initial Restrictions and Rules set forth in Exhibit "D" ("Rules" or "Restrictions and Rules"). This Article is not intended to apply to rules regulating traffic flow or parking on streets within the Community, which the Board may adopt by resolution pursuant to Section 3.2(d), nor to administrative and enforcement policies which the Board may adopt by resolution.

(a) Declarant Authority. So long as the Declarant has the unilateral right to amend this Declaration pursuant to Section 16.1, the Declarant may unilaterally amend Exhibit "D" to add new Rules or to modify, supersede or rescind existing Rules.

(b) Board Authority. Subject to the notice and veto provisions in subsection (c) and the Board's duty to exercise judgment and reasonableness on behalf of the Association and its Members, the Board may adopt new Rules and modify or rescind existing Rules by majority vote of the directors at any Board meeting. However, during the Development and Sale Period, any such action shall also be subject to the Declarant's approval.

(c) Notice; Effective Date; Owner Veto. Within 30 days after adoption of any new Rule or modification or rescission of an existing Rule pursuant to Section 3.2(b), the Board shall mail, by ordinary first-class mail, a copy of the new or modified Rule or a notice of the rescission of a Rule, as the case may be (any of the foregoing shall be referred to herein as a "Rule Change"), to all the Owners, and shall set a date for a meeting of the Owners to consider the Rule Change, which meeting shall occur in accordance with the By-Laws. A Rule Change adopted under Section 3.2(b) shall take effect 30 days after the date of the Owners' meeting required by this Section 3.2(c) in the absence of a veto at the noticed meeting by a majority of all Class A Members or by the Class "B" Member, as long as such Class "B" membership exists, whether or not a quorum is present at such noticed meeting.

(d) Administrative and Operating Policies. The procedures set forth in this section do not apply to administrative and operating policies that the Board may adopt relating to the Common Elements, such as traffic, parking and safety regulations, notwithstanding that such policies may be published as part of the Rules.

(e) Conflicts. No action taken under this Section 3.2 shall have the effect of modifying or repealing any provision of this Declaration other than the Rules. In the event of a conflict between the Rules and any provision of this Declaration (exclusive of the Rules), the Declaration shall control.

3.3. Owners' Acknowledgment and Notice to Purchasers.

ALL OWNERS ARE GIVEN NOTICE THAT USE OF THEIR UNITS AND CONDUCT WITHIN THE COMMUNITY IS LIMITED BY THE RESTRICTIONS AND RULES AS AMENDED, EXPANDED AND OTHERWISE MODIFIED FROM TIME TO TIME. Each Owner, by acceptance of a deed, acknowledges and agrees that the use and enjoyment and marketability of his or her Unit can be affected by this provision and that the Restrictions and Rules may change from time to time. All purchasers of Units are on notice that the Association may have adopted changes. Copies of the current Restrictions and Rules may be obtained from the Association.

3.4. Limitation on Restrictions and Rules for Protection of Owners and Others.

Except as may be set forth in this Declaration (either initially or by amendment) or in the initial Restrictions and Rules set forth in Exhibit "D," all Restrictions and Rules shall comply with the following provisions:

(a) Similar Treatment. Similarly situated Owners shall be treated similarly.

(b) Religious and Holiday Displays. No rule shall prohibit Owners from displaying religious and holiday signs, symbols, and decorations inside structures on their Units of the kinds normally displayed in dwellings located in single-family residential neighborhoods, except that the Association may adopt rules regulating the time, place, and number and size of such displays visible from outside the dwelling and other rules regulating the manner in which they are displayed.

(c) Signs. No rules shall prohibit the posting of political signs by an Owner within the boundaries of that Owner's Unit during the period 45 days prior to an election and 7 days after the election, or regulate the content of political signs; however, rules may regulate the size and number of such signs to the extent regulated by city or county ordinance, or if not regulated by city or county ordinance, to the extent permitted by C.R.S. § 38-33.3-106.5(1)(c) of the Act.

(d) Flags. No rules shall prohibit an Owner's display of the flag of the United States of America on such Owner's Unit in a manner consistent with the federal flag code, P.L. 94-344, 90 Stat. 810, 4 U.S.C. Sections 4 through 10, nor prohibit an Owner's display on the inside of a window or door of the dwelling on such Owner's Unit of a service flag bearing a star denoting the service of the Owner or a member of the Owner's immediate family in the active or reserve military service of the United States during a time of war or armed conflict; however, the Association may adopt reasonable rules regulating the location and size of flags and flagpoles, except that the maximum dimensions allowed shall be not less than nine by sixteen inches.

(e) Household Composition. No rule shall interfere with the freedom of Owners to determine the composition of their households, except that the Association may adopt rules requiring that all occupants be members of a single housekeeping unit and limiting the total number of occupants permitted in each Unit on the basis of the size and facilities of the Unit.

(f) Activities Within Dwellings. No rule shall interfere with the activities carried on within the confines of dwellings, to the extent in compliance with local laws and ordinances, except that the Association may prohibit activities not normally associated with property restricted to residential use, and it may restrict or prohibit any activities that create monetary costs for the Association or other Owners, that create a danger to the health or safety of occupants of other Units, that generate excessive noise or traffic, that create unsightly conditions visible outside the dwelling, or that create an unreasonable source of annoyance to persons outside the Unit.

(g) Allocation of Burdens and Benefits. No rule shall alter the allocation of financial burdens among the various Units or rights to use the Common Elements to the detriment of any Owner over that Owner's objection expressed in writing to the Association. Nothing in this provision shall prevent the Association from changing the Common Elements available, from adopting generally applicable rules for use of Common Elements, or from denying use privileges to those who are delinquent in paying assessments, abuse the Common Elements, or violate the Governing Documents. This provision does not affect the right to increase the amount of assessments as provided in Article VIII.

(h) Alienation. No rule shall prohibit leasing or transfer of any Unit, or require consent of the Association or Board for leasing or transfer of any Unit; however, rules may restrict leasing of multiple Units by related or affiliated Persons and may require a minimum lease term of three (3) months. The Association may also require that Owners use lease forms approved by the Board.

(i) Abridging Existing Rights. No rule shall require an Owner to dispose of personal property that was in or on a Unit prior to the adoption of such rule if such personal property was in compliance with all rules previously in force. This exemption shall apply only during the period of such Owner's ownership of the Unit, and shall not apply to subsequent Owners who take title to the Unit after adoption of the rule.

(j) Reasonable Rights to Develop and Sell. No rule or action by the Association or Board shall unreasonably impede Declarant's right to develop Mountain Trace Townhomes, nor restrict Declarant rights under this Declaration.

### 3.5 Party Walls.

(a) For purposes of this Section 3.5, "Party Wall" shall mean and refer to any wall which is part of a Unit and located between two or more Units and is placed on or immediately adjacent to a Unit boundary line and which separates two Units.

(b) Mutual reciprocal easements are hereby established, declared and granted for all Party Walls between Units, which reciprocal easements shall be for mutual support and shall be governed by this Declaration. Every conveyance of a Unit, whether or not expressly so stating, shall be deemed to convey and to be subject to such reciprocal easements.

(c) To the extent not inconsistent with the provisions of this Section 3.5, the general rules of law regarding party walls and of liability for property damage due to negligence or willful acts or omissions apply thereto.

(d) The cost of reasonable repair and maintenance of any Party Wall shall be borne equally by the Owners of Units sharing the Party Wall. If the Owner of one Unit sharing the Party Wall refuses to pay his proportionate share of the cost of repair or maintenance, then the other Owner may cause the Party Wall to be repaired and shall be entitled to assess the cost attributable against the non-paying adjoining Owner's Unit, and the same shall become and remain a lien against the Unit, until fully paid. Said lien may be foreclosed in the manner provided by law for the foreclosure of a mortgage on real property.

(e) If a Party Wall is destroyed or damaged by fire or other casualty, Owners of Units sharing the Party Wall may restore it, and if other Owners thereafter make use of the Party Wall, they shall contribute to the cost of restoration thereof in proportion of such use, subject however, to the right of any such Owners to call for a larger contribution from the other Owners under any rule of law regarding liability for negligent or willful acts or omissions. If one Owner causes the Party Wall to be restored and any other Owner uses the Party Wall and does not contribute his proportionate share to the costs of the Party Wall's restoration, the Owner who caused the wall to be restored shall be entitled to assess the cost attributable against the non-paying adjoining Owner's Unit, and the same shall become and remain a lien against such property until fully paid. The lien may be foreclosed in the manner provided by law for the foreclosure of a mortgage on real property.

(f) Notwithstanding any other provision of this Section 3.5, an Owner who by his negligent or willful act or omission causes the Party Wall to be damaged, destroyed, or exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements to the extent insurance proceeds are unavailable.

(g) The right of any Owner to contribution from any other Owner under this Section 3.5 shall be appurtenant to and run with the land and shall pass to such Owner's successors in title.

(h) If any dispute arises concerning a Party Wall under the provisions of this Section 3.5, such dispute shall be arbitrated in the manner hereinafter provided. Three individuals (including one or more members of the board of directors of the Association or one or more Owners or a combination of both) appointed by the President of the Association, none of whom may be a party to the dispute, shall act as a Board of Arbitration and the decision shall be by a majority vote of the Board of Arbitration after an arbitration proceeding. No legal action with respect to a Party Wall dispute shall be commenced or maintained unless and until the provisions of this arbitration clause have been met. The appointment of arbitrators hereunder shall be made within 20 days after notice by one party to the other party that a dispute exists, which notice shall not be given after any applicable statute of limitations concerning such dispute shall have expired. All arbitrations shall be subject to the Colorado Uniform Arbitration Act, C.R.S. § 13-22-201, *et seq.*

(i) Notwithstanding any other provision of this Section 3.5, the Association may, in its sole discretion make any repairs to Party Walls that the Association deems necessary, and the cost for such repairs shall be assessed equally against the Units benefited by such repairs unless the repairs are necessitated by willful acts or omissions or negligence of one Owner in which case the Owner causing the damage shall pay for all costs of repairs.

### 3.6 Alan Road.

A portion of the Common Elements designated on the Plat as “Alan Road” has been previously offered to the City of Durango for future development as a public street. By recordation of the Plat, Declarant has dedicated Alan Road as a private exclusive easement for access and utilities, postal delivery and waste disposal for the benefit of owners of property on Alan Road. Residents and Owners in the Mountain Trace Townhomes have no right to use Alan Road for access or recreation or any other purpose until the offer of dedication of Alan Road to the City of Durango as a city street is accepted by the City.

### 3.7 Limited Common Elements.

The areas shown on the Plat by the designation “LCE” are Limited Common Elements allocated to the Units to which they are adjacent. The Limited Common Elements located in front of the Units are for driveways and landscaped areas; the Limited Common Elements located at the rear and/or sides of the Units are for fenced yards.

## Article IV Alteration of Units and Landscaping

### 4.1. General.

After conveyance by the Declarant, no alterations shall be made to any Unit and no improvements or other work (including staking, clearing, excavation, grading and other site work, exterior alterations of existing improvements, or planting or removal of landscaping) shall take place on any Unit or on or within any Unit’s Limited Common Element(s), except in compliance with this Article; however, nothing in this Article shall restrict the display of political signs or flags to a greater extent than would be permitted under Section 3.4, or prohibit the removal by an Owner of trees, shrubs, or other vegetation on the Owner’s Unit to create defensible space around the dwelling for fire mitigation purposes as necessary to comply with any defensible space plan applicable to the Unit adopted and registered with the Association in accordance with C.R.S. § 38-33.3-106(1)(e) of the Act.

Approval shall be required to repaint the exterior of a structure in accordance with the originally approved color scheme or to rebuild in accordance with originally approved plans and specifications. Any Owner may remodel, paint or redecorate the interior of his or her Unit without approval. However, modifications to the interior of screened porches, patios, and similar portions of a Unit visible from outside the structure shall be subject to approval.

All construction on Units shall comply with all applicable building codes and requirements.

This Article shall not apply to Declarant's activities, nor to activities of the Association during the Class "B" Control Period.

4.2 Approval Required. Except for initial Improvements constructed by Declarant and Improvements made at any time by the Association, all plans and specifications in connection with (a) exterior remodeling, rebuilding, refurbishing, or alteration of a Unit, including, without limitation, the exterior appearance, color or texture, the roof, and decks; or (b) any Improvements or alterations to the Limited Common Element(s) appurtenant to a Unit, including, but not limited to, landscaping not initially provided by Declarant, patio covers, awnings, sculpture or art work, driveway, and fences, shall require the prior written approval of the Declarant or the DRC, as defined herein.

(a) By Declarant. During the Development and Sale Period, no activity within the scope of this Article shall be commenced on any Unit unless and until Declarant or its designee has given its prior written approval for such activity, which approval may be granted or withheld in the Declarant's or its designee's sole discretion.

(b) Design Review Committee. Upon delegation by Declarant or upon expiration or termination of Declarant's rights under this Article, the approval required under this Article shall be sought from the Design Review Committee (the "DRC"). The DRC, when appointed, shall consist of at least three, but not more than five, persons who shall serve and may be removed and replaced in the Board's discretion. The members of the DRC need not be Members of the Association or representatives of Members, and may, but need not, include architects, engineers or similar professionals, who may be compensated in such manner and amount if any, as the Board may establish.

(c) Fees; Assistance. Declarant and the DRC (either one a "Reviewer" for purposes of this Article) may establish and charge reasonable fees for review of applications, inspections or administration of such applications and may require such fees to be paid in full prior to review of any application.

4.3. Guidelines and Procedures. Before any work within the scope of this Article begins, the Owner of the Unit shall submit to the Reviewer complete plans, specifications, and color/material/texture samples for the scheduled work and the qualifications of the parties to be performing the scheduled work. The Reviewer's approval or disapproval as required by this Declaration shall be in writing. In the event the Reviewer fails to give its written approval or disapproval within thirty (30) days after complete submission of the required plans and specifications, the submitted plans and specifications shall be deemed approved by the Reviewer. The DRC may adopt guidelines, standards, and procedures for its day-to-day operations and the performance of its duties under this Declaration, which guidelines, standards, and procedures shall be consistently applied for all matters coming before the DRC.

4.4. Construction of Improvements after Approval. Following approval of proposed Improvements by the Reviewer, the Owner shall cause the approved Improvements to be made to the Unit in a timely fashion.

4.5 Non-Liability of DRC Members. None of the DRC members shall be liable to any Owner or to any other person for any loss, damage, or injury arising out of, or in any way connected with, the performance of the DRC's duties under this Declaration. By granting its approval of proposed alterations, the DRC will not be deemed to have approved or to have made any representation as to the safety, structural soundness, or compliance with local building codes or other governmental laws or regulations concerning the proposed work.

## Article V Maintenance and Repair of Units and Limited Common Elements

### 5.1. Maintenance by Owners.

Except to the extent that such maintenance responsibility is otherwise assigned to the Association pursuant to Section 5.2, each Owner shall maintain the interior of his or her Unit and all improvements in the Unit in a manner consistent with the Governing Documents, the Community-Wide Standard and all applicable covenants. Owners shall be responsible for the maintenance, repair and replacement of individual heating, ventilation, air-conditioning, and snow melt systems serving their respective Units. Owners shall be responsible for the cleaning and routine maintenance of decks and balconies associated with each respective Unit. Owners shall also be responsible for maintaining the landscaping within the Limited Common Element yard areas that are appurtenant to their Units.

Utility or service connections, facilities, or other utility equipment and property located in, on, or upon a Unit used solely to supply a service or utility to such Unit shall be owned by the Unit Owner using such utility or service, and all expenses and liabilities for repair and maintenance shall be borne solely by the Unit Owner, who shall have a perpetual easement in and to that part of such other Units containing such property for purposes of maintenance, repair, and inspection.

### 5.2. Maintenance by the Association.

The Association shall be responsible for maintenance, repair and replacement as needed, of the exterior of all Units, including walls, roofs, and balconies, and all fences enclosing the Limited Common Element yard areas and all retaining walls installed as part of the initial construction of a Unit and replacements thereof.

### 5.3. Responsibility for Repair and Replacement.

Unless otherwise specifically provided in the Governing Documents or in other instruments creating and assigning maintenance responsibility, responsibility for maintenance shall include responsibility for repair and replacement as necessary to maintain the property to a level consistent with the Community-Wide Standard.

In the event of damage to or destruction of structures on or comprising a Unit, the Owner shall, within 180 days thereafter, complete the repair or reconstruction of the damaged structures in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with Article IV. Prior to commencement of repair or reconstruction, the Owner shall clear the Unit of any debris and ruins and maintain it in a neat and attractive, landscaped condition consistent with the Community-Wide Standard. The Owner shall pay any costs not covered by insurance proceeds.

#### 5.4. Insurance.

(a) Each Owner shall carry property insurance for the full replacement cost of all insurable improvements on his or her Unit, less a reasonable deductible. The Owner shall provide the Association with a current Certificate of Insurance and Declarations page evidencing appropriate coverage. At its discretion and upon reasonable notice to the Owner(s), the Association may assume responsibility for obtaining insurance coverage on behalf of any or all Owners and the premiums for such insurance shall be levied as a Specific Assessment against the benefited Unit(s) and Owner(s).

(b) Each Owner shall carry general liability insurance, which may be obtained as an addendum to or as part of the Owner's property insurance policy, in at least such minimum amount as may be specified in the Restrictions and Rules. The Association shall be named as an additional insured on such policy and the Owner shall provide the Association with a current Certificate of Insurance and Declarations page evidencing the appropriate coverage.

### Article VI The Association and its Members

#### 6.1. Function of Association.

The Association has been established to administer Mountain Trace Townhomes pursuant to the Governing Documents. Its responsibilities include, but are not limited to:

- (a) management, maintenance, operation and control of the Area of Common Responsibility; and
- (b) interpretation and enforcement of the Governing Documents; and
- (c) establishing and upholding the Community-Wide Standard; and
- (d) upon delegation or termination of Declarant's authority under Article IV, administering the design review process for Mountain Trace Townhomes, as provided in that Article.

The Association may delegate authority for any of these functions as set forth in the By-Laws. The Association shall perform its functions in accordance with the Governing Documents and Colorado law.

6.2. Membership.

(a) Classes of Membership. The Association initially shall have two classes of membership, Class "A" and Class "B". Class "A" Members shall be all Owners, which may include the Declarant if the Declarant owns any Unit. The sole Class "B" Member shall be the Declarant. The Class "B" Membership shall terminate on the earlier of:

(i) 60 days after the date on which 75% of the total number of Units shown on the recorded plat 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;

(ii) seven years after the date this Declaration is recorded;

(iii) when, in its discretion, the Declarant voluntarily and expressly surrenders such right in a recorded instrument.

Upon termination of the Class "B" membership, the Declarant shall continue to hold a Class "A" membership for each Unit that it owns.

(b) Automatic Membership; Exercise of Privileges. Every Owner automatically becomes a Member of the Association upon taking title to a Unit and remains a Member as long as the Owner holds title to such Unit. There shall be only one membership per Unit. If a Unit is owned by more than one Person, all co-Owners shall share the privileges of such membership, subject to reasonable Board regulation and the restrictions on voting set forth in Section 6.3 and in the By-Laws, and all such co-Owners shall be jointly and severally obligated to perform the responsibilities of Owners. 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.

6.3. Voting.

The voting rights of each class of membership shall be as follows:

(a) Class "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) Class "B". 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 Board, the membership and committees, as specifically provided elsewhere in the Governing Documents. In addition, the Class "B" Member may appoint a majority of the members of the Board of Directors during the Class "B" Control Period, as specified in Article 3 of the By-Laws. Additional rights of the Class "B" Member are specified in the relevant sections of the Governing Documents.

## Article VII Association Powers and Responsibilities

### 7.1. Acceptance and Control of Association Property.

(a) The Association, through action of its Board, may acquire, hold, lease (as lessor or lessee), operate and dispose of tangible and intangible personal property and real property, subject to the provisions of the Act.

(b) By recordation of the Plat(s), the Declarant has conveyed to the Association as Common Elements the private parking areas and streets, pocket parks, trails, ponds, and other areas identified on any recorded Plat of the Community as Common Elements, and the Association shall accept such Common Elements and thereafter maintain them, subject to the provisions of this Declaration.

(c) The Association shall be responsible for management, operation and control of the Common Elements, subject to any covenants and restrictions set forth in the Plat(s) transferring such property to the Association. The Board may adopt such reasonable rules regulating use of the Common Elements as it deems appropriate.

### 7.2. Maintenance of Area of Common Responsibility.

(a) The Association shall maintain the Area of Common Responsibility in accordance with the Community-Wide Standard. The Area of Common Responsibility shall include, but need not be limited to:

- all private streets and parking areas within Mountain Trace Townhomes, including Alan Road (unless and until such time as Alan Road is accepted by the City of Durango for perpetual maintenance pursuant to Section 15.2); and
- any community entry features, including a central mailbox kiosk, entry statement(s), signs, and pond, and associated landscaping, lighting, and equipment, if any, located at the entrance to the Community, whether situated on Common Elements or public right-of-way;
- landscaping, signage, street lights and sidewalks within the rights-of-way of public or private parking areas and streets or Common Elements within or adjacent to Mountain Trace Townhomes, except to the extent that such responsibility is assumed by the association for another planned community, or a governmental body or utility provider; and

- such portions of Units as are the Association's responsibility pursuant to Section 5.2 of this Declaration; and
- such portions of any additional property included within the Area of Common Responsibility as may be dictated by this Declaration or any contract or agreement for maintenance thereof entered into by the Association.

(b) The Association shall be responsible for repair, maintenance, replacement and snow removal on driveways and sidewalks within a reasonable period of time after a snowstorm ends, except that the Association may suspend or limit snow removal activity to the extent that it would exceed budgeted funds due to unexpectedly frequent or heavy snowfalls during a particular year, and the Association shall have no responsibility for de-icing driveways or sidewalks and no liability for personal injury as a result of failure to remove snow or ice on any particular schedule.

(c) The Association may maintain other property that it does not own, including, without limitation, property dedicated to the public, if the Board of Directors determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard.

(d) The Association shall not be liable for any damage or injury occurring on or arising out of the condition of property that it does not own except to the extent that it has been negligent in the performance of its maintenance responsibilities.

(e) Except as otherwise specifically provided in this Declaration, the costs associated with maintenance, repair and replacement of the Area of Common Responsibility shall be a Common Expense, subject to the right of the Association to seek reimbursement from the owner(s) of, or other Persons responsible for, certain costs pursuant to this Declaration, other recorded covenants, or agreements with the owner(s) thereof.

### 7.3. Insurance; Repair after Loss or Damage.

(a) Coverage and Premiums. The Association shall obtain and continue in effect, as a Common Expense, insurance as required under the By-Laws and by the Act.

(b) Restoring Damaged Improvements. In the event of damage to or destruction of property which the Association is obligated to insure, the Board or its duly authorized agent shall file and adjust all insurance claims and obtain reliable and detailed estimates of the cost of repairing or restoring the property to substantially the condition in which it existed prior to the damage, allowing for changes or improvements necessitated by changes in applicable building codes.

The Association shall cause damaged improvements on the Common Elements to be repaired or reconstructed unless a decision not to repair or reconstruct is approved within 60 days after the loss or damage by Owners of at least 67% of the Units, and during the Development and Sale Period, by the Declarant. If either the insurance proceeds or estimates of the loss, or both, are not available to the Association within such 60-day period, then the period shall be extended until

such funds or information are available. However, such extension shall not exceed 60 additional days. No Mortgagee shall have the right to participate in the determination of whether the damage or destruction to the Common Elements shall be repaired or reconstructed.

If a decision is made not to restore the damaged improvements and no alternative improvements are authorized, the affected property shall be cleared of all debris and ruins and thereafter shall be maintained by the Association in a neat and attractive, landscaped condition consistent with the Community-Wide Standard.

Any insurance proceeds remaining after paying the costs of repair or reconstruction, or after such settlement as is necessary and appropriate, shall be retained by the Association for the benefit of its Members and placed in a capital improvements account. This is a covenant for the benefit of Mortgagees and may be enforced by the Mortgagee of any affected Unit.

If insurance proceeds are insufficient to cover the costs of repair or reconstruction, the Board may, without a vote of the membership, levy Special Assessments to cover the shortfall.

#### 7.4. Compliance and Enforcement.

(a) Every Owner and occupant of a Unit shall comply with the Governing Documents. The Board may impose sanctions for violation of the Governing Documents as set forth in this Section and elsewhere in the Governing Documents.

(b) The Board may impose the following sanctions only after notice and a hearing in accordance with the procedures set forth in Article 8 of the By-Laws:

(i) imposing reasonable monetary fines which shall constitute a lien upon the violator's Unit; and

(ii) suspending the vote attributable to a violating Owner's Unit;

(iii) suspending the privilege of using any Common Elements;

(iv) suspending any services that the Association provides to an Owner or the Owner's Unit, during any period that the Owner is more than 30 days delinquent in paying any assessment or other charge owed to the Association or for a reasonable period for other violations of the Governing Documents; and

(v) requiring an Owner, at the Owner's expense, to perform maintenance or repairs, or to remove any structure, item, or improvement on such Owner's Unit in violation of the Governing Documents, and to restore the Unit to its previous condition and, upon failure of the Owner to do so, the Board or its designee may enter the property and perform such maintenance or repairs, or remove the violating structure, item, or improvement, and restore the property to substantially the same condition as it was in prior to such violation, and any such action shall not be deemed a trespass;

(vi) without liability to any Person, precluding any contractor, subcontractor, agent, employee or other invitee of an Owner who fails to comply with the terms and provisions of Article IV from continuing or performing any further activities in Mountain Trace Townhomes; and

(vii) recording a Notice of Violation and levying a Specific Assessment pursuant to Section 8.4 to cover costs which the Association incurs to bring a Unit into compliance with the Governing Documents, or costs incurred as a consequence of the conduct of an Owner or occupant of a Unit, his or her guests or invitees.

(c) In addition, the Association, acting through the Board or its designee, may take the following action to enforce the Governing Documents without the necessity of compliance with the procedures set forth in Article 8 of the By-Laws:

(i) exercising self-help in any situation which requires prompt action to avoid potential injury or damage or unreasonable inconvenience to other persons or their property (specifically including, but not limited to, the towing of vehicles that are in violation of parking rules and regulations); and/or

(ii) bringing suit at law or in equity to enjoin any violation or to recover monetary damages or both, subject to the procedures set forth in Article XII, if applicable.

(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, if the Association prevails, it shall be entitled to recover all costs, including, without limitation, attorneys fees and court costs, reasonably incurred in such action.

(e) The decision to pursue enforcement action in any particular case shall be left to the Board's discretion, except that the Board shall not be arbitrary or capricious in taking enforcement action. Without limiting the generality of the foregoing sentence, the Board may determine that, under the circumstances of a particular case:

(i) the Association's position is not strong enough to justify taking any or further action; or

(ii) the covenant, restriction or rule being enforced is, or is likely to be construed as, inconsistent with applicable law; or

(iii) although a technical violation may exist or may have occurred, it is not of such a material nature as to be objectionable to a reasonable person or to justify expending the Association's resources; or

(iv) it is not in the Association's best interests, based upon hardship, expense, or other reasonable criteria, to pursue enforcement action.

Such a decision shall not be construed a waiver of the right of the Association to enforce such provision at a later time under other circumstances or preclude the Association from enforcing any other covenant, restriction or rule.

(f) The Association, by contract or other agreement, may enforce applicable city ordinances and permit the City of Durango to enforce ordinances within Mountain Trace Townhomes for the benefit of the Association and its Members.

#### 7.5. Implied Rights: Board Authority.

The Association may exercise any right or privilege given to it expressly by the Governing Documents, the Act, or the Colorado Revised Nonprofit Corporation Act, or reasonably implied from or reasonably necessary to effectuate any such right or privilege. All rights and powers of the Association may be exercised by the Board without a vote of the membership except to the extent that the Governing Documents or Colorado law specifically require a vote of the membership.

The Board may institute, defend, settle, or intervene on behalf of the Association in mediation, binding or non-binding arbitration, litigation, or administrative proceedings in matters pertaining to the Area of Common Responsibility, enforcement of the Governing Documents, or any other civil claim or action. However, the Governing Documents shall not be construed as creating any independent legal duty to institute litigation on behalf of or in the name of the Association or its Members.

In exercising the rights and powers of the Association, making decisions on behalf of the Association, and conducting the Association's affairs, Board members shall be subject to, and their actions shall be judged in accordance with, the standards set forth in Article 6 of the By-Laws.

#### 7.6. Provision of Services to Units.

The Association may provide, or provide for, services and facilities for the Owners and their Units, and shall be authorized to enter into and terminate contracts or agreements with other entities, including Declarant, to provide such services and facilities. The Board may charge use or service fees for any such services and facilities provided at the option of an Owner, or may include the costs thereof in the Association's budget as a Common Expense and assess it as part of the General Assessment if provided to all Units. By way of example, such services and facilities might include trash collection, pest control service; cable, digital, satellite or similar television service; telecommunication and internet connection services; security monitoring; utilities; and other services and facilities.

Nothing in this Section shall be construed as a representation by Declarant or the Association as to what, if any, services shall be provided. In addition, the Board shall be permitted to modify or cancel existing contracts for services in its discretion, unless the provision of such

services is otherwise required by the Governing Documents. Non-use of services provided to all Owners or Units as a Common Expense shall not exempt any Owner from the obligation to pay assessments for such services.

7.7. Relationships with Other Properties.

The Association may enter into contractual agreements or covenants to share costs with any neighboring property to contribute funds for, among other things, shared or mutually beneficial property or services and/or a higher level of Common Elements maintenance.

7.8. Education and Training.

The Association shall, as a Common Expense, provide training sessions for the Owners on at least an annual basis as to the general operations of the Association and the rights and responsibilities of Owners, the Association, and the Board under the Governing Documents and Colorado law. The Association may retain the services of legal and management professionals and others as the Board deems appropriate to assist in or provide such training, which shall be offered at no charge to the Owners. The Board shall determine the manner, content, and timing of such training.

Article VIII Association Finances

8.1. Authority to Levy Assessments for Association Expenses.

(a) Purposes and Types. There are hereby created, and the Association is hereby authorized to levy, assessments for expenses incurred or anticipated to be incurred by the Association in performing its responsibilities and exercising its rights and powers under the Governing Documents. There shall be three types of assessments: (a) General Assessments, as described in Section 8.2; (b) Special Assessments as described in Section 8.3; and (d) Specific Assessments as described in Section 8.4. Each Owner, by accepting a deed or entering into a recorded contract of sale for any Unit, is deemed to covenant and agree to pay these assessments. Such assessments shall commence at the time and in the manner set forth in Section 8.5.

(b) Personal Obligation and Lien. All assessments, together with interest (computed from its due date at a rate of 10% per annum or such higher rate as the Board may establish by resolution, not to exceed 18% per annum), late charges as determined by Board resolution (subject to the limitations of Colorado law), costs, and reasonable attorneys' fees, shall be the personal obligation of each Owner, and a charge and continuing lien upon each Unit as provided in Section 8.6, until paid in full. Upon a transfer of title to a Unit, the grantee shall be jointly and severally liable for any assessments and other charges due at the time of conveyance. Further, as set forth in C.R.S. §38-33.3-316, a Mortgagee who obtains title to a Unit by exercising the remedies provided in its Mortgage may be liable for unpaid assessments that accrued prior to such acquisition of title.

Failure of the Board to fix assessment amounts or rates or to deliver or mail each Owner an assessment notice shall not be deemed a waiver, modification, or a release of any Owner from the

obligation to pay assessments. In such event, each Owner shall continue to pay General Assessments on the same basis as during the last year for which an assessment was made, if any, until a new assessment is levied, at which time the Association may retroactively assess any shortfall.

No Owner may exempt himself from liability for assessments by non-use of Common Elements, abandonment of his or her Unit, or any other means. The obligation to pay assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of assessments or set-off shall be claimed or allowed for any alleged failure of the Association or Board to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or improvements, or from any other action it takes.

Within fourteen (14) calendar days after receipt of a written request therefor, the Association shall furnish to any Owner liable for any type of assessment a certificate in writing signed by an Association officer setting forth the amount of any unpaid assessments or other charges levied on the Unit. Such certificate shall be binding on the Association and every Owner. The Association may require the advance payment of a reasonable processing fee for the issuance of such certificate.

## 8.2. Budgeting and Allocating Association Expenses.

(a) Preparation of Budget. At least 60 days before the beginning of each fiscal year, the Board shall prepare a budget of the estimated Common Expenses for the coming year, which shall include, in addition to any operating reserves, a reasonable contribution to a reserve fund for repair and replacement of any capital items which the Association is responsible for maintaining. In determining the amount of such reserve contribution, the Board shall take into account the number and nature of replaceable assets, the expected useful life of each, the expected repair or replacement cost, and the contribution required to fund the projected need by an annual contribution over the useful life of the asset.

The budget shall also reflect the sources and estimated amounts of funds to cover such expenses, which may include any surplus to be applied from prior years, any income expected from sources other than assessments levied against the Units, and the amount to be generated through the levy of assessments.

(b) Calculation of General Assessments. Upon determining the total amount of income required to be generated through the levy of General Assessments, the Board shall establish the General Assessment per Unit in accordance with the Allocated Interests .

Declarant may, but shall not be obligated to, reduce the General Assessment for any fiscal year by payment of a subsidy. Any such subsidy may be treated as a contribution, an advance against future assessments due from Declarant, or a loan, in Declarant's discretion. Any such subsidy and the characterization thereof shall be conspicuously disclosed as a line item in the income portion of the budget. Payment of such subsidy in any year shall not obligate Declarant to

continue payment of such subsidy in future years, unless otherwise provided in a written agreement between the Association and Declarant.

(c) Notice of Budget and Assessment; Right to Disapprove. Within 30 days after the Board adopts any budget, the Board shall send a summary of the budget, together with notice of the amount of the General Assessment to be levied pursuant to such budget, to the Owner of each Unit. The notice shall announce the date set for a meeting of the Owners to consider such budget. The date of the meeting shall be not less than 14 nor more than 50 days after the date of mailing or other delivery of the summary of the budget. The Common Expense budget shall automatically become effective unless vetoed at the meeting, whether or not a quorum is present, by Owners representing at least 75% of the total votes in the Association and by the Class "B" Member, as long as the Class "B" Membership exists.

If any proposed budget is disapproved or the Board fails for any reason to determine the budget for any year, then the budget most recently in effect, shall continue in effect until a new budget takes effect in accordance with the above procedures without veto by the members.

(d) Budget Revisions. The Board may revise the budget and adjust the General Assessment from time to time during the year, subject to the notice and ratification requirements set forth above.

### 8.3. Special Assessments.

In addition to other authorized assessments, the Association may levy Special Assessments from time to time to cover unbudgeted expenses or expenses in excess of those budgeted under Section 8.2. Except as otherwise specifically provided in this Declaration, any Special Assessment shall require a notice of meeting as set forth in 8.2(c) as set forth in this Declaration and the affirmative vote or written consent of persons entitled to cast more than 50% of the total votes allocated to Units which will be subject to such Special Assessment, and during the Development and Sale Period, the written consent of Declarant. Special Assessments shall be levied equally on all Units subject to such assessment.

### 8.4. Specific Assessments.

The Association shall have the power to levy Specific Assessments against a particular Unit as follows:

(a) to cover the costs, including overhead and administrative costs, of providing services to the Unit upon request of the Owner pursuant to any menu of special services which the Association may offer (which might include the items identified in Section 7.7). Specific Assessments for special services may be levied in advance of the provision of the requested service;

(b) for monetary fines imposed pursuant to Section 7.4 and to cover costs incurred in bringing the Unit into compliance with the Governing Documents, or costs incurred as a consequence of the conduct of the Owner or occupants of the Unit, their agents, contractors,

employees, licensees, invitees, or guests; provided, the Board shall give the Unit Owner prior written notice and an opportunity for a hearing in accordance with the By-Laws, before levying any Specific Assessment under this subsection (b); and

(c) pursuant to Section 8.7.

#### 8.5. Payment of Assessments.

(a) Except as otherwise provided herein, the obligation to pay assessments shall commence as to each Unit on the first day of the month following: (i) the month in which the Unit is made subject to this Declaration, or (ii) the month in which the Board first determines a budget and levies assessments pursuant to this Article, whichever is later.

(b) Assessments shall be paid in such manner and on such dates as the Board may establish. The Board may require advance payment of assessments at closing of the transfer of title to a Unit and impose special requirements for Owners with a history of delinquent payment. Unless the Board otherwise provides, the General Assessment shall be payable in twelve, equal monthly installments, due on the first day of each month. If any Owner is delinquent in paying any assessments or other charges levied on his Unit, the Board may require the outstanding balance on all assessments to be paid in full immediately.

(c) The Association may assign its right to receive General Assessments from Owners as collateral for a loan that is obtained by the Association in accordance with this Declaration, the Bylaws, and all applicable Colorado law.

#### 8.6. Lien for Assessments.

(a) The Association shall have a lien against each Unit to secure payment of assessments, as well as interest, late charges (subject to the limitations of Colorado law), and costs of collection (including attorneys fees and expenses). Subject to the limitations of Colorado law, such lien shall be superior to all other liens, except as set forth in C.R.S. §38-33.3-316(2) which includes: (i) the liens of all taxes, bonds, assessments, and other levies which by law would be superior, and (ii) the lien or charge of any recorded first Mortgage (meaning any recorded Mortgage with first priority over other Mortgages) made in good faith and for value; except that the Association's lien shall have priority over any such Mortgage to the extent of assessments that would have become due in the absence of acceleration during the six months immediately preceding any judicial or nonjudicial foreclosure of the Mortgage.

Although no further action is required to create or perfect the lien, the Association may, as further evidence and notice of the lien, execute and record a document setting forth as to any Unit the amount of the delinquent sums due the Association at the time such document is executed and the fact that a lien exists to secure the repayment thereof. However, the failure of the Association to execute and record any such document shall not affect the validity, enforceability, or priority of the lien.

(b) If any assessment or other charge due to the Association remains unpaid for a period of 30 days or longer after the due date thereof, the Association may foreclose its lien through judicial or, to the extent allowed by law, nonjudicial foreclosure proceedings in accordance with Colorado law, as it may be amended

(c) The Association may bid for the Unit at the foreclosure sale and acquire, hold, lease, mortgage, and convey the Unit. While a Unit is owned by the Association following foreclosure: (a) no right to vote shall be exercised on its behalf; (b) no assessment shall be levied on it; and (c) each other Unit shall be charged, in addition to its usual assessment, its pro rata share of the assessment that would have been charged such Unit had it not been acquired by the Association. The Association may sue for unpaid assessments and other charges authorized hereunder without foreclosing or waiving the lien securing the same, in addition to pursuing any and all remedies allowed by law to enforce the lien.

(d) Sale or transfer of any Unit shall not affect the assessment lien or relieve such Unit from the lien for any subsequent assessments. However, the sale or transfer of any Unit pursuant to foreclosure of the first Mortgage shall extinguish the lien as to any installments of such assessments due prior to the Mortgagee's foreclosure. The subsequent Owner of the foreclosed Unit shall not be personally liable for assessments on such Unit due prior to such acquisition of title. Such unpaid assessments shall be deemed to be Common Expenses collectible from Owners of all Units subject to assessment under Section 8.5, including such acquirer, its successors and assigns.

#### 8.7. Capitalization of Association.

(a) Authority. Except as provided in Section 8.7(b), upon each transfer of record title to a Unit, a contribution shall be made by or on behalf of the new Owner to the working capital of the Association in the amount of Four Hundred Fifty Dollars (\$450.00). This amount shall be in addition to, not in lieu of, the annual General Assessment and shall not be considered an advance payment of such assessments, but rather shall be considered a Specific Assessment secured by the Association's lien for assessments under Section 8.6. This amount shall be deposited into the purchase and sales escrow and disbursed therefrom to the Association for use in covering operating expenses and other expenses incurred by the Association pursuant to this Declaration and the By-Laws.

(b) Exempt Transfers. The following transfers shall be exempt from the contribution required under subsection (a) of this Section:

- (i) to Declarant;
- (ii) by a co-owner to any Person who was a co-owner immediately prior to such transfer;
- (iii) to the Owner's estate, surviving spouse or child upon the death of the Owner;

(iv) to an entity wholly owned by the grantor; provided, upon any subsequent transfer of an ownership interest in such entity, the contribution shall become due; or

(v) to an institutional lender pursuant to a Mortgage or a deed in lieu of a foreclosure or upon a transfer pursuant to a foreclosure sale under a Mortgage.

#### Article IX Expansion of the Community

(a) Declarant's Right to Annex. Declarant reserves the right to annex to the Common Interest Community all or any part of the Annexable Property as described on Exhibit B (hereinafter "Annexable Property"). Each Owner of a Unit hereunder hereby grants to Declarant the right to annex all or any part of the Annexable Property to the Common Interest Community. Alternatively, Declarant shall have the right and is authorized to convey portions of the Annexable Property, prior to and instead of annexing them to the Common Interest Community, to such third party or parties as Declarant may deem appropriate, whether for purposes consistent with this Declaration or otherwise. Declarant makes no assurances that all or any portion of the Annexable Property will be added to the Common Interest Community and Declarant reserves the right to annex all or any portion of the Annexable Property to the Common Interest Community in any order it deems appropriate in its sole and absolute discretion.

(b) Annexation Procedure. The annexation of additional real property to the Common Interest Community shall be accomplished by the recording by Declarant with the Clerk and Recorder of La Plata County of a Supplemental Declaration containing a legal description of the land area to be added to the Common Interest Community and amending this Declaration accordingly, together with a Supplemental Plat thereof. The Supplemental Declaration shall assign an identifying number to each new Unit created thereby. The Supplemental Declaration shall also describe any Common Elements thereby created and any Limited Common Elements thereby created, and in the case of Limited Common Elements, the Supplemental Declaration shall designate the Unit(s) to which each is allocated. The annexation of the Annexable Property may be accomplished by successive Supplemental Declarations, in no particular or pre-established order, and may provide that property annexed thereby (the "Annexed Property") is phased so that it is made subject to this Declaration at different times. Upon recording of a Supplemental Declaration, the Annexed Property described therein shall be subject to all of the covenants, conditions, restrictions, limitations, reservations, exceptions, equitable servitudes, and other provisions set forth in this Declaration, except to the extent specifically stated in the Supplemental Declaration or as modified thereby. Any such Supplemental Declaration may impose on the Annexed Property described therein additional covenants, conditions, restrictions, limitations, reservations, exceptions, equitable servitudes, and other provisions than those set forth in this Declaration, taking into account the unique and particular aspects of the Annexed Property covered thereby and of the proposed development thereof. Furthermore, Declarant shall have the right to reserve in such Supplemental Declaration any development rights that Declarant considers necessary or appropriate, provided that such provision shall not extend the termination date for the exercise of Declarant's development rights as set forth in this Declaration.

Article X Additional Rights Reserved to Declarant

10.1. Development and Sales Activities.

During the Development and Sale Period:

(a) Declarant may conduct and maintain on Common Elements, public rights-of-way within or adjacent to Mountain Trace Townhomes, or on property it owns in Mountain Trace Townhomes, such facilities and activities as, in Declarant's sole opinion, may be reasonably required, convenient, or incidental to the construction or sale of Units, including, but not limited to, business offices, signs, model units, and sales offices. Declarant shall have easements for access to and use of such facilities at no charge. Upon termination of such use, the Declarant shall, at its own expense, restore any portion of the Common Elements disturbed by its activities pursuant to this Section to a condition consistent with the Community-Wide Standard.

(b) Declarant and its employees, agents and designees shall have a right of access and use and an easement over and upon all of Mountain Trace Townhomes for the purpose of making, constructing and installing such improvements to Mountain Trace Townhomes as it deems appropriate in its sole discretion.

(c) In addition to the other development rights and special Declarant rights reserved to Declarant hereunder, Declarant reserves the right to construct, erect, install, and maintain on the Common Elements solar panels and related facilities reasonably necessary for a solar energy system intended to supply the power for the street lights and irrigation systems within Mountain Trace Townhomes.

10.2. Right to Veto Changes in Standards.

During the Development and Sale Period, the Declarant shall have the right to veto any amendment to or modification of the Restrictions and Rules.

10.3. Right to Transfer or Assign Declarant Rights.

Any or all of Declarant's special rights and obligations set forth in this Declaration or the By-Laws may be transferred in whole or in part to other Persons; provided, the transfer shall not reduce an obligation nor enlarge a right beyond that which Declarant has under this Declaration or the By-Laws. No such transfer or assignment shall be effective unless it is in a written instrument signed by Declarant and the transferee and recorded. The foregoing sentence shall not preclude Declarant from permitting other Persons to exercise, on a one time or limited basis, any right reserved to Declarant in this Declaration where Declarant does not intend to transfer such right in its entirety, and in such case it shall not be necessary to record any written assignment unless necessary to evidence Declarant's consent to such exercise.

10.4. Exclusive Rights To Use Name of Community.

No Person other than Declarant and its authorized agents shall use the name "Mountain Trace Townhomes," any derivative of such names, or associated logos or depictions, in any electronic, printed or promotional media or material without Declarant's prior written consent. However, Owners may use the name "Mountain Trace Townhomes" in printed or promotional matter where such term is used solely to specify that particular property is located within Mountain Trace Townhomes. The Association shall also be entitled to use the words "Mountain Trace Townhomes" in its name.

10.5. Right to Notice of Design or Construction Claims.

No Person shall retain an expert for the purpose of inspecting the design or construction of any structures or improvements within Mountain Trace Townhomes in connection with or in anticipation of any potential or pending claim, demand or litigation involving such design or construction unless Declarant has first been notified in writing and given an opportunity to meet with the owner of the property to discuss the owner's concerns and conduct its own inspection pursuant to the rights reserved in Section 11.5.

10.6 Termination of Declarant Rights. As to all Declarant rights reserved in this Declaration, Declarant offers no assurances regarding the manner or order in which it may exercise such reserved rights enumerated. The time limits within which each of these rights must be exercised are the later in time of: (i) the time limit set forth in the applicable section of this Declaration pertaining to such right; or (ii) January 1, 2050.

Article XI Easements

11.1. Easements in Common Elements.

Declarant grants to each Owner a nonexclusive right and easement of use, access, and enjoyment in and to the Common Elements, subject to:

- (a) the Governing Documents and any other applicable covenants;
- (b) any restrictions or limitations contained in any deed conveying such property to the Association;
- (c) the Board's right to:
  - (i) adopt rules regulating use and enjoyment of the Common Elements, including rules regulating or limiting guest and visitor access;
  - (ii) dedicate or transfer all or any part of the Common Elements, subject to Section 15.2;

(iii) mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred, subject to the approval requirements set forth in Section 15.2.

Any Owner may extend his or her right of use and enjoyment to the members of his or her family, lessees, and social invitees, as applicable, subject to reasonable regulation by the Board. An Owner who leases his or her Unit shall be deemed to have assigned all such rights to the lessee of such Unit for the period of the lease, except that the Owner shall retain a right of access to the leased Unit.

11.2. Easements of Encroachment and Fence Maintenance.

(a) Declarant grants reciprocal appurtenant easements of encroachment, and for maintenance and use of any permitted encroachment, between each Unit and any adjacent Common Elements or right-of-way and between adjacent Units due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed, or altered thereon (in accordance with the terms of these restrictions) to a distance of not more than one foot (1'), as measured from any point on the common boundary along a line perpendicular to such boundary. However, in no event shall an easement for encroachment exist if such encroachment occurred due to reckless disregard for the boundary or willful and knowing conduct on the part of, or with the knowledge and consent of, the Person claiming the benefit of such easement.

(b) Declarant grants reciprocal appurtenant easements of encroachment, and for maintenance and use of any permitted encroachment, between each Unit and any adjacent Common Elements or right-of-way and between adjacent Units, as reasonably necessary to install, maintain, repair and replace any fence or retaining wall constructed on or within one foot (1') of the boundary line of any Unit.

11.3. Easements for Utilities, Etc.

(a) Installation and Maintenance. Declarant reserves for itself, during the Development and Sale Period, and grants to the Association and all utility providers, perpetual non-exclusive easements throughout Mountain Trace Townhomes (but not through a Unit) to the extent reasonably necessary for the purpose of:

(i) installing utilities and infrastructure to serve Mountain Trace Townhomes, cable and other systems for sending and receiving data and/or other electronic signals, security and similar systems, walkways, pathways and trails, drainage systems, street lights and signage on property which Declarant owns or within public rights-of-way or easements reserved for such purpose on recorded plats or in other recorded documents; and

(ii) inspecting, maintaining, repairing and replacing the utilities, infrastructure and other improvements described in Section 11.3(a)(i); and

(iii) access to read utility meters.

(b) Specific Easements. Declarant reserves for itself the non-exclusive right and power to grant and record such specific easements as may be necessary, in the sole discretion of Declarant, in connection with the orderly development of any property described in Exhibits "A" and "B." The Owner of any property to be burdened by any easement granted pursuant to this subsection (b) shall be given written notice in advance of the grant. The location of the easement shall be subject to the written approval of the Owner of the burdened property, which approval shall not unreasonably be withheld, delayed or conditioned.

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

#### 11.4. Easements for Maintenance, Emergency and Enforcement.

Declarant grants to the Association easements over Mountain Trace Townhomes as necessary to enable the Association to fulfill its maintenance responsibilities under Sections 5.2 and 7.2. The Association shall also have the right, but not the obligation, to enter upon any Unit for emergency, security, and safety reasons, to perform maintenance and to inspect for the purpose of ensuring compliance with and enforce the Governing Documents. Such right may be exercised by any member of the Board and its duly authorized agents and designees, and all emergency personnel in the performance of their duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner.

#### 11.5. Easement to Inspect and Right to Correct.

Declarant reserves for itself and others it may designate the right to inspect, monitor, test, redesign, and correct any structure, improvement, installation, or condition which may exist on any portion of the property within Mountain Trace Townhomes, including Units, and a perpetual, nonexclusive easement of access throughout Mountain Trace Townhomes to the extent reasonably necessary to exercise such right. Except in an emergency, entry onto a Unit shall be only after reasonable notice to the Owner and no entry into a Unit shall be permitted without the consent of the Owner, which consent shall not unreasonably be withheld. The person exercising this easement shall promptly repair, at such person's own expense, any damage resulting from such exercise.

## Article XII Dispute Resolution

### 12.1 Statement of Clarification.

Without modifying or restricting the scope of this Article and as a statement of clarification only, nothing contained in this Article is intended to prevent the parties from attempting to resolve any differences between them through the normal course of business and communications. It is only when the parties are unable to resolve their differences and they wish to proceed further through the assertion of a "Claim" as defined herein, that the Mandatory Dispute Resolution provisions contained in this Article are activated.

### 12.2 Alternative Method for Resolving Disputes.

Declarant; the Association, its officers and directors; all Owners; and any Person not otherwise subject to this Declaration but who agrees to submit to this Article (each such entity being referred to as a "Bound Party"), agree to encourage the amicable resolution of disputes involving the Community and all of its improvements without the emotional and financial costs of litigation. Accordingly, each Bound Party covenants and agrees to submit all Claims each may have to the procedures set forth in this Article 12 and not to a court of law.

### 12.3 Claims.

Except as specifically excluded in Section 12.4, all claims, disputes and other controversies arising out of or relating to the:

- (a) interpretation, application or enforcement of this Declaration;
- (b) land development, design and/or construction of the Improvements within the Community and/or any alleged defect therein;
- (c) rights, obligations and duties of any Bound Party under this Declaration; and/or
- (d) breach thereof,

all of which are hereinafter referred to as a "Claim", shall be subject to and resolved by submitting the Claim to mediation and, if not resolved during mediation, shall be resolved by mandatory binding arbitration all in accordance with Article 12 of this Declaration and not in a court of law.

### 12.4 Claims Subject to Approval.

Unless Owners to whom at least sixty-seven percent of the votes in the Association are allocated agree to the contrary, the following shall not be Claims and shall not be subject to the provisions of this Article 12:

(a) any suit by the Association against any Bound Party to enforce the provisions regarding assessments (Article VIII);

(b) any suit by the Association or Declarant to obtain a temporary restraining order or injunction and such other ancillary relief as the court may deem necessary in order for the Association or Declarant to act under and enforce the provisions of this Declaration;

(c) any suit by an Owner to challenge the actions of Declarant, the Association, Design Review, or any other committee with respect to the enactment and application of standards or rules or the approval or disapproval of plans pursuant to the provisions of Article IV of this Declaration;

(d) any suit between or among Owners, which does not include Declarant or the Association as a party;

(e) any suit in which any indispensable party is not a Bound Party.

#### 12.5 Notice of Claim

Any Bound Party having a Claim ("Claimant") against any other Bound Party ("Respondent") shall submit all of his or her Claims by written notification delivered to each Respondent, stating plainly and concisely:

(a) the nature of the Claim, including the Persons involved and Respondent's role in the Claim;

(b) the legal or contractual basis of the Claim (i.e., the specific authority out of which the Claim arises); and

(c) the specific relief and/or proposed remedy sought.

If the Claim is based on the land development, design and/or construction of the Improvements within the Community then the notice required by this Section 12.5 shall constitute the notice required under § 13-20-803.5, C.R.S., and shall comply with the provisions thereof.

#### 12.6 Timely Initiation.

All Claims shall be initiated by the Claimant within a reasonable time after the Claim has arisen, and in no event shall it be made after the date when institution of legal or equitable proceedings based on such Claim would be barred by the applicable statute of limitations or repose.

### 12.7 Right to be Heard

Upon receipt of a Claim and prior to the Association or any Member asserting the Claim commencing any arbitration or judicial or administrative proceeding which may fall within the scope of this Article 12, Declarant shall have the right to be heard by the Claimant, affected Owners, and Association in an effort to resolve the Claim.

### 12.8 Right to Inspect.

If the Claim is based on the land development, design and/or construction of the Improvements within the Community then, subject to Owner's prior written approval which shall not be unreasonably withheld, Declarant shall have the right to access the affected area at a reasonable time(s) for purposes of inspecting the condition complained of including but not limited to, any investigative or destructive testing.

The Association shall have the same right to inspect for any Claims by Owner against the Association in accordance with the above.

In the exercise of the inspection rights contained herein, the party causing the inspection to be made ("Inspecting Party") shall:

- (a) be careful to avoid any unreasonable intrusion upon, or harm, damage or costs to the other party including, without limitation, using its best efforts to avoid causing any damage to, or interference with, any improvements on the property being inspected ("Property");
- (b) minimize any disruption or inconvenience to any person who occupies the Property;
- (c) remove daily all debris caused by the inspection and located on the Property;
- (d) in a reasonable and timely manner, at the Inspecting Party's sole cost and expense, promptly remove all equipment and materials from the Property and repair and replace all damage, and restore the Property to the condition of the Property as of the date of the inspection, unless the Property is to be immediately repaired.

The repair, replacement and restoration work shall include, without limitation, the repair or replacement to any structures, driveways, fences, landscaping, utility lines or other improvements on the Property that were damaged, removed or destroyed by Inspecting Party. In the event the Inspecting Party wishes to make appropriate and necessary repairs to resolve the subject matter of the Claim, the same shall be made upon terms and conditions acceptable to all affected parties.

The Inspecting Party shall not permit any claim, lien or other encumbrance arising from the exercise of its right to inspect to accrue against or attach to the Property. The Inspecting Party shall indemnify, defend and hold harmless the owners, tenants, guests, employees and agents,

against any and all liability, claims, demands, losses, costs and damages incurred, including court costs and attorney's fees, resulting from any breach of this Article by the Inspecting Party.

#### 12.9 Good Faith Negotiations

The Parties shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. Any party may appoint a representative to assist such Party in negotiations.

#### 12.10 Mediation

If the Parties do not resolve the Claim through negotiations within thirty days after the date of submission of the Claim to Respondent(s), as may be extended upon agreement of all affected Parties, Claimant shall have 30 additional days to submit the Claim to mediation under the auspices of an independent mediation service acceptable to all parties. If Claimant does not submit the Claim to mediation within such time, or does not appear for the mediation, Claimant shall be deemed to have waived the Claim, and all Respondent(s) shall be released and discharged from any and all liability to Claimant on account of such Claim.

(a) Any settlement of the Claim through mediation shall be documented in writing by the mediator and signed by the Parties.

(b) If the Parties do not settle the Claim within 30 days after submission of the matter to the mediation, or within such other time as determined by the mediator or agreed to by the Parties, the mediator shall issue a notice of termination of the mediation proceedings ("Termination of Mediation"). The Termination of Mediation notice shall set forth that the Parties are at an impasse and the date that mediation was terminated.

(c) Within ten days after issuance of a Termination of Mediation, the Claimant shall make a final written Settlement Demand to the Respondent(s) and the Respondent(s) shall make a final written Settlement Offer to the Claimant. If the Claimant fails to make a Settlement Demand, Claimant's original Claim shall constitute the Settlement Demand. If the Respondent(s) fail to make a Settlement Offer, Respondent(s) shall be deemed to have made a "zero" or "take nothing" Settlement Offer.

(d) Each Party shall bear its own costs, including attorney's fees, and each Party shall share equally all charges rendered by the mediator(s) and all filing fees and costs of conducting the mediation proceeding.

(e) If the Parties agree to a resolution of any Claim through negotiation or mediation in accordance with this Article 12 and any Party thereafter fails to abide by the terms of such agreement, then any other Affected Party may file suit or initiate administrative proceedings to enforce such agreement without the need to again comply with the procedures set forth in this Article 12. In such event, the Party taking action to enforce the agreement shall be entitled to recover from the non-complying Party all costs incurred in enforcing such agreement, including, without limitation, attorney's fees and court costs.

#### 12.11 Consensus for Association Arbitration or Litigation.

Except as provided in this Article 12, the Association shall not commence any arbitration or a judicial or administrative proceeding unless Owners to which at least sixty-seven percent of the votes in the Association are allocated agree to such proceedings.

This paragraph 12.11 shall not apply, however, to:

(a) actions brought by the Association or Declarant to enforce the terms of this Declaration (including, without limitation, the foreclosure of liens); or

(b) the imposition and collection of Assessments, fines, costs and attorney fees, or other specific amounts due under the Declaration.

12.12 Arbitration. If the Parties do not resolve the Claim through mediation, either party may commence an arbitration pursuant to the provisions of §§ 13-22-101, *et seq.*, C.R.S. The award rendered by the arbitrator shall be final and binding, may be filed with any court of competent jurisdiction in accordance with applicable law and judgment obtained thereon, and execution may issue. The party seeking enforcement shall be entitled to all reasonable attorney's fees and costs incurred in the enforcement of the award. The arbitrator shall have authority, in the sound exercise of discretion, to award the prevailing party such party's costs and expenses, including reasonable attorney's fees. The Association or the Owner shall notify the Declarant prior to retaining any person or entity as an expert witness for purposes of any arbitration or authorized litigation.

#### 12.13 Binding Effect.

This Article 12 and the obligation to arbitrate shall be specifically enforceable under the applicable arbitration laws of the State of Colorado. The arbitration award shall be final and binding, and judgment may be entered upon it in any court of competent jurisdiction to the fullest extent permitted under the laws of the State of Colorado.

#### 12.14 Amendment.

This Article XII shall not be amended unless such amendment is approved by Owners to whom at least sixty-seven percent of the votes in the Association are allocated.

### Article XIII Mortgagee Provisions

#### 13.1. Notices of Action.

An institutional holder, insurer, or guarantor of a first Mortgage which provides a written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the street address of the Unit to which its Mortgage relates (thereby becoming an "Eligible Mortgage Holder"), will be entitled to timely written notice of:

(a) Any condemnation loss or any casualty loss which affects a material portion of Mountain Trace Townhomes or which affects any Unit on which there is an Eligible Mortgage held, insured, or guaranteed by such Eligible Mortgage Holder; or

(b) Any delinquency in the payment of assessments or charges owed for a Unit subject to the Eligible Mortgage of such Eligible Mortgage Holder, where such delinquency has continued for a period of 60 days, or any other violation of the Governing Documents relating to such Unit or the Owner or occupant which is not cured within 60 days; or

(c) Any lapse, cancellation, or material modification of any insurance policy maintained by the Association; or

(d) Any proposed action that would require the consent of a specified percentage of Eligible Mortgage Holders.

### 13.2. No Priority.

No provision of this Declaration or the By-Laws gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any Unit in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Elements.

### 13.3. Notice to Association.

Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Unit.

## Article XIV Changes in Ownership of Units

### 14.1. Notice of Transfer.

Any Owner desiring to sell or otherwise transfer title to his or her Unit shall give the Board at least seven days' prior written notice of the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the Board may reasonably require. The Person transferring title shall continue to be jointly and severally responsible with the Person accepting title for all obligations of the Owner, including assessment obligations, until the date upon which the Board receives such notice, notwithstanding the transfer of title.

### 14.2. Administrative Transfer Fee.

The Association may charge an "Administrative Transfer Fee" on transfer of title to each Unit to cover the administrative expenses associated with updating the Association's records. Any such Administrative Transfer Fee shall be reasonably determined by the Board to cover its costs, including, but not limited to, any fees charged for updating records by a management company retained by the Association.

## Article XV Changes in Common Elements

### 15.1. Partition.

Except as permitted in this Declaration, the Common Elements shall remain undivided, and no Person shall bring any action seeking the partition of any portion of the Common Elements without the written consent of persons entitled to cast at least 75% of the Class "A" votes in the Association and the written consent of the Declarant, during the Development and Sale Period. This Section shall not prohibit the Board from acquiring and disposing of tangible personal property nor from acquiring and disposing of real property which may or may not be subject to this Declaration, subject to such approval as may be required under Section 15.2.

### 15.2. Mortgaging, Conveyance or Dedication of Common Elements.

The Association may dedicate any Common Elements to the City of Durango, or to any other local, state, or federal governmental or quasi-governmental entity, upon approval of the Board and, during the Development and Sale Period, the written consent of the Declarant. Otherwise, the Association may subject Common Elements to a security interest, or may transfer or convey Common Elements only upon the written direction of persons entitled to cast at least 75% of the total Class "A" votes in the Association and the Declarant during the Development and Sale Period. The proceeds from the sale or financing of Common Elements shall be an asset of the Association to be used as the Board determines. No sale or encumbrance of Common Elements may deprive any Unit of rights of access or support.

## Article XVI Amendment of Declaration

### 16.1. By Declarant.

In addition to specific amendment rights granted elsewhere in this Declaration, until termination of the Class "B" Control Period, Declarant may unilaterally amend this Declaration for any purpose. Thereafter, until termination of the Development and Sale Period, Declarant may unilaterally amend this Declaration for the purpose of: (a) bringing any provision into compliance with any applicable governmental statute, rule, regulation, or judicial determination; (b) enabling any reputable title insurance company to issue title insurance coverage on the Units; (c) enabling any institutional or governmental lender, purchaser, insurer or guarantor of mortgage loans to make, purchase, insure or guarantee mortgage loans on the Units; (d) complying with the requirements of any state or federal law or any local, state or federal governmental agency. However, any unilateral amendment by Declarant pursuant to this Section shall not materially adversely affect the allocation of voting rights or assessment burdens among the Units or title to any Unit unless the Owner shall consent in writing; or (e) correcting typographical errors or inadvertent errors in this Declaration and Plat, including surveying and platted errors and omissions.

16.2. By Members.

Except as otherwise specifically provided above and elsewhere in this Declaration, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of persons entitled to cast at least 67% of the total Class "A" votes in the Association, including at least 67% of the Class "A" votes held by Members other than Declarant, and during the Development and Sale Period, the Declarant's consent.

Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

16.3. Validity and Effective Date.

No amendment may remove, revoke, or modify any right or privilege of Declarant or the Class "B" Member without the written consent of Declarant or the Class "B" Member, respectively (or the assignee of such right or privilege).

If an Owner consents to any amendment to this Declaration or the By-Laws, it will be conclusively presumed that such Owner has the authority to consent, and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment.

Any amendment shall become effective upon recording, unless a later effective date is specified in the amendment. Any procedural challenge to an amendment must be made within six months of its recordation or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of this Declaration.

16.4. Exhibits.

Exhibits "A" "B" and "C" attached to this Declaration is incorporated by this reference and amendment of such exhibit shall be governed by this Article. All other exhibits are attached for informational purposes and may be amended as provided therein or in the provisions of this Declaration which refer to such exhibits.

Article XVII Termination of Declaration

This Declaration may be terminated only upon recording a termination agreement signed by the then Owners of at least 80% of the Units. Nothing in this Section shall be construed to permit termination of any easement created in this Declaration without the consent of the holder of such easement.



EXHIBIT "A"

Land Initially Submitted

Phase 1 of Mountain Trace Townhomes according to the recorded Mountain Trace Townhomes Phase 1 As-Built Plat filed for record September \_\_\_\_\_, 2008 under Reception No. \_\_\_\_\_, County of La Plata, State of Colorado.

EXHIBIT "B"

Annexable Property

All property depicted as "future phases", "future development property", or similar designation on the plat of Mountain Trace Townhomes Phase 1 As-Built Plat filed for record September \_\_\_\_\_, 2008 under Reception No. \_\_\_\_\_, County of La Plata, State of Colorado

EXHIBIT "C"

Table of Allocated Interests

The Allocated Interests are determined in accordance with the average gross square footage per Unit floor plan type. The average gross square footages per Unit per floor plan type are as follows:

- "A" Unit: 1,201 square feet
- "B" Unit: 1,461 square feet
- "C" Unit: 1,973 square feet
- "D" Unit: 2,132 square feet
- "E" Unit: 2,429 square feet

Unit Number	Square Footage (Rounded; From Plat)	Allocated Interest (%)
101	2,132	9.7
102	1,201	5.5
103	1,973	9.0
104	2,429	11.0
105	1,973	9.0
106	2,132	9.7
1501	1,461	6.7
1502	2,132	9.7
1503	1,973	9.0
1504	2,429	11.0
1505	2,132	9.7
TOTALS:	21,967	100%

## EXHIBIT "D"

### NOTICE

These are the initial Restrictions and Rules for Mountain Trace Townhomes and are intended to evolve with the needs of the community. Subsequent amendments, modifications or supersession of these Restrictions and Rules may not be recorded. It is the responsibility of each Owner to obtain and comply with the most current version of these Restrictions and Rules. Current Restrictions and Rules may be obtained from Mountain Trace Homeowners Association or its designated agent.

### Initial Restrictions and Rules

The following restrictions shall apply to all of Mountain Trace Townhomes until such time as they are superseded, amended, modified, repealed or limited pursuant to Article III of the Declaration.

1. General. The properties submitted to this Declaration shall be used only for residential and related purposes (including home occupation and office) consistent with this Declaration. Such purposes may include, without limitation, an information center and/or a sales office for any real estate broker retained by Declarant to assist in the sale of property described in Exhibit "A," offices for any property manager retained by the Association, business offices for Declarant and the Association, and public facilities.

2. Restricted Activities. The following activities are prohibited within Mountain Trace Townhomes unless expressly authorized by, and then subject to such conditions as may be imposed by, the Board of Directors:

(a) Parking of any vehicles on private streets or private thoroughfares within Mountain Trace Townhomes, or parking of commercial vehicles or equipment, mobile homes, recreational vehicles, trailers, stored vehicles or inoperable vehicles in places other than enclosed garages except temporarily during loading and unloading; provided, construction, service and delivery vehicles shall be exempt from this provision for such period of time as is reasonably necessary to provide service or to make a delivery to a Unit or the Common Elements. For purposes of this provision, "commercial vehicles" shall be defined as trucks or vans with commercial writing on their exteriors or vehicles primarily used or designed for a commercial purpose, and vehicles with advertising signage attached or displayed on such vehicle's exterior, but shall not include passenger cars with identifying decals or painted lettering not exceeding a total area of one square foot in size, or official vehicles owned by governmental or quasi-governmental bodies meeting the criteria set forth in Section 38-33.3-106.5(1)(d) of the Act; and

(b) Those pets which are permitted to roam free, or, in the sole discretion of the Board, make objectionable noise, endanger the health or safety of, or constitute a nuisance or inconvenience to the occupants of other Units shall be removed upon request of the Board. If the

pet owner fails to honor such request, the Board may remove the pet. Dogs shall be kept on a leash or otherwise confined in a manner acceptable to the Board whenever outside the dwelling. Owners shall clean up after their pets at all times and in all places within the Community. Pets shall be registered, licensed and inoculated as required by law; and

(c) Any activity which emits foul or obnoxious odors outside the Unit or creates an unreasonable level of noise or other conditions which tend, in the Board's judgment, to unreasonably disturb the peace or threaten the safety of the occupants of other Units (this paragraph shall not preclude normal and customary use of power tools, lawn mowers, and other yard maintenance equipment); and

(d) Any activity which violates local, state or federal laws or regulations; however, the Board shall have no obligation to take enforcement action in the event of a violation; and

(e) Pursuit of hobbies or other activities which tend to cause an unclean, unhealthy or untidy condition to exist outside of enclosed structures on the Unit; and

(f) Any noxious or offensive activity which in the reasonable determination of the Board tends to cause embarrassment, discomfort, annoyance, or nuisance to persons using the Common Elements or to the occupants of other Units; and

(g) Exterior fires or outside burning of trash, leaves, debris or other materials, except by the Declarant during the normal course of development, construction, and clean up; provided, this provision shall not preclude normal use of barbecue grills or outdoor fireplaces approved pursuant the Declaration; and

(h) Use or discharge of any radio, loudspeaker, horn, whistle, bell, or other sound device so as to be audible to occupants of other Units, except alarm devices used exclusively for security purposes; and

(i) Use and discharge of firecrackers and other fireworks; and

(j) Dumping grass clippings, leaves or other debris, petroleum products, fertilizers, or other potentially hazardous or toxic substances in any drainage ditch, stream, or elsewhere within Mountain Trace Townhomes, except that fertilizers may be applied to landscaping on Units provided care is taken to minimize runoff; and

(k) Accumulation of rubbish, trash, or garbage except between regular garbage pick ups, and then only in approved containers which must either be stored in an enclosed garage or in another enclosed area, not visible from adjacent property, except on the day garbage is collected; and

(l) Obstruction or rechanneling drainage flows after location and installation of drainage swales, storm sewers, or storm drains, except that Declarant, its designees, and the

Association shall have such right, and Builders may alter drainage flow so long as the alteration does not adversely affect other Units; provided, the exercise of such right shall not materially diminish the value of or unreasonably interfere with the use of any Unit without the Owner's consent; and

(m) Conversion of any garage to finished space for use as an apartment or other integral part of the living area on any Unit without prior approval pursuant to The Declaration, or use of any garage for storage or other purposes, temporarily or permanently, which preclude its use for parking of that number of vehicles for which it was originally designed; and

(n) Discharge of firearms; provided, the Board shall have no obligation to take action to prevent or stop such discharge; and

(o) On-site storage of gasoline, heating, or other fuels, except that a reasonable amount of fuel may be stored on each Unit for emergency purposes and operation of lawn mowers and similar tools or equipment, and the Association shall be permitted to store fuel for operation of maintenance vehicles, generators, and similar equipment. This provision shall not apply to any underground fuel tank authorized pursuant to The Declaration; and

(p) Any yard sale, garage sale, moving sale, rummage sale, or similar activity, except on such dates as the Board may designate for such activities to be conducted on a community-wide basis; and

(q) Use or operation of snowmobiles, motorcycles, trailbikes, minibikes, dirt bikes, all-terrain vehicles, and similar motorized vehicles within Mountain Trace Townhomes, except that such vehicles may be transported through Mountain Trace Townhomes on trailers, and motorcycles licensed for use on public streets may be operated on streets within Mountain Trace Townhomes as necessary for direct access between a Unit and streets outside of Mountain Trace Townhomes; and

(r) Any construction, erection, placement, or modification of any thing, permanently or temporarily, on the outside portions of the Unit, whether such portion is improved or unimproved, except in strict compliance with the provisions of the Declaration. This shall include, without limitation, solar panels, signs, basketball hoops, swing sets and similar sports and play equipment; clotheslines; garbage cans; woodpiles; above-ground swimming pools; docks, piers and similar structures; and hedges, walls, dog runs, animal pens, or fences of any kind; satellite dishes and antennas, except that:

(i) antennas designed to receive direct broadcast satellite services, including direct-to-home satellite services, that is one meter or less in diameter and located within a Unit's courtyard; or

(ii) an antenna designed to receive video programming services via multipoint distribution services, including multichannel multipoint distribution services, instructional

television fixed services, and local multipoint distribution services, that is one meter or less in diameter or diagonal measurement; or

- (iii) an antenna that is designed to receive television broadcast signals;

(collectively, "Permitted Antennas") shall be permitted on Units, subject to such reasonable requirements as to location and screening as may be set forth in the any design guidelines adopted from time to time by the Design Review Committee, consistent with applicable law, in order to minimize obtrusiveness as viewed from streets and adjacent property. Provided that the Owner has obtained approval from the Declarant or the Design Review Committee, solar panels shall be permitted on Units, provided that they are installed flush with the roof on the Unit or not higher than the level of the backyard fence. Declarant and/or the Association shall have the right, without obligation, to erect an aerial, satellite dish, or other apparatus for a master antenna, cable, or other communication system for the benefit of all or a portion of Mountain Trace Townhomes, should any master system or systems be utilized by the Association and require such exterior apparatus. Declarant and/or the Association shall have the right, without obligation, to erect and thereafter maintain solar panels and associated equipment on a portion of the Common Elements for the purpose of providing an energy source for the street lighting and irrigation systems serving the Common Elements; and

(s) Loud music or noise that violates City ordinances or unreasonably disturbs neighbors is PROHIBITED at any time, but in particular between 10:00 p.m. and 8:00 a.m. Social gatherings must be confined to the individual unit or General Common Elements as allowed by the Rules and Regulations, and must be immediately terminated if City ordinances are violated or neighbors are unreasonably disturbed. Every effort should be made by participants not to disturb neighbors. The fact that a complaint has not been made does not mean that your gathering is not disturbing neighbors and is not improper. Specific requirements are:

- Parties and social gatherings shall be held inside the Townhome or in designated picnic areas.
- No gatherings will be held in parking areas or on roadways.
- Absolutely NO "keg" parties or parties where an admission is charged are allowed. Charging admission is against the law!
- Stereos, televisions, etc., must not be audible outside of the Townhome.
- There shall be NO violation of any state or city ordinance.
- There shall be NO underage drinking.
- Public profanity is strictly prohibited.
- If the Durango Police must be called to quell a disturbance or party, the host-tenant or Owner will be held responsible and a citation may be issued. In addition,
- Driving any vehicle in excess of 15 miles per hour on the project driveways is strictly prohibited.

3. Prohibited Conditions. The following shall be prohibited in Mountain Trace Townhomes:

(a) Plants, animals, devices or other things of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of Mountain Trace Townhomes; and

(b) Structures, equipment or other items on the exterior portions of a Unit which have become rusty, dilapidated or otherwise fallen into disrepair; and

(c) Sprinkler or irrigation systems or wells of any type which draw upon water from ground or surface waters within Mountain Trace Townhomes, except that Declarant, its designees, and the Association shall have the right to draw water from such sources, to the extent permitted by applicable ordinances and governmental regulations.

DECLARANT: Mountain Trace, LLC, a Colorado limited liability company

By: \_\_\_\_\_  
Garth L. Schultheis, Manager