

# Mountainside Village Community Operating Agreement

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**MOUNTAINSIDE INC.**, an Idaho S Corporation (the “Founder”), makes this **COMMUNITY OPERATING AGREEMENT** as of the \_\_\_\_\_ day of \_\_\_\_\_, year of 200\_\_.

**DECLARATION:**

The Founder, who is the owner and developer of all of the property in Victor, Idaho, described on Exhibit A (the “Neighborhood”), hereby submits the property described in Exhibit B and future additions as described below (“Mountainside Village”) to this Community Operating Agreement. The Founder hereby declares that the property subject to this Community Operating Agreement shall be held, sold and conveyed subject to the covenants, restrictions and easements of this Community Operating Agreement, which shall run with the land and be binding upon all owners of property within Mountainside Village (the “Owners”), their heirs, successors and assigns, and upon all other parties, heirs, successors and assigns having any right, title or interest in all or any part of Mountainside Village. Capitalized terms are typically defined terms, unless the context indicates otherwise. Definitions for these terms are provided in the Mountainside Village Book of Operating Principles (the “Book”).

# Part I:

## Introduction and Overview

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Mountainside Village, situated in the shadow of the mountains on the edge of the Teton Basin in Victor, Idaho, is a classic *American village*, which provides “a sense of place” where owners build sustainable homes in a sustainable community. Through its mixed use zoning, Mountainside Village combines homes, shops, workplaces and a public realm.

While Mountainside Village is village-like in its design, it does not have a town government. The Owners of property in Mountainside Village are bound together by certain covenants and Mountainside Village relies on the covenants set out in the Book. The covenants are agreements between neighbors. Some of those agreements provide a way to maintain the Commons – the open space, parks, greens, gardens, paths, stormwater ponds, the Mail Center, rear lanes, and the Community Tower – that are shared as Commons by all of the Mountainside Village’s Owners and Occupants. Other covenants provide agreements between neighbors to provide ways of getting along. By taking title to the real property within Mountainside Village, Owners agree to these covenants.

The Owners, acting through the Mountainside Village Association, Inc. (the “Association”), help meet the needs of the community. The Owners of all property within Mountainside Village will be Members of the Association.

The Association takes care of the physical needs of Mountainside Village by maintaining the Commons and providing services. The Association also helps preserve neighborhood harmony by providing for dispute mediation and enforcing the covenants when necessary. The Association can serve as a link to the larger Victor and Teton County communities, bringing in other viewpoints through its membership functions and its work as a board of directors.

The Association is intended to work to protect the architectural integrity of the community over the long term, to conduct long-range planning and to represent the voice of the neighborhood in outside matters that may impact Mountainside Village. No Owner may hold himself or herself out as representing the Association or speaking on its behalf without written authorization from the Board.

The Association has three (3) elected categories: the President, the Board and a Chancellor (who may sometimes be appointed rather than elected). Each has different responsibilities and a certain degree of autonomy.

- The Board sets policy for the maintenance of Mountainside Village’s physical assets and enforces the covenants of this Book when necessary.
- The President is the chief executive of Mountainside Village and is empowered to make decisions within the scope of authority described by the Board and this Book.
- The Chancellor tries to mediate disputes within Mountainside Village, giving neighbors a forum to work out differences and find solutions. If disputes cannot be resolved by mediation, the Chancellor may make recommendations to the Board.

Detailed information about the operation of the Association is contained in Chapter 4 of this Book.

The Mountainside Foundation & Institute, Inc., (the “Institute”) is a separate non-profit institute to address the cultural and social and educational needs of Mountainside Village. It may sponsor concerts and art festivals to enrich the community. It may also encourage events intended just to bring people together, to meet each other and to enjoy being part of a community. The Institute has voluntary membership and is open to all Owners and Occupants in Mountainside Village.

While each entity operates independently, they may work together and may enter into contractual agreements. The following chart describes some of the roles and characteristics of the different entities.

	Association	Institute
<b>Purposes</b>	Maintain the Commons, support the covenants, and help prevent or resolve conflicts between neighbors.	Foster the arts, education and cultural and community events as well as charitable activities.
<b>Legal Status</b>	Nonprofit corporation	Nonprofit corporation intended to have tax status as a tax-exempt organization under Section 501(c)(3) of the Internal Revenue Code.
<b>Members</b>	All individuals or entities owning property within Mountainside Village.	Open on a voluntary basis to all residents of Mountainside Village plus additional, non-resident contributors. Members are not entitled to vote.
<b>Primary Source of Funds</b>	Assessments on property within Mountainside Village, secured by a lien on the Parcel.	Donations, Institute Contributions assessed on property transfers, voluntary membership dues and revenue from programs.

# Part II:

# The Commons

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The Association is responsible for maintaining and sometimes even operating the Commons in Mountainside Village. The Commons shall include, without limitation, the open space, parks, greens, gardens, paths, stormwater ponds, the Mail Center, rear lanes, and the Community Tower.

2.1 Easements for Use of the Commons. Each Owner of property in Mountainside Village has the following non-exclusive easements in the Commons for the benefit of such Owner and its tenants, employees and guests:

(a) An easement for pedestrian and Wheeled Transport ingress and egress over all of the sidewalks and paths that are part of the Commons, subject to applicable laws and the rules and regulations.

(b) An easement for pedestrian, Wheeled Transport and vehicular ingress and egress over all rear lanes and streets that are part of the Commons, subject to applicable laws and the rules and regulations.

(c) An easement for normal park use of all parks in Mountainside Village, subject to applicable laws and the rules and regulations.

Deposits and/or fees may be required by the Association or the Founder for use of areas of the Commons; provided that such fees or deposits are applied equally to all similarly situated users.

Occupants of property in Mountainside Village who are not Owners shall have the right to use the easement of the Owner whose lot they occupy provided that, (i) the Owner is and will be responsible for the manner of the Occupant's use, and (ii) the Owner may withdraw consent for the use by written notice to the Association.

2.2 Rules of Park Usage. No use of any parks within Mountainside Village shall take place except in conformance with the following:

(a) When Section 2.2 indicates that an Owner or Occupant must arrange for use of a portion of the Commons through the Association, this means that the Owner has no direct right to use or schedule use of the portion of the Commons but instead must

arrange and schedule such use through the Association. The Association has the right to require evidence of compliance with the requirements of this Community Operating Agreement and the Rules and Regulations governing use of the portion of the Commons and the right to bar the use of the portion of the Commons by anyone not complying with these provisions in advance of or during an event. The Founder or the Association may bar any Owner, Occupant, tenant or guest from event use of a portion of the Commons for a period up to twelve (12) months for a violation of this Community Operating Agreement. After three (3) violations, the Founder or the Association may permanently bar an Owner, tenant or guest. The Founder or the Association may charge a reasonable scheduling fee to cover costs associated with its duties under this section.

(b) Any Owner or Occupant conducting an event in a portion of the Commons shall take steps necessary to prevent the event from precluding reasonable use of the park by others. Access may be limited to portions of the Commons for up to six (6) hours in a day. The Founder or the Association may restrict access to portions of the Commons for an unlimited time period for special events.

(c) Any Owner or Occupant conducting an event in a portion of the Commons shall take steps necessary to prevent the event or people arriving or departing from the event from unreasonably interfering with traffic around the park or damaging cars parked adjacent to the portion of the Commons.

(d) Any Owner or Occupant conducting an event in a portion of the Commons shall remove all trash, signs, tables, chairs or other property associated with the event promptly following the event and generally restore the portion of the Commons to its pre-event condition.

(e) Any Owner or Occupant conducting an event in a portion of the Commons shall provide proper trash and recycling receptacles and rest room facilities for the event and shall promptly remove these receptacles and facilities and properly dispose of trash and recyclables.

(f) Any Owner or Occupant conducting an event in a portion of the Commons shall not charge a fee for access to the portion of the Commons, though fees may be charged for concessions or otherwise in accordance with applicable laws and the rules and regulations.

(g) Subject to the brief periods of limited access permitted in Section 2.2(b) above, the easements granted in this Part II are non-exclusive.

2.3 Damage or Destruction of Commons or Commons Improvements by an Owner.

(a) If any Commons or Improvement on the Commons is damaged or destroyed by an Owner or a tenant of a Parcel within Mountainside Village, or by family members, guests (but not including individuals in Mountainside Village as customers or clients of the Owner) or agents of the Owner or occupant, the Owner shall be liable for such damage or destruction and the Owner must, within fifteen (15) days after it occurs, repair the damage in a good and workmanlike manner and restore any damaged Commons Improvement or facility to its existing state before the damage or destruction occurred. In circumstances where the Founder determines that a shorter response period is appropriate, the fifteen (15) day period may be shortened. If the Owner does not repair the damage as described above, then the Founder may repair the damage. The Founder may bring an action for damages, specific performance, declaratory decree or injunction, or any other remedy at law or in equity to enforce the provisions of this Section.

(b) If an Owner's or Occupant's business attracts customers or clients who engage in damaging or destructive behavior resulting in damage or destruction of any Commons or improvements on Commons, and such damage or destruction occurs on at least three (3) occasions, the Founder or the Association may provide twenty (20) days notice to the Owner that the Owner shall be liable for all future such acts of damage or destruction performed by the Owner's or Occupant's customers or clients.

# Part III: Architectural Standards and Review

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The architectural standards for Mountainside Village will be governed by the Mountainside Village Design Code (the “Design Code”) and other design guidelines that may be developed, approved and used from time to time. The Design Code is a guideline that will serve as a benchmark for architectural designs and will help Mountainside Village to develop in a manner that is consistent with the community’s overall vision.

Initial construction is dramatic, as each street takes shape. The facades of the buildings form Mountainside Village’s outdoor rooms, and the community envisioned in the Design Code springs to life. However, Mountainside Village is not frozen in time. A neighborhood evolves after its initial construction. Homes are enlarged to suit a growing family. A tree falls and must be replaced. Children clamor for swimming pools and basketball hoops. A puppy requires a fenced yard. The questions surrounding modification review concern not just design but compatibility with adjacent properties.

This Part III provides a method for review of both initial construction and modifications.

3.1 Town Architect. The Founder may appoint a Town Architect, whose job it is to understand and interpret the Design Code. The Town Architect must have a professional degree in architecture or urban design from an accredited university or comparable qualifications and must have experience or training in traditional neighborhood or urban design or other qualifications deemed appropriate by the Founder. The Town Architect does not, however, need to be licensed to practice in Idaho.

3.2 Mountainside Village Design Committee.

(a) Composition. The Mountainside Village Design Review Committee (the “DRC”) has at least three (3) members and no more than five (5) members, with the number of members to be determined by the Founder. Until construction is complete on all Parcels, or until the Founder voluntarily assents, the DRC includes the following members who are entitled to vote on all matters before the DRC:

- The Town Architect, if there is one, fills one seat on the DRC or the Founder appoints a similarly qualified substitute.
- The Founder appoints the remaining members. If the Founder abandons the positions on the DRC and fails to designate successors, the positions are to be filled using the procedure described in Section 3.10.

(b) Staff, Compensation. The DRC may employ personnel or contract with individuals or companies as necessary to assist in the review process. Professionals and staff may be paid reasonable compensation for serving on the DRC, as determined from time to time by the Founder or if the Founder no longer appoints the DRC, then the Boards of the Association. All members of the DRC shall be compensated for expenses.

(c) Review Fees. The DRC may set its review fees to cover all or part of the expected cost of its operation.

3.3 Design Code. The Design Code is an architectural guideline for Mountainside Village. Other guidelines may be developed, approved and used over time. The DRC may revise any part of the Design Code from time to time for any of the following reasons:

(a) To correct errors or resolve conflicts with governmental requirements or make changes that the DRC believes will better accomplish the objectives of Mountainside Village;

(b) To permit use of new materials or techniques for construction or landscape that are appropriate to Mountainside Village; or

(c) To recognize changing land use or market conditions over time, both from within and outside Mountainside Village.

3.4 Construction Subject to Review.

(a) Applicability. All plans and specifications for construction or modification of any structure or improvement of the property such as driveways, parking lots, fences, walls or walks or material landscaping element (such as trees or large shrubbery) must be reviewed and approved before construction in accordance with this Part III. No construction or clearing of a Parcel may begin until approved by the DRC. Once construction begins, all construction must comply with the approved plans and specifications. Although this Part III refers to “Parcels” and applies primarily to private property, it also applies to modification of the Commons. Construction of any structure upon the Commons (other than initial construction by the Founder) or modification of

any existing structure, as well as any material alteration of the landscaping or topography of any Commons, must be approved in advance by the DRC.

(b) Scope. Review for both new construction and for modification includes materials and color selection and selection and placement of any ornamentation or functional accessories, including but not limited to the following:

- site plan;
- materials and color selection for the main building and any outbuilding (including roof, doors, windows and trim);
- building Massing, slope and location of windows;
- landscaping, grading and any removal or substantial pruning of trees or plants;
- privacy walls or other fences and gates, driveways, walks, patios and other ground surface materials;
- antennas, satellite dishes or receivers, solar panels or other devices that are visible from outside the Parcel;
- fountains, swimming pools, whirlpools or other pools, awnings, flower boxes, shelves, statues or other outdoor ornamentation and window coverings visible through the window;
- signage of any type;
- permanent or semi-permanent play equipment, whether or not secured, such as tree houses, pools, basketball hoops, skateboard ramps and swing sets; and
- green building standards.

The listing of a category does not imply that such construction or use is permitted. Review is not required to repaint with originally approved paint and colors, or to replace the roof or other components with duplicates of those originally approved.

(c) Trees. The cutting, removal or intentional damage of existing trees (including excessive pruning or failure to use due care with equipment or when removing other trees permitted to be removed) is strictly regulated under the Design Code. All plans must comply with applicable drainage, water conservation, and erosion control and stormwater detention requirements.

### 3.5 Standard for Review.

(a) Generally. Applications are approved based upon compliance with the Design Code in effect at the time of the submittal, compatibility with surrounding Parcels and Commons and overall quality of design. The DRC has the sole and absolute ability to review and approve applications. Strict compliance with the Design Code does not guarantee approval of an application. The DRC may require changes to a plan to improve its aesthetic appearance even if the design meets the technical requirements of

the Design Code. If the DRC rejects an application due to overall design quality despite compliance with the Design Code, the DRC may make suggestions for improving the design.

(b) Variances. The DRC may grant variances from the Design Code based on existing topographical or landscape conditions, existing trees, accessibility or architectural merit. Any such variance must be in writing. Approval of a variance does not constitute a precedent for other applications, and such requests may be arbitrarily denied.

### 3.6 Review Procedure.

(a) Applications. The DRC may establish forms and procedures for the review of applications, including review costs and fees, if any, to be paid by the applicant. The DRC may provide lists of approved materials and may allow for staff review and approval of routine or minor matters.

(b) Notification; Construction; Inspection. The DRC shall use its best efforts to notify the applicant of its decision within the time allowed by its design approval process handbook. However, a delay in reviewing an application shall not be deemed consent to construction. If approval is given and all necessary governmental permits and approvals are in place, then construction of the improvements may begin. If construction is not begun within six (6) months after approval of the plans and specifications and there has been any change in the Design Code in the intervening months that would otherwise apply to the approved construction, then the approval will expire and the plans and specifications must be resubmitted.

(c) Inspection. The DRC or its agent may inspect the property during construction but has no obligation to make any such inspection.

(d) Governmental Compliance. Owners are responsible for making sure that construction conforms to governmental regulations and all local building codes if the DRC notes noncompliance, the Owner may be required to make the necessary changes. However, the DRC is not responsible for compliance with governmental requirements.

(e) Trees. Improper cutting, removal or intentional damage to existing trees or shrubs is subject to fines plus a requirement that the tree be replaced with an approved species of comparable caliper, or, if approved by the DRC, a combination of trees totaling the caliper of the removed tree. Fines may be set by the DRC.

(f) Completion. When the primary building and landscaping are completed in substantial compliance with the approved plans and specifications, DRC shall issue a

Certificate of Substantial Conformance. The Certificate shall describe any areas of deficiency that need to be corrected. All fines and other enforcement shall be waived so long as the deficiencies are corrected within sixty (60) days. Upon correction of all deficiencies, the DRC shall issue a Certificate of Completion and Release in recordable form.

### *Notice to Owners*

The contract for the construction or modification of a home or business is negotiated between the Parcel Owner and the contractor. Neither the Founder, nor the DRC is a party to that contract. Owners are ultimately responsible for assuring that the improvements constructed on the Parcel are in accordance with the approved plans and specifications. Because the Design Code may change from time to time, it is important that an Owner obtain or confirm that he or she has the current version of the Design Code before undertaking any change or improvement of its property. For the Owner's benefit, **contracts should require the contractor to build or modify the improvements in accordance with plans and specifications approved by the DRC.** Receipt of the DRC's Certificate of Completion indicating compliance with the approved plans and specifications should be a condition of final payment on the contract.

3.7 Builders. The DRC may establish a review and approval process for builders and other contractors. Approval may be based on willingness to build in accordance with approved plans and specifications, quality of past work, client satisfaction and financial history. Builders must agree to comply with construction regulations, to dispose of construction debris properly and to build in accordance with the approved plans and specifications. Builders may be required to post a deposit for compliance and damages. Failure to comply may result in fines, forfeiture of the deposit and revocation of the right to build in Mountainside Village.

3.8 Liability. The DRC and its representatives are concerned primarily with aesthetic considerations and are not responsible for compliance with governmental requirements or design or construction defects or use of materials affecting the safety or structural integrity of the building. Approval by the DRC of an application shall not constitute a basis for any liability of the Founder, or members of the DRC, Board of Directors or Association for failure of the plans to conform to any applicable building codes or inadequacy or deficiency in the plans resulting in defects in the improvements, or for the performance or quality of work of any contractor or architect approved by it, or for non-compatible or unstable soil conditions or soil erosion, or any other condition of the property.

3.9 Modification Committee to the DRC. The DRC may establish a committee to review and approve modifications of properties that are submitted at least two (2) years after a Certificate of Substantial Conformance, as described in Section 3.6(f), has been issued.

3.10 Final Composition of the DRC. Within sixty (60) days after the date that construction is complete on all parcels in Mountainside Village, or upon Founder's voluntary assent, a new three (3) or five (5)-person DRC shall be appointed to replace the Founder-controlled DRC. The Association shall choose the size of the DRC.

(a) Three (3)-Person DRC. If the Association chooses to establish a three (3)-person DRC, the Association shall appoint two (2) members to the new DRC. The Founder may appoint the third member.

(b) Five (5)-Person DRC. If the Association chooses to establish a five (5)-person DRC, the Association shall appoint four (4) members to the new DRC. The Founder may appoint the fifth member.

In either case, if the Founder chooses not to appoint a member or if the Founder no longer owns any Parcels in Mountainside Village, the remaining DRC members shall select the additional member. All members shall serve two (2) year renewable terms.

# Part IV:

# Environmental Protections

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4.1 Environmental Compliance. Each Owner and Occupant shall comply with all Laws relating to the discharge, storage and disposal of all hazardous or toxic wastes and substances, petroleum, petroleum by-products and other environmental contaminants (as any of the foregoing may now or in the future be defined by any Governmental Entity) on, at or from such Owner or Occupant's Parcel or otherwise relating to environmental protection. All Owners and Occupants shall comply with all environmental provisions of the Design Code and the Rules and Regulations.

4.2 Clean-up; Indemnification. By accepting a deed to a Parcel, each Owner hereby agrees (i) to clean up and remove or contain (but only if permitted by law), in accordance with and to the extent required by any and all applicable federal, state and local laws, any hazardous or toxic substances or wastes or other environmental contaminants on or under the Owner's Parcel, or stored, generated, disposed of or discharged by the Owner or any Occupant of the Owner's Parcel or from the Owner's Parcel, and (ii) to indemnify, defend and hold harmless the Founder, any Affiliate of the Founder, the Association, their agents and each of the other Owners from and against any and all foreseeable and unforeseeable claim, loss, damage, cost or expense (including, without limitation fines, clean-up costs, costs of relocating tenants, employees and agents, restoration costs, loss of income and attorneys' fees) incurred or suffered by the indemnified party as a result of any hazardous or toxic waste or substance or other environmental contaminant discharged from, stored at or disposed of at or from the indemnifying party's Parcel.

4.3 Nuisance. Whether otherwise permitted by a Governmental Entity, the Reviewing Body (either the Founder or the Association, as described in this Section) may prohibit any use or operation that creates objectionable noise, smoke, odors or which in any other way, in their reasonable opinion, will constitute a nuisance or degrade the value of Mountainside Village. While the Founder owns any Parcel in Mountainside Village, the Founder shall be the Reviewing Body for purposes of this paragraph. Thereafter, the Association shall review nuisance issues.

# Part V:

## Founder's Reserved Rights

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### 5.1 Addition or Withdrawal of Property.

(a) Neighborhood. The Founder shall have the right, but not the obligation, for a period of thirty (30) years from the date of this Community Operating Agreement, from time to time in its sole discretion, to add to Mountainside Village any part of the Neighborhood. This reserved development right may be exercised with respect to different portions of the Neighborhood at different times. No assurances are made as to the boundaries of those portions or order in which the portions will be added. Exercising any development right in any portion of the Neighborhood does not necessarily mean the right will be exercised in the remainder of the Neighborhood.

(b) Other Property. The Founder may also add to Mountainside Village: (i) property contiguous to the Neighborhood not a part of the Neighborhood, (ii) property any portion of which is within two (2) miles of any portion of Mountainside Village (including any property separated from Mountainside Village by a public street, body of water or other property) or, (iii) any other property with a reasonable relationship to Mountainside Village.

(c) Supplemental Declaration. A Supplemental Declaration adding the additional property shall become effective upon being recorded in the Teton County Clerk's Office, Driggs, Idaho, and upon such recording the additional property shall become part of Mountainside Village, subject to this Community Operating Agreement. The Supplemental Declaration may modify, remove or add to the provisions of this Community Operating Agreement if needed to reflect the different character of the additional property, including a different assessment allocation.

(d) Withdrawal of Property. The Founder reserves the right to withdraw property from Mountainside Village so long as all Owners within the area to be withdrawn consent and access to the remaining portions of Mountainside Village is preserved.

5.2 Use of Name. The Founder reserves the right to trademark the name "Mountainside Village" or other name of the Neighborhood as a trade name owned by the Founder. An Owner or occupant may use the trademarked name to describe the location of its business and may advertise a business as being located in "Mountainside

Village” or other trademarked name. If requested by the Founder, the Owner or Occupant shall accompany such use with a symbol or explanation concerning trademark or service mark registration of the name. An Owner or Occupant may not use the trademarked name in any other manner without the express permission of the Founder, which may be arbitrarily denied. The Founder shall have the right to change the name, Mountainside Village, for all or any part of the property subject to this Community Operating Agreement. The Founder may, but is not required to, amend this Community Operating Agreement to reflect the name change.

5.3 Reserved Easements. The Founder, its successors and assigns, is hereby granted all easements over, across, under and through Mountainside Village reasonably necessary to permit the Founder to continue and complete construction of the Neighborhood, whether or not that property is ultimately submitted to this Community Operating Agreement, and all other properties owned by the Founder or its assigns which are adjacent to, or reasonably near, Mountainside Village (including property separated from Mountainside Village by a public road), whether or not such properties are developed as part of Mountainside Village. Without limiting the generality of the foregoing, the Founder shall have the following easements:

(a) Private Roads and Paths: A nonexclusive easement for use of any roads or streets within Mountainside Village which are not accepted for dedication to the public and which are intended for automobile traffic (including rear lanes or other similar access roads that are generally intended for use only by residents on that road), along with a nonexclusive easement for appropriate use of any pedestrian or bicycle paths. If such roads become a primary means of access to a community which is not made part of Mountainside Village, and Mountainside Village does not similarly use the roads of such community, the Association or the Founder shall explore the development of an agreement whereby such community shall contribute its pro rata share of the cost of Mountainside Village’s road maintenance.

(b) Utility Easements: A blanket easement upon, across, over, through, and under Mountainside Village for ingress, egress, installation, replacement, repair and maintenance of all public and private utility and service systems. These systems and services include, but are not limited to, water, sewer, irrigation systems, drainage, telephone, electricity, natural gas, television, security, collection of garbage and recyclable materials, cable or communication lines and other equipment. By virtue of this easement the Founder, and its successors or assigns, may install and maintain facilities and equipment, excavate for such purposes and affix and maintain wires, circuits and conduits.

(c) Cable and fiber optic systems: Exclusive easements within all of Mountainside Village for installation, replacement, repair and maintenance of cable and fiber optic systems. By virtue of this easement the Founder, its successors or assigns, may

install and maintain facilities and equipment, excavate for such purposes and affix and maintain wires, circuits and conduits. However, the exercise of this easement must not unreasonably disturb each Owner's right of quiet enjoyment of his Parcel.

(d) Police Powers: A blanket easement throughout Mountainside Village for private patrol services and for police powers and services supplied by the local, state and federal governments. The reservation of such easement does not imply that any such service shall be provided.

(e) Drainage, Erosion Controls: A blanket easement and right on, over, under and through the ground within Mountainside Village to maintain and to correct drainage of surface water and other erosion controls. This easement includes the right to cut any trees, bushes or shrubbery, grade soil, or to take any other action reasonably necessary for health or safety or to comply with governmental requirements. The entity that exercises this easement shall be responsible for notifying the affected Owners (except in an emergency) but shall not be obligated to restore landscaping or other improvements. This easement may be exercised at the option of the Founder and shall not be construed to obligate the Founder to take any affirmative action to correct conditions.

(f) Encroachment: An easement for any improvements constructed on Commons that encroach on any Parcel, whether due to any minor deviation from the subdivision plat of Mountainside Village or the settling or shifting of any land or improvements.

(g) Maintenance of Commons: An easement for maintenance and improvement of Commons at the Founder's discretion and, to the extent reasonably necessary, an easement over any Parcel for maintenance of Commons.

(h) Models; Neighborhood Information Centers; Sales and Management Offices: The right to maintain a sales office, a management office, a Neighborhood Information Center; and an unlimited number of models within Mountainside Village. These facilities may be located on any Parcel in Mountainside Village and may be relocated from time to time at the Founder's discretion. The sales office, management office, Neighborhood Information Center, and models may be owned by different entities, including builders and other entities that are unrelated to the Founder. At the end of its use as a sales or management office, Neighborhood Information Center, or model, the Parcel shall be owned by the Owner of record, subject to all normal covenants and restrictions for Mountainside Village. Subject to state law and local ordinances, the Founder or its assigns, where such right is specified, may maintain signs on Commons and in the sales office, management office, Neighborhood Information Center, and models advertising Mountainside Village.

(i) Construction Equipment: To the extent reasonably necessary, an easement over, under and through any roads, whether public or private, and any other Commons for construction equipment and any other purpose related to continued construction of any property within the Neighborhood.

5.4 Bed and Breakfast Facilities. Until the conveyance of all Parcels in the Neighborhood to an Owner other than the Founder or its designated entities is complete, no bed and breakfast facilities or other inns shall be established or shall operate in Mountainside Village without prior approval by the Founder.

5.5 Commercial Use of Images.

(a) The Founder shall have the following rights:

(i) The exclusive right to grant permission for the Commons to be photographed, sketched, painted or its image otherwise reproduced for commercial use (including, without limitation, its use as a motion picture set or as a background for the display of fashions or other goods); and

(ii) The right to grant permission for similar reproduction of the exteriors of any other part of the Parcels which can be viewed from streets, rear lanes, or Commons. Such exteriors may be reproduced without the consent of, or payment to, the Owners of the Parcel, but the above right is not intended to prevent any Owner from granting independent permission for any part of the Parcels owned exclusively by that Owner, in which case the consent of the Founder shall not be required.

(b) The Founder may collect a fee for its consent to the use of such images or for the providing of support services to photographers or others. The exercise of this right to collect a fee shall not interfere with normal and customary rights of architects to structures designed by them. Consent of the Founder shall not be required for photography or other reproductions of the images of the Parcels in connection with any news or feature coverage, for academic purposes or by any governmental agency or entity appointed by a governmental agency for the purpose of promoting the City of Victor, Teton County, the development of tourism or commerce, or any other similar purpose.

5.6 Real Estate Offices. For eight (8) years after the date that this Community Operating Agreement is recorded, the Founder shall have the right to exclusive operations of real estate sales, rental or management offices within Mountainside Village, which shall be considered a deed restriction for the entire Mountainside Village and shall be part of the consideration for the sale of property within Mountainside Village. However, unsigned home-based real estate offices are permitted.

5.7 Assignment. The Founder may at any time assign all or any portion of its rights under this Community Operating Agreement to a related entity, a successor Founder, or the Association.

5.8 Rules and Regulations. The Founder may enact rules and regulations governing any of the matters addressed by this Community Operating Agreement or the Book.

# Part VI: Amendment and Additional Terms

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## 6.1 Amendment.

(a) Generally. This Community Operating Agreement may be amended at any time by an instrument signed by the Founder and the President or Vice President and Secretary of the Association certifying approval by the Board of Directors. Rights reserved to the Founder may not be amended without the specific consent of the Founder. Any amendment shall take effect upon recording in the Teton County Clerk's Office, Driggs, Idaho.

(b) Founder's Right. To the extent permitted by law, the Founder specifically reserves the absolute and unconditional right to amend this Community Operating Agreement without the consent or joinder of any party (i) to conform to the requirements of the Federal Home Loan Mortgage Corporation, Veterans Administration, Federal National Mortgage Association or any other generally recognized institution involved in the guarantee or purchase and sale of mortgages, (ii) to conform to the requirements of institutional mortgage lenders or title insurance companies, (iii) to clarify the Declaration's provisions or correct errors, (iv) to subject additional property to this Community Operating Agreement or in connection with Supplemental Declarations or to withdraw property from the Neighborhood or Mountainside Village, (v) to change a name pursuant to this Community Operating Agreement, or (vi) to conform to applicable law.

(c) Recording. Any amendment shall take effect upon recording in the Teton County Clerk's Office, Driggs, Idaho.

6.2 Rerecording. Unless this Community Operating Agreement is terminated, the Founder or any other party may rerecord this Community Operating Agreement or other notice of its terms at intervals necessary under Idaho law to preserve its effect.

6.3 Enforcement.

(a) Deposit, Fines. The Founder may require the builder or Owner to post a deposit from which the Founder may deduct fines for failure to comply with the approved plans and specifications, tree regulations and rules for builder conduct. The collection of a fine shall not in any way diminish the available remedies at law or equity.

(b) Unapproved Construction. If any clearing, grading, construction, demolition or modification is begun which has not been approved or which deviates from approved plans and specifications, the Founder may require the Owner to resolve the dispute through binding arbitration and/or may bring suit seeking damages, specific performance, declaratory decree and/or injunction, or any other remedy at law or in equity. If the Founder brings suit and the court finds that the construction was not approved or that the construction deviated from the approved plans or specifications, then the Founder shall also be awarded reasonable attorney's fees, even if the relief requested is not granted.

(c) Other Enforcement. To enforce any other provision of this Community Operating Agreement, the Founder or the Association may bring an action for damages, specific performance, declaratory decree or injunction, or any other remedy at law or in equity. The Founder or the Association may also require and enforce the collection of a management fee if the Founder or the Association is required to take action on behalf of an Owner.

(d) No Waiver. Failure to enforce any provision of this Community Operating Agreement shall not be deemed a waiver of the right to do so at any time thereafter.

6.4 Interpretation.

(a) Construction. The provisions of this Community Operating Agreement shall be liberally construed to effectuate their purpose of creating a uniform and consistent plan for the development and operation of Mountainside Village as a neighborhood of the highest quality. All numbered sections and subsections, paragraphs and subparagraphs, the opening and closing paragraphs and the paragraph entitled "Declaration," shall be considered operative provisions. Other paragraphs that are not numbered or lettered shall be considered in the nature of recitals.

(b) Governmental Regulation. All provisions of this Community Operating Agreement shall be subject to applicable government regulation or agreements.

(c) Conflict. In the event of a conflict between this Community Operating Agreement and the Book, the terms of this Community Operating Agreement shall govern.

(d) Invalidity. The invalidity of any part of this Community Operating Agreement shall not impair or affect the validity or enforceability of the rest of the Community Operating Agreement, which shall remain in full force and effect.

6.5 Jurisdiction. Any suit concerning this Community Operating Agreement must be brought in the court of appropriate jurisdiction for Victor, Idaho. This Community Operating Agreement shall be construed in accordance with the laws of the State of Idaho.

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IN WITNESS WHEREOF, the undersigned do hereby make this Community Operating Agreement for Mountainside Village and have caused this Community Operating Agreement to be executed as of the day and year first above written.

MOUNTAINSIDE Inc., an Idaho  
S Corporation,

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF IDAHO:

CITY/COUNTY OF \_\_\_\_\_:

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 200\_\_ by \_\_\_\_\_ as \_\_\_\_\_ of MOUNTAINSIDE Inc., an Idaho S Corporation, on behalf of the company.

My commission expires:

\_\_\_\_\_  
Notary Public

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## **Exhibit A**

### **The Neighborhood**

The Neighborhood shall include all of the real property in Mountainside Village identified on the drawing entitled Phase 1, Final Plat, A Portion of the North Half of Section 13, Township 3 North, Range 45 East, prepared by Dyer Group, LLC., dated July 26, 2005, attached hereto and incorporated herein by reference.

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**Exhibit B**

**Mountainside Village**

Mountainside Village shall include the real property described on that certain plat entitled Phase 1, Final Plat, A Portion of the North Half of Section 13, Township 3 North, Range 45 East, prepared by Dyer Group, LLC., dated July 26, 2005 and duly recorded on \_\_\_\_\_ in the public records of the Teton County Clerk's Office, Driggs, Idaho, in Map Book \_\_\_\_\_.

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