

MOUNTAINSIDE VILLAGE

BOOK OF OPERATING PRINCIPLES

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MOUNTAINSIDE INC., an Idaho S Corporation whose address is 541 Village Way, Victor, ID 83455 (the “Founder”) makes this Declaration on the _____ day of _____, year of 200__.

STATEMENT OF PURPOSE

Mountainside Village is a mixed-use community in the City of Victor, Idaho, and is being developed as a new “traditional neighborhood.” The Founder records this Mountainside Village Book of Operating Principles (the “Book”) and establishes the Mountainside Village Neighborhood Association, Inc. (the “Association”) to enhance community life, to institute and enforce certain covenants and restrictions, to provide for further maintenance of Mountainside Village and Commons, including identified streets, rear lanes, squares, walks and utility facilities, and to allow for self-governing of Mountainside Village by its Owners.

The plan for Mountainside Village and the relationship between the various recorded instruments is described in the Community Operating Agreement.

This Book is intended to provide for the needs of property owners wherever located within Mountainside Village.

DECLARATION

The Founder hereby establishes the Potential Neighborhood as all of that property in the City of Victor, described on Exhibit A and submits to this Book that portion of the Potential Neighborhood described in Exhibit B (“Mountainside Village”).

The Founder hereby declares that this Book, including Appendix I, shall run with the land and be binding upon all parties having any right, title or interest in Mountainside Village, and which shall inure to the benefit of every Owner in Mountainside Village or any portion of it and to the benefit of the Founder.

Except to the extent expressly provided in this Book and any Supplemental Declaration, all of the rights, powers, and duties of the Association and the Owners, who are Members of the Association, including the Owner’s voting rights, shall be governed by the Articles and Bylaws of the Mountainside Village Association, Inc. The Association shall also have all of the rights, powers, and duties provided in the Idaho Nonprofit Corporation Act.

1 Overview

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 nonprofit institute which aims to address the cultural, social and educational needs of Mountainside Village. The Institute may sponsor concerts and art festivals to enrich the community. It may also encourage events intended just to bring people in the community and the area together. The Institute has a voluntary membership and is open to all Owners and Occupants in Mountainside Village.

How the *Mountainside Village Book of Operating Principles Works*

This Book looks significantly different from most homeowner’s association documents. It is based on the premise that communities have personalities just like people, and that the personality is usually established at the beginning of the community’s life. Typical documents, which tell everyone what they have to do and what they can’t do, teach property owners to enforce rules. This document takes a different approach by teaching people the principles behind running their community.

This Book begins with an overview of the community and ends with a look at the future. In between are chapters concerning Community Life, Physical Surroundings, Architectural Standards and Finance. Several of these chapters have two parts. The first part considers the issue from a community-wide viewpoint, while the second part brings the issue to the level of the resident.

Although the meanings of most words should be apparent from the context, definitions are provided in Chapter 7.

Appendix I concerns development issues and is an integral part of the Book during the community’s early years. The Appendix may be excised from the Book after the Founder no longer has any control over the development.

Most chapters contain three types of information: “Descriptive Text”, “Quick View” and “Dialogue.”

Descriptive Text begins each chapter and provides the philosophical framework that Mountainside Village needs to make decisions. Not every issue and concern can be anticipated, and the text does not try to cover every possible situation. Instead, the text helps the community through the decision-making process.

Quick View outlines some of the basic issues discussed in the chapter in the format of a table or grid. Although it sometimes summarizes information presented in the text, Quick View may also present new information. In essence it helps to define roles and to draw distinctions between related ideas.

Dialogue begins the process of interpretation in the form of questions and answers. The Dialogue is never intended to contradict the Descriptive Text or Quick View, but it may fill in some of the gaps. The Dialogue initially provided in this Book is expected to expand as the community faces new issues. Usually, Dialogue will be in the form of a new policy adopted by the Board of Directors (“Board”). Occasionally legal advice will be required to help interpret the documents. The Board should compile the questions and answers it has approved and record this running Dialogue at least annually. Once adopted, succeeding Boards should give Dialogue due consideration as precedent. However, the Board is free to reconsider Dialogue and adopt new answers if warranted. When that happens, the Board is encouraged to include in the new Dialogue the reason for the revision.

We hope that an association that follows the guidance outlined in this Book will avoid many of the disputes and conflicts that can divide a community. However, in the event of legal action, the Descriptive Text and Quick View portions of this Book, including information set out in table form are to be interpreted as legally binding. As Quick View often abbreviates information from the Descriptive Text, any apparent conflict should be resolved in favor of the Descriptive Text. Dialogue is not binding but should be given appropriate consideration in the resolution of disputes.

Quick View: Association

	Association	Institute
Purposes	Work to maintain 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.
Legal Status	Non-profit corporation	Nonprofit corporation intended to have tax status as a tax-exempt organization under Section 501(c)(3) of the Internal Revenue Code.
Members	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.
Primary Source of Funds	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.

Dialogue

Q. Why does Mountainside Village need a property owners association?

The most obvious answer is that Mountainside Village has certain common areas that must be maintained. However, the Association also fulfills the fundamental need to build working relationships between the members of the community.

Q. How does the Association interact with the Institute?

The Association and the Institute have different functions and are funded differently. While the Association focuses on covenant enforcement and physical maintenance and appearance, the Institute fills social, educational and cultural needs. Aside from the transfer fee paid upon re-sales of property, residents are not required to support the Institute, which will rely upon voluntary contributions, dues from voluntary members, and fees generated by its programming. The Association and the Institute will work together on long-range planning and to represent the voice of Mountainside Village in outside matters that may impact the community.

2.1 Community Life, Part I: Association

All Owners of Parcels in Mountainside Village are automatically Members of the Association during the period of their ownership. Membership in the Association is a legal right and obligation attached to the property. New Parcel owners become Members in the Association upon transfer of title to the land. Except as expressly provided, when Owners vote on matters addressed in this Book, their vote is weighted in the same way as relative values are assigned to Parcel types, as discussed in Chapter 5, Part II. Owner votes on matters set forth in the Bylaws or Articles may be on a different basis, as provided in those documents.

This Chapter contains some of the most important provisions concerning Association operation and voting procedure. Additional provisions are contained in the Association's Bylaws and Articles.

Association Operation

The operation of the Association relies on the following individuals:

- The Board of Directors ("Board"). Most decisions about the Association are the responsibility of the Board, acting on the Owners' behalf. Unless specifically provided otherwise, the Board has the authority to act on behalf of the Association and to make all decisions necessary for the operation of the Association, the care of Commons and the enforcement of covenants contained in this Book. The Founder initially appoints the directors. Owners begin electing some of the directors when at least 20 Parcels in the Neighborhood have been sold to Owners other than the Founder or its designated entities.
- President. The President, who is also elected by the Board, 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 President executes the details of projects authorized by the Board and handles matters that arise between Board meetings, within the scope of authority established in the Bylaws or by the Board. The President must be a Member of the Board. Candidates for President must be sitting on the Board with time remaining equal to the term of the President's office.
- Chancellor(s). The Chancellor(s) is not an officer of the Board. However, Chancellor(s) play an important role in the life of Mountainside Village. The Chancellor(s) may mediate disputes among Owners or Occupants related to the requirements of the Design Code, or any Rules or Regulations giving the Board, Owners and Occupants a forum to

work out differences and find solutions. Depending on the circumstances, the Chancellor(s) may act individually or as a panel. If disputes cannot be resolved by mediation, the Chancellor(s) may make recommendations to the Board. The Board determines the number of Chancellors and may decide to make the Chancellor a paid professional position, in which case, the Board will select a mediator, attorney or other professional for each available Chancellor position. Chancellors are elected by the Owners unless the Board has determined that Chancellors are to be paid professional positions. However, if there are insufficient numbers of candidates for Chancellor, the Board may select the remaining Chancellors. The role of the Chancellor is more fully described in Part II of this Chapter 2.

The Board will also elect a Vice President, a Secretary, a Treasurer and other such officers as described in the Bylaws. These officers have the following responsibilities:

- Vice President. A Vice President takes the place of the President and performs the duties of the President whenever the President is absent or unable to act. If neither the President nor a Vice President is able to act, the Board shall appoint some other Member of the Board to act in the place of the President on an interim basis. A Vice President also performs such other duties as required by the Board or by the President and, except as specified, has all of the general powers and duties of a Vice President of a corporation organized under the Idaho Nonprofit Corporation Act. If there is more than one Vice President, the Board determines which Vice President acts.
- Secretary. The Secretary (i) keeps the minutes of all meetings of the Association and of the Board; (ii) has charge of such books and papers as the Board directs; (iii) maintains a register listing the place to which all notices to Owners and Mortgagees are to be delivered; (iv) upon request delivers statements of all unpaid assessments applicable to a particular parcel to be conveyed; (v) executes notices of delinquent assessment(s); (vi) executes notices of and releases of liens for delinquent assessments; and (vii) performs the duties of a Secretary described in the Bylaws and the Idaho Nonprofit Corporation Act.
- Treasurer. The Treasurer is responsible for managing (i) the Association's funds and securities; (ii) keeping full and accurate financial records and books of account showing all receipts and payments; (iii) preparing all required financial data; (iv) depositing money and valuables in the appropriate bank or other institution as designated by the Board; and (v) in general, performing of all the duties of a treasurer of a corporation organized under the Idaho Nonprofit Corporation Act.

The President and Directors are not paid for their services; however, they are reimbursed for actual expenses. If one or more Chancellors are hired by the Board rather than elected, the Chancellors would be paid for service to the Association on terms negotiated by the Board. Chancellors may be hired on a part-time or as-needed basis.

Election Procedure

The Board regulates election procedure and sets policy concerning voter registration and the casting of ballots. The Bylaws contain additional provisions concerning the election procedure.

Elections, Casting Votes. Once the Owners have the right to elect Class A or Class B Directors, then the Owners directly elect the relevant directors to the Board. The Owners also elect the Chancellor(s), unless the Board has decided to hire the Chancellor(s).

- The Board. Class A Owners vote for Class A Directors. Class B Owners vote for Class B Directors. An Owner may cast his votes for as many candidates as there are Directors to be elected. An Owner is not required to use all his votes; however, no cumulative voting shall be permitted. For example, if there are three seats to be filled and the Owner has one vote, the Owner may cast one vote each for one, two or three candidates, but shall not cast more than one vote for any particular candidate. If the Owner is eligible to cast two votes as a result of owning more than one Parcel in Mountainside Village, the Owner may cast two votes a piece for each of up to three candidates. The candidates receiving the highest number of votes shall be declared elected. Directors may be elected by a plurality; a majority is not required.
- Chancellor(s). The Chancellor(s) are also elected by the Owners unless the Board has determined that the Chancellor(s) are to be paid professional positions. However, if there are insufficient numbers of candidates for Chancellor, the Board may select the remaining Chancellor(s).

Board Meetings

The Board usually meets on a monthly basis but may meet more or less often depending on the community's needs. The Board must meet at least four (4) times a year. Notice of Board meetings is to be posted or Owners otherwise notified of the meeting schedule. Owners are welcome to attend Board meetings, but their right to participate in discussion may be limited by meeting rules established and published by the Board. The Board may go into executive session to discuss certain issues including possible or pending litigation, personnel matters, and other matters.

Voting. Voting at a Board meeting requires presence of at least a majority of the Directors, in person or by telephone conference or, if allowed by law, by proxy. While face to face meetings are beneficial and should be conducted when practicable, it may be difficult at times to get a quorum of Directors together in a timely manner. If permitted by law, any action required to be taken by vote of the Board may be taken in the absence of a meeting (or in the absence of a quorum at a meeting) by obtaining the written approval of a majority of the Board or by unanimous consent. With the approval of all Directors and if permitted by law, meetings may be

conducted by telephone. Rules about quorums and voting procedures are provided in the Bylaws and may be affected by applicable statutes.

Neighborhood Meeting and Voting

Although the elected Board makes most decisions, election of the Board and certain other decisions require the participation of all Owners. Notice of each annual or regularly scheduled meeting of the Association must be sent or delivered personally at least ten (10) but not more than sixty (60) days before each meeting. The notice must state the time and place of the meeting.

Notice of any other Neighborhood Meetings must be sent at least ten (10) but not more than sixty (60) days before such a meeting. If notice is mailed by other than first class or registered mail, notices must be sent no fewer than thirty (30) days or more than sixty (60) days before the meeting date. The notice must state the time, place and purpose of the meeting. Notice of any meeting at which Owners are to vote on amendments to the Articles, a plan of merger, a proposed sale of assets or the dissolution of the Association must be given as required by Sections 30-3-101, 30-3-107, or 30-3-111 of the Idaho Nonprofit Corporation Act, as applicable.

Rules about notice of meetings for amending Articles of Incorporation and other actions, quorums and voting procedures are provided in the Bylaws and may also be affected by applicable statutes.

For those decisions requiring Owners' approval, a Neighborhood Meeting provides a public opportunity for discussion and voting. As a convenient reference and not as a limitation, actions which may under the terms of this Book require a vote of the Owners, or assent in writing, include the following:

Election of the Board and Chancellors	Chapter 2, Part I
Repeal of Rules and Regulations adopted by the Board.....	Chapter 2, Part II
Conveyance or dedication of Commons	Chapter 3, Part I
Approval of General Assessments when increased more than 15%.....	Chapter 5, Part I
Ratification of expenditures for capital improvements.....	Chapter 5, Part I
Approval of Zone expenses	Chapter 5, Part I
Repeal of additional services	Chapter 6
Amendment or termination of Book.....	Chapter 6

Records

The Board must keep a record of all Board meetings and other Association meetings. For each action taken, the record should state the vote and a description of the action approved and, where applicable, the reasons why the action was considered necessary and a summary of the information on which the decision was based. Any Owner has the right to review the

Association's records, at reasonable times, and can make copies or pay to have copies made for a reasonable fee. To the extent permitted by law, certain records may not be made available to Owners if genuine privacy considerations exist.

The Association should use available technology for effective, timely communication to Owners.

Use of Professional Management

The Board may hire a professional manager, either an individual or a management company, for the Association. Some typical duties of the manager are as follows:

- Determining day-to-day maintenance needs and dispatching personnel or service providers as necessary (although major contracts would go through the Board and possibly a bidding process as well),
- Supervising vendors, employees and service providers and making payment to them,
- Collecting assessments (including past-due notices as necessary),
- Keeping the books and records of the Association and preparing budgets and financial statements (and working with an accountant as necessary),
- Mailing or posting notices of meetings, election information and other communications to Owners, and
- Answering inquiries from Owners (and referring some questions to the Board or its attorney as necessary).

In contrast, Board members are not paid (except to be reimbursed for expenses). The Board selects the manager and must work with the manager and provide guidelines. Board members make such policy decisions as adopting the budget and determining assessment levels, making significant employment decisions and approving major contracts. They decide what major repair or replacement projects will be undertaken and the general level of service to be provided.

2.2 Community Life, Part II: Neighbors

This Book doesn't have long lists of rules. Instead, the concept is simple: neighbors shouldn't create unreasonable disturbances or unsafe conditions *and* neighbors should tolerate a certain amount of activity, noise, pets and exuberant children as part of a vibrant community.

Use of the Parcel

Residential and Business Uses. Mountainside Village is intended as a mixed-use community where, in addition to single and multi-family residences, offices, retail and civic uses thrive. Non-residential uses are subject only to the Community Operating Agreement. These commercial and civic uses are an integral part of a pedestrian-friendly community and allow people to obtain some goods and services and interact without having to use an automobile. Businesses must use reasonable measures to dispose of garbage properly and to minimize the impact of noise and odor on the surrounding area. However, residents near businesses need to recognize that a certain amount of noise and odor may be unavoidable. Live/work units shall be subject to this Book in addition to the Community Operating Agreement.

Home-based Businesses. Subject to City of Victor ordinances, a home-based business that does not generate significant noise, odor, parking demand or traffic is permitted in Mountainside Village. The Board may establish reasonable hours of operation for home-based businesses that are visited by individuals. Signage for home-based businesses is regulated under the Design Code and City of Victor ordinances and may not be permitted.

Garage Sales. Garage sales, estate or yard sales, sample sales and similar kinds of sales activity from residential Parcels is permitted on an occasional basis in accordance with City of Victor ordinances. The holding of frequent sales from a particular residence will be considered a business and may be regulated, limited or prohibited by the Association.

Leasing. Residential Parcels or separate Residential Units within a Parcel may be rented so long as the Occupants comply with the covenants for neighborhood life contained in this Chapter. Rentals may be short-term vacation rentals or longer term rentals. Tenants may use the Association's recreational facilities through a limited number of recallable recreational Memberships. The Association may prohibit the leasing of any Parcel or Residential Unit within a Parcel while the Owner is in default in the payment of Assessments and may attach rentals if the Parcel or Residential Unit within the Parcel is leased while the default exists.

Safety and Appearance

Generally. Each Owner must keep his Parcel in good order and repair and free from debris. The Design Code or the Association may regulate placement and maintenance of garbage and trash containers and fuel or gas storage tanks (including the prohibition of such tanks) and other matters affecting the attractiveness or safety of Parcels.

Signage. No sign, advertisement or notice of any type (other than those erected by the Founder or the Association or those specifically approved by the Mountainside Village Design Review Committee (“DRC”)) shall be erected or displayed on any Parcel. “For Sale” or “For Rent” signs are allowed but are limited to a uniform size, style, design and placement as specifically permitted by the DRC. Political campaign signs are permitted, subject to reasonable regulation.

Vehicles. The Design Code or the Association may regulate or prohibit the parking of trailers, recreational vehicles, nonfunctioning, oversized or excessive number of vehicles or equipment, and may require that garage doors be kept closed except when entering or leaving the garage.

Sports Equipment. Play structures, such as basketball hoops and swing sets, must be kept in good repair and their location may be limited, in accordance with the Design Code, to back yards or rear lanes. The Association may regulate or prohibit large play structures such as skateboard ramps that are visible from outside the Parcel.

Temporary Structures. The Design Code may prohibit or regulate construction trailers, tents, shacks, barns, sheds or other structures of a temporary character that are visible from outside the Parcel. However, reasonable occasional use of tents for festive occasions or children’s backyard camping is part of life and should be enjoyed.

Pets

Pets are welcome so long as the pets do not cause an unsafe condition, unreasonable disturbance or annoyance or public nuisance. The Association may regulate the number, type and size of pets (including particular breeds of dogs deemed to create unreasonable danger) and may prohibit the keeping of animals other than customary household pets, which it may define. The Association may designate specific areas within the Commons where pets may be walked, may prohibit pets on other areas, may require pet owners to collect and dispose of animal waste and may require pets to be on leash. Owners of Parcels in the Hillside area of Mountainside Village shall use underground radio or electric fences, or similar systems, to contain their pets and minimize pet/native wildlife interactions. The Association may also require the Owners in other areas of Mountainside Village to use similar pet containment systems.

Rules and Regulations

The writing of rules is one way to address specific issues that arise within the community. The Association may adopt or amend Rules and Regulations interpreting or expanding upon the basic principles of this Chapter and other portions of this Book, including but not limited to, rules about vehicles, sports equipment, temporary structures and satellite dishes. Rules should strive to address the problem in the least restrictive way. A copy of the current Rules and Regulations will be made available upon request.

Separate Rules and Regulations may also be enacted by the Founder under the Community Operating Agreement. Copies of these rules and regulations will be made available upon request.

Effective Date. Rules and regulations of the Association take effect immediately upon approval by the Board, or at a later date selected by the Board. If requested by at least ten percent (10%) of the Owners, a special meeting must be called and, if a quorum is present, any Rule or Regulation may be repealed by majority vote of the Owners, present in person or by proxy. Rules and Regulations of the Founder are effective upon their adoption by the Founder and may not be repealed by the Owners during the Period of Founder Control.

The Board should review the Rules and Regulations adopted by the Association regularly and remove or amend those that are unnecessary or overly restrictive. The Board may not remove or amend Rules and Regulations of the Founder during the Period of Founder Control.

The Rules and Regulations, as adopted from time to time, and whether adopted by the Association or the Founder, are incorporated by reference into this Book. In the event of a conflict between any provisions in the Rules and Regulations and this Book, the provisions of this Book control.

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.

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.

Nuisances

Whether otherwise permitted by a Governmental Entity, the Founder or the DRC may prohibit any use or operation that creates objectionable noise, smoke, odors or which in any other way, in the reasonable opinion of the Founder or the DRC, will constitute a nuisance or degrade the value of Mountainside Village. While the Founder owns any Parcel in Mountainside Village, the Founder shall make the permitting decision for purposes of this paragraph. Thereafter, the DRC shall review nuisance issues.

Role of the Chancellor

When problems with covenant enforcement arise, the Board or any Owner or Occupant may file a request with the Board for a Chancellor to hear the issue. The Board may authorize, in advance, categories or types of issues that may be heard by the Chancellor without first coming to the Board. The Board has the authority to approve or deny the use of a Chancellor to attempt to mediate agreement. If requested by the Board or the Chancellor to which the case is assigned, and if there is more than one Chancellor, the case will be heard by more than one Chancellor, sitting as a panel. The Chancellor or panel will notify the resident who is believed to be in violation, as well as the Owner of the Parcel, if different, and set a convenient date for a mediation session.

Mediation Session. The object of the mediation session is to hear the various viewpoints and to attempt to reach an agreement that is acceptable to all parties. Sessions must be conducted with tact, dignity and respect. The Chancellor or panel has the discretion to decide if the complaining party should participate in the mediation session.

Agreement. The Chancellor or panel is to evaluate whether the resident has caused an unreasonable disturbance or other violation, and, if so, to help reach a resolution within the general principles set out in this Chapter. If the parties reach agreement, the agreement is to be summarized in writing and signed by the parties. The Chancellor's office is to keep a copy of the agreement. The Chancellor or panel has the right to consider whether the same problem has arisen in the past and whether the Owner or resident has complied with previous agreements in evaluating the current agreement. If agreement is not reached, or if the parties do not comply with the agreement, the Chancellor or panel may make a report and recommendation to the Board for further action.

Enforcement

Each Owner and the Owners' family members, guests and tenants are required to abide by the covenants contained in this Book, which are covenants running with the land, all applicable laws, and any Rules and Regulations adopted by the Association and the Founder. Each Owner is responsible for assuring such compliance, and any violation by family members, guests or tenants may be considered to be a violation by the Owner. If the Chancellor cannot resolve a violation, the Board is empowered to take necessary legal steps to enforce the covenants contained in this Book.

If the Chancellor determines that the problem is not satisfactorily resolved, the Board will notify the Owner of the date of the Board meeting at which the matter will be discussed. After hearing the report from the Chancellor and giving opportunity for the Occupant (and Owner, if different) to be heard, the Board may take any of the following actions:

- Fines. The Board has the right to assess fines up to the maximum allowed by law and may restrict the resident's use of Commons for up to sixty (60) days or until the violation is remedied, whichever is longer. However, the primary goal of this Chapter is not to punish but to resolve problems. The Association may suggest or approve agreements and suspend payment of a fine if the agreement is honored. Fines shall be charged against the Parcel as an Individual Parcel Assessment. Any fines collected shall be contributed to the general fund of the Association.
- Pets. If the Board finds that a pet causes an unsafe condition, unreasonable disturbance or annoyance or public nuisance, it may require the Owner or Occupant to take steps to cure or limit the offensive condition. If such steps are ineffective, if the resident or Owner fails to cooperate or if the pet is considered to create an unsafe condition, unreasonable disturbance or annoyance, or public nuisance, the Association may require that an Owner or Occupant permanently remove the pet from Mountainside Village.
- Corrective Action for Enforcement Rights. If the Board determines that any Owner is in violation of this Book, the Design Code, or applicable Rules and Regulations, or has failed to maintain any part of a Parcel (including the yard and any wall, fence, or building for which the Owner is responsible) in a clean, attractive and safe manner, in accordance with the provisions of this Book, the Design Code or applicable Rules and Regulations, the Board shall notify the Owner of its findings and may assess fines. If the violation continues for ten (10) days after notice to the Owner, the Association shall have the right without liability to enter the Parcel to correct, repair, restore, paint and maintain any part of such Parcel, including but not limited to landscaping, and to have any objectionable items removed from the Parcel. The Board may reduce or eliminate the time for notice if it believes the condition creates a hazard. All costs related to such action are to be assessed to the Owner as an Individual Parcel Assessment. The Board may also assess a

management fee for activities that it must take to correct, repair, restore, paint or maintain any part of such Parcel on behalf of an Owner. If, in accordance with this section, authorized agents of the Association enter upon any Parcel to abate or remove a violation or breach of this Book, the Design Code, or the Rules and Regulations, neither the Person entering the Parcel nor the Person directing the entry shall be deemed liable for any manner of trespass for such action. This paragraph shall not apply to Parcels so long as they are owned by the Founder.

- Tenant Violations. If, after notice to both the Owner and Occupant and opportunity for a hearing, the Board determines that a tenant has violated this Book or Rules and Regulations, the Association may assess fines against the Owner. In addition, if the violation continues for ten (10) days after notice to the Owner of the findings, or if the Occupant materially violates the same covenant more than once in any one (1) year period, the Association shall have the right to evict the tenant, except Occupants who are Owners or the Owner's family. Each Owner by acceptance of a deed irrevocably appoints the Association as its agent and attorney-in-fact in such an eviction action. All costs related to such action shall be charged to the Owner as an Individual Parcel Assessment.
- Additional Remedies. All remedies listed in this section are non-exclusive and may be applied cumulatively. The Association shall also have the right to bring suit to enforce the covenants contained in this Book, including the right to an injunction and to recover damages for any violation
- Failure to Enforce Not a Waiver of Rights. No delay or failure on the part of an aggrieved Person to invoke any available remedy in respect to a violation of any provision of this Book shall be held to be a waiver by the Person of (or an estoppel of that Person to assert) any right available to such Person upon recurrence or continuance of such violation or the occurrence of a different violation, nor shall there be imposed upon the Founder, the Association, the Association's board or any Architectural Review Board a duty to take any action to enforce this Book.

Initiation of Litigation by Association

The Association shall not initiate any judicial or administrative proceeding without prior approval by Owners entitled to cast seventy-five percent (75%) of the total votes other than those of the Founder in the Association. However, no such approval shall be required for actions or proceedings:

- Initiated during the Period of Founder Control;
- Initiated to enforce the provisions of this Book, including collection of assessments and foreclosure of liens;
- Initiated to challenge ad valorem taxation or condemnation proceedings;

- Initiated against any contractor, vendor, or supplier of goods or services arising out of a contract for services or supplies; or
- To defend claims filed against the Association or to assert counterclaims in proceedings instituted against it.

Quick View: The Chancellor, the Board and the President

	<i>The Chancellor...</i>	<i>The Board...</i>	<i>The President...</i>
General Duties	Hears and mediates covenant issues.	Makes major policy decisions concerning Association operation, maintenance of Commons and budgeting decisions.	Makes day-to-day decisions within a scope of authority established in the Bylaws or by the Board.
Role in Covenant Enforcement	Brings the parties together to discuss possible covenant violations and mediates an agreement. If the agreement is not reached or is ineffective, the Chancellor may present the problem to the Board.	Has the power to enforce the covenants through fines, clean-up of Parcels (billed to the Owner), or legal action if necessary. Has the power to approve the use of Chancellor(s) to mediate agreement.	Carries out decision of Board.
Special Qualifications	None unless the Board converts the Chancellors to a paid professional position. Not required to be Owner or Occupant.	None. Not required to be Owner or Occupant.	Must be a member of the Board.
Term of Office	If elected, a two (2)-year term. No limit on number of terms.	Staggered two (2)-year terms except during the period of Founder control.	One (1)-year term except during the period of Founder control.

Dialogue

Q. If I don't like the Chancellor's decision, is there a right of appeal?

The Chancellor(s) operate primarily as mediators. If the Chancellor is unable to facilitate the reaching of an agreement between the Owners or Occupants in question, the Chancellor may

make a recommendation to the Board. The affected Occupants and Owners have the opportunity for a hearing before the Board. The decision of the Board is final, subject to appeal in a court of law.

Q. Why are there special provisions concerning tenants?

A. Special provisions concerning tenants are necessary because these covenants run with the land. Under real property law, the Association's only power of enforcement is against those who have taken title to property. The Association has no direct relationship with the tenant except as granted by the Owner. By taking title subject to this Book, the Owner is considered to have granted his or her rights of enforcement to the Association.

3.1 Physical Surroundings, Part I: Commons

The open space, walkways, recreational areas and other commonly used portions of Mountainside Village, called Commons may be owned by the Association. In most cases, the Association will hold title to Commons in fee simple. In other cases, the Association's ownership may be in the form of easements, leases or other rights.

Commons

Most of the Commons in Mountainside Village are intended for the mutual benefit and enjoyment of the community. Commons of Mountainside Village shall include the open space, parks, greens, gardens, paths, stormwater ponds, the Mail Center, rear lanes, and the Community Tower. Commons may include areas that are privately owned, areas that are publicly owned but maintained by agreement with the Founder and areas that are owned by the Association. Commons shall be maintained in accordance with the environmental standards set forth in the Design Code. In general, areas described above and those shown on the plat referenced in Exhibit A as open space, or if shown as such in any Supplemental Declaration, shall be Commons. The boundary or character of a Commons may be changed by Supplemental Declaration.

Use of Commons

Every Owner has, and is hereby granted, a non-exclusive easement for appropriate use and enjoyment of Commons. This easement passes with title to the Owner's Parcel and is automatically extended to Occupants provided that (i) the Owner of the property that they occupy shall be responsible for the manner of such use, and (ii) the Owner may withdraw consent for such use by written notice to the Association. The easement is subject to the Association's right of regulation in accordance with this Book and is also subject to any limitations that may be contained in the conveyance of that portion of Commons to the Association.

Open-Air Markets, Festivals and Other Events. Mountainside Village is intended to be a vibrant community with activity that brings people together. The Board may permit use of portions of Commons for various events. The following are examples:

- Farmers' Market or other open-air market.

- Festivals, parades, block parties or other events intended to enrich and enliven the community.
- Private parties, weddings and events.

As part of these events, the Board may rent or assign space for pushcarts, kiosks, stands or temporary sales structures and may permit the erection of tents and banners. Such uses may be only for special events or on a recurring basis. However, other than where specified in this Book, no contract shall be for a period of longer than a year, including all renewal options. Any revenue from events is to benefit the Association or other charitable or community-enriching organization.

Rules of Usage of Community Areas. Use of Commons must be in accordance with this Book, the Rules and Regulations, and the following:

- a. An Owner or Occupant must arrange for the use of the Commons for any gathering, class, party, wedding or event through the Association. The Association may approve the functions in accordance with the Rules and Regulations and has the right to require evidence of compliance with the requirements of this Book and the Rules and Regulations and the right to bar use of the Commons by anyone not complying with these provisions in advance or during an event. The Association may bar any Owner or Occupant from event use of the Commons for a period of up to one (1) year for a violation of this Book. After three (3) violations, the Association may permanently bar an Owner or Occupant. 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 the Commons must take the steps necessary to prevent the event from precluding reasonable use by others of the Commons; provided that portions of the Commons may have limited access for up to six (6) hours in a day, or such other time as approved by the Association.
- c. Any Owner or Occupant conducting an event in the Commons must take the steps necessary to prevent the event or people arriving or departing from the event from unreasonably interfering with traffic around the Commons or damaging cars parked adjacent to the Commons. Any Owner or Occupant conducting an event in the Commons must take the steps necessary for the removal of all trash, signs, tables, chairs or other property associated with the event promptly following the event and for generally restoring the Commons to its pre-event condition.
- d. Any Owner or Occupant conducting an event in the Commons shall be responsible for providing proper trash and recycling receptacles and rest room facilities for the event and for the prompt removal of these receptacles and facilities after the event and the proper disposition of trash and recyclables.

e. Any Owner or Occupant conducting an event in the Commons shall not charge a fee for access to the Commons, though fees may be charged for concessions or otherwise in accordance with the Rules and Regulations and applicable law.

Club Membership. The Association may permit limited use and access to non-Owners of all or a portion of Commons and amenities through the sale of recallable club memberships or other fees. Any such revenue is to benefit the Association.

Damage or Destruction of Commons. If any Commons or Improvements on a Commons is damaged or destroyed by an Owner or Occupant 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 Association or 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 or the Association may repair the damage at the Owner's expense. The Owner may also be charged a management fee if the Association is required to repair the damage on behalf of the Owner because the Owner does not repair the damage. If the damage is unsightly or dangerous as determined by the Founder or the Association at its sole discretion, the Founder or the Association has the right to repair the damage immediately and charge the Owner responsible for the damage for the cost of the damage plus a management fee after the repair has been completed. The cost of the repairs becomes a Special Assessment on the Parcel of the Owner and constitutes a lien on the Owner's Parcel. This lien is collectible in the same manner as other Assessments set out in this Book. 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 to enforce the provisions of this Section.

If an Owner's or Occupant's business attract 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 Association may provide twenty (20)-day 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.

Delegation of Use; Sale. Any Owner may temporarily delegate his right of enjoyment in Commons to any Occupants of the Owner's Parcel and to its customers, invitees or guests, subject to the terms of this Book and any Rules and Regulations established from time to time. This right cannot be conveyed except as an appurtenance to Parcels within Mountainside Village. The Founder, the Association, or any owner of a portion of Commons may dedicate or convey all or any part of such area to any public agency or authority with the consent of the Founder or, if the Founder no longer owns any property within Mountainside Village, then with the consent of the Board.

Limitation of Liability. The Association is not an insurer of safety and makes no warranty and assumes no liability for any loss or injury.

Maintenance and Capital Improvements

The Association is responsible for the management, control and improvement of Commons. At a minimum, it must keep Commons clean and in good repair. The Association may also make capital improvements to Commons and may modify the uses of Commons. Any changes to Commons must be approved in accordance with the architectural review standards of Chapter 4.

To the extent reasonably necessary, the Association has, and is hereby granted, an easement over each Parcel for maintenance of Commons. The Association also has, and is hereby granted, an easement with respect to any improvements constructed on Commons that unintentionally encroach on a Parcel, whether due to any minor deviation from the subdivision plat of Mountainside Village or the settling or shifting of any land or improvements.

Roads, Utilities, Drainage

The Association manages the various systems within the community that are part of Commons. The Association has the benefit of certain easements, and also has the power to grant easements to others, such as granting to a utility company rights for utility installation and maintenance. The following are some of the Association's rights and responsibilities:

Common Road Regulation. To the extent permitted by law, the Association may make Rules and Regulations concerning driving and parking within Mountainside Village and may construct traffic calming devices as approved by the Board, with Founder approval during the Period of Founder Control, post speed limit or other traffic signs and take any other reasonable measures to discourage excessive speed and encourage safe driving on the Common Roads. While parking requirements for all uses in Mountainside Village are set forth in the Zoning Ordinance, additional parking requirements, such as limiting parking duration or requiring decals for Owners or Occupants, may be set forth in an Owner's deed, in a Supplemental Declaration filed on a Parcel, or in the Rules and Regulations. Each Owner, Occupant, and their tenants and guests shall comply with all applicable parking requirements. Any failure to comply shall be a violation of this Book as well as a violation of the document creating the parking requirement. To the extent permitted by local government, the Association may enforce any violation in accordance with Chapter 2 and may tow offenders.

Surface Water or Stormwater Management System. The Association has the power to maintain proper drainage within Mountainside Village. In the exercise of this power, the Association shall have a blanket easement and right on, over, under and through the ground within Mountainside Village to inspect, maintain and correct drainage of surface water and other erosion controls. This easement includes the right to cut or remove any vegetation, grade soil or

take any other action reasonably necessary for health or safety or to comply with governmental requirements. The Association shall notify affected Owners and Occupants (except in an emergency) and shall restore the affected property to its original condition as nearly as practicable.

Snow Removal. The Association has a blanket easement upon, across, over, through, and under Mountainside Village for access, storage, and plowing of snow from neighborhood center parking areas and snow banks adjacent to roads within Mountainside Village.

Utility Easements. The Association has a blanket easement upon, across, over, through and under Mountainside Village for access, installation, replacement, repair and maintenance of all public and private utility and service systems. These systems include, but are not limited to, water, sewer, irrigation, drainage, telephone, electricity, television, security, cable or communication lines and other equipment. By virtue of this easement, the Association 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 reasonable use of his Parcel. If authorized by majority vote of the Board, the Association may assign all or a portion of its rights under this paragraph to one or more utility providers.

Police Powers. The Association has a blanket easement throughout Mountainside Village for private patrol services and for police powers and services supplied by local, state and federal governments as needed to lawfully carry out their duties, including clearing emergency vehicle access. The reservation of such easement does not imply that any such service shall be provided.

Purchase or Conveyance of Commons

Purchase of Commons. The Association may acquire additional Commons. The decision to acquire additional Commons (other than that added by the Founder), whether by purchase or lease or other means, shall be authorized by a vote of at least sixty percent (60%) of the Board. If the purchase or lease is costly enough to be considered a substantial capital expense, it must be approved as described in Chapter 5.

Sale or Long-Term Lease of Commons. As described elsewhere in this chapter, the Board may rent or assign space in Commons on a short-term basis for open-air markets, festivals, parties, weddings and other events and may dedicate part or all of Commons to the public. Although it would be unusual, the Association may sell, donate or grant long-term leases for small portions of Commons or exchange parts of Commons for other property inside or outside Mountainside Village when the Board finds that it benefits the community in at least one of the following two ways:

- The conveyance is intended to benefit the community in ways other than the revenue, if any, to be derived from the transaction. For instance, the Association may convey or

exchange property if necessary to improve access to Mountainside Village or to improve utility service. The Association may also convey property to other community-oriented organizations.

- The revenue to be derived is significant and the use and appearance of Commons is not significantly impaired. For instance, the Association might sell or lease small amounts of space for cellular telephone transmission equipment, subject to design approval in the architectural review process.

Any decision to donate, sell, exchange or lease any portion of Commons must be approved by at least sixty percent (60%) of the Board and for as long as the Founder owns any Parcels in Mountainside Village. A transaction for sale, exchange or lease for a term of more than one (1) year, including all tenant renewal options, cannot be completed until thirty (30) days after notice to Owners. If requested by at least ten percent (10%) of the Owners within the thirty (30) day period, a special meeting must be held. Notice requirements for special meetings are described in Chapter 2 and in the Bylaws. If a quorum is present in person or proxy, the decision to purchase, sell, exchange or lease may be rescinded by a two-thirds (2/3) vote of the Owners present. Any contract with a third party for the purchase, sell, exchange or lease of Commons should be contingent upon this right of rescission, unless the Board has previously passed a resolution describing the intended transaction and giving thirty (30) days notice.

Except as specifically permitted by this Book, Commons cannot be rented or sold.

Corrective Instruments. The Association, by approval of at least sixty percent (60%) of the Board, may also execute corrective instruments, settle boundary line disputes and resolve other title matters concerning Commons.

Dedication and Condemnation

Dedication is the voluntary conveyance of title to a municipality or other governmental entity, while condemnation is the taking of property by a government or other authority having the power of eminent domain. Any dedication or conveyance is subject to acceptance by the applicable governmental agency.

Dedication. If any portion of the Common Roads has not previously been dedicated to the public, the Board may, by majority vote, cause the Association to convey title to or dedicate the Common Roads to the appropriate public authority. Any other dedication of Commons must be approved in the same manner as a conveyance of Commons.

Condemnation. If all or any part of Commons is taken by, or an offer is accepted in lieu of condemnation from, any authority having the power of eminent domain, all compensation and damages shall be paid to the Association. The Board shall have the right to act on behalf of the Association with respect to any negotiation or litigation relating to the offer or taking.

Association Insurance and Reconstruction

Insurance can protect the Association's assets and financial security. However, insurance is a large and sometimes volatile item in the Association's budget. At least once each year, the Board should review types of insurance and terms and limits of coverage for insurance held by the Association. Changes in replacement costs or anticipated liabilities can make existing insurance coverage inadequate. In rare cases, if coverage becomes too expensive, the Association may make a decision to drop certain coverage or to take a higher deductible.

Types of Insurance. The following are examples of insurance the Association should consider:

- Property and Casualty Insurance. The Board shall obtain property and casualty insurance for Commons includes structures or other improvements that can and should be insured for damage or other loss. Some policies provide coverage for "all risks" (or "perils") not excluded. Others insure against loss from named perils such as fire, vandalism, malicious mischief, earthquake and wind. If it is available, the Board should consider obtaining flood insurance (if in a flood-prone area). Care should be taken that sufficient coverage is obtained to comply with any co-insurance percentage provided for in the policy. Preferably, the policy should stipulate an "agreed value" of the property to avoid the problems presented by a co-insurance provisions altogether.
- Commercial General Liability. The Board shall obtain commercial general liability insurance in such amounts as the Board determines, insuring against liability arising out of, or incident to, the membership and use of the Community Areas and any topographic conditions or water access located on or adjoining Mountainside Village. It should seek to extend the coverage to walkways. This insurance should provide that the acts of any given insured, if excluded from coverage, should not preclude coverage for the named insured or other insured not involved in the acts or behavior triggering the exclusion.
- Director Liability Insurance. The Board may obtain liability insurance insuring against liability for actions taken by members of the Board, officers of the Association and advisory members in the performance of their duties. The Board may also obtain fidelity insurance for its employees.
- Other Coverage. The Board shall obtain and maintain workman's compensation insurance if and to the extent necessary to meet the requirements of law and such other insurance as the Board may determine or as may be requested from time to time by a majority vote of the Owners.

Repair and Reconstruction after Fire or Other Casualty. If Improvements to Commons are damaged, the Board shall arrange for and supervise prompt repair and restoration of the Improvements. The Board obtains funds for repair on reconstruction first from the insurance proceeds, second from reserves for the repair and replacement of such Improvements, and third from any Special Assessments that may be necessary.

3.2 Physical Surroundings, Part II: Private Domains

The design for Mountainside Village is intended to maximize land usage and sense of community by providing gracious squares and parks while offering intimate and private yards and gardens for individual use. Mountainside Village follows principles of traditional neighborhood design, which uses the individual houses and other buildings to form the streetscape. Their facades help form the walls of “outdoor rooms” - comfortable spaces where residents can enjoy walking, playing and relaxing.

This chapter enables some of the special design considerations of traditional neighborhood development through easements and other provisions concerning the buildings and lots. A related chapter, Part II of Chapter 2, provides covenants for daily living.

Relationship Between Parcels

As provided by the Design Code, certain buildings within Mountainside Village may be attached townhouses or the dwellings may be detached but placed on or near the property line. The easements in this section are intended to enable reasonable cooperation between neighboring Owners. The Association may make rules for maintenance and use of easement areas and shared improvements that are to be uniformly applied to all similarly configured Parcels.

Parcel Lines. The re-subdivision of any Parcel or the separate conveyance of any part of a Parcel other than as an easement is prohibited except if performed by the Founder. The specific consent of the Mountainside Village Design Review Committee (“DRC”) is required to otherwise modify the boundary lines of any Parcel. Additional approval by the City of Victor may also be required.

Structural Party Walls. Each Owner grants to the Owner of each adjacent Parcel within Mountainside Village the right and easement to maintain and to utilize any exterior or interior wall that forms a party wall between them. A wall will be considered a party wall only if it provides structural support for the buildings, or parts of a building, on more than one Parcel. Maintenance of each surface of the party wall shall be the sole responsibility of the Owner whose building faces such surface. Each Owner shall be liable and responsible if, in connection with that Owner’s use and maintenance of the party wall, the Owner damages the adjacent Owner’s building or the wall itself. The cost of any other repairs to the party wall shall be shared equally by the adjacent Owners.

Exterior Walls. An exterior wall which supports the building on only one Parcel, or which encloses a courtyard on one Parcel, shall not be considered a party wall. The Association may make Rules and Regulations concerning use and maintenance of such walls, including assigning responsibility between the adjoining Owners for painting and repair and granting access over the adjoining Parcel as reasonably necessary to maintain the wall. All such maintenance and repair shall be in accordance with the Association's Rules and Regulations and Design Code.

Yard Easements. To allow the most efficient use of a Parcel while complying with governmental setback requirements, a portion of a Parcel along a lot line may be subject to an easement for use by the adjoining Parcel Owner. The Owner of a Parcel subject to such an easement will usually be the beneficiary of a similar easement burdening another Owner's Parcel, unless the Parcel is a corner lot or is larger than the adjoining Parcel. Such easements may be designated on the plat, in the Design Code or recorded in the deed from the Founder to the first Owner of the burdened Parcel. Such easement area may be up to four (4) feet wide and shall run along a boundary line. Subject to regulation under the Design Code, the beneficiary of such an easement shall have the use and maintenance responsibility for the easement area and, subject to this Chapter 3, may place air-conditioning equipment, fences, decks or patios, and other fixtures (but not primary structures) upon the easement area.

Footings. For certain building types, such as side yard houses, which are to be built along a property line, the Design Code may permit footings to intrude into the adjacent property. To the extent allowed by the Design Code and governmental regulations, the adjacent property shall be subject to an easement for such intrusion. However, roofs, gutters, downspouts and rain leaders may not discharge water onto the surface of the adjacent property as a point source.

Townhouse or Row House Roof. If a townhouse or row house wall or parapet exists along or very near a property line, the Owner of the townhouse or row house to be constructed on the adjacent property shall have the right to flash into the existing building in accordance with industry standards in order to make the new building watertight. This right includes the right to make minor cuts on the existing building and to secure flashing or other materials to the existing building, so long as the structural integrity and water tightness of the existing building is not impaired. The cost of this flashing shall be borne by the Owner of the new building, but the maintenance of this connection shall be a shared expense between adjacent property Owners.

Owner Insurance

The loss of a building due to fire or other casualty affects the entire block. Insurance is necessary to make sure that each Owner has the funds available to rebuild after a casualty.

Parcel Coverage. Each Owner shall obtain property and casualty insurance for Improvements on his or her Parcel. Coverage shall be in an amount not less than necessary to comply with the co-insurance percentage stipulated in the policy, but in any event not less than eighty percent (80%) of the value (based upon replacement cost) of the insurable improvements constructed on

the Parcel. If requested by the Association, an Owner shall provide evidence of such insurance to the Association.

Casualty. If fire or other casualty damages or destroys a building or any other Improvements on a Parcel, the Owner of that Parcel shall proceed to rebuild and restore the Improvements to the condition existing immediately prior to such damage or destruction, unless other plans are approved by the DRC. Construction and restoration must be diligently pursued and completed within a reasonable period of time. If the Owner fails to clear and secure a Parcel within thirty (30) days after a casualty, the Association may, in accordance with the provisions of Part I of Chapter 3, remove debris, raze or remove portions of damaged structures and perform any other clean up the Association deems necessary to make the Parcel safe and attractive. The cost of such clean-up shall be assessed to the Owner as an Individual Parcel Assessment.

Quick View: Acquisition and Conveyance of Commons

	<i>Purpose:</i>	<i>Approval Process:</i>
Acquisition of Additional Commons	Benefit to Neighborhood.	Authorized by at least sixty percent (60%) of the Board. If purchase or lease is costly enough to be considered a significant capital expense, it must be approved as described in Chapter 5.
Grant of Easements	Provision or improvement of utility services.	Board may approve easements to utility providers by majority vote.
Short-Term Rental or Assignment of Portions of Commons	Events such as farmers' markets, festivals, block parties or private parties.	Board approval; term of no more than one year.
Sale, Donation or Long-term Lease of Portions of Commons	Beneficial use for community or significant income without significant impairment of Commons.	At least sixty percent (60%) of Board and the Founder subject to Owners' right of rescission.
Dedication or Condemnation of Portions of Commons	Conveyance to a municipality or other governmental entity.	Board may approve dedication of streets by majority vote and may negotiate regarding condemnation. Other dedication subject to the same approval requirement as for a sale of Commons.

Dialogue

Q. Can an Owner get permission to have a private party on Commons?

The Board will set policy from time to time concerning use of Commons for private parties. If such use is permitted, the Board may limit the number of times an Owner may have a party on Commons and may establish fees and other requirements for use.

4.1 Architectural Standards, Part I: Mountainside Village Design Code; Town Architect; DRC

Improvements within Mountainside Village will be designed and built by different homeowners, architects and builders. Each of these individuals will contribute to the shaping of the community.

The Mountainside Village Design Code communicates the basic elements that are essential for creation of this residential community. It is intended to conform to “traditional neighborhood” or urban design principles and contains features of both a conventional architectural code and a zoning code.

The architectural review process, set out in Part III of the Community Operating Agreement, concerns all portions of the Design Code.

Copies of the Design Code are available from the Association, the DRC or the Founder. Because the Design Code may change from time to time, it is important that an Owner obtain approval based on the current version of the Design Code before undertaking any change or improvement of his or her property.

Town Architect

The Founder may appoint a Town Architect, whose job it is to understand, interpret and, when necessary, modify 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.

Founder and Mountainside Village Design Review Committee Roles

The community attracts its residents based on the anticipation that it will, in general, be constructed in accordance with the Founder’s vision. The Design Code represents a component of that vision. No Improvement will be made nor building permit for an Improvement sought without written approval of the Improvement by the DRC. The DRC will review Improvements

using the procedures set forth in the Community Operating Agreement, as it is amended from time to time. The DRC has the sole and absolute ability to review and approve applications.

4.2 Architectural Standards, Part II: Review Process

Initial construction is dramatic, as each street takes shape. The facades of the buildings and the streetscape landscaping form the community's outdoor rooms, and the community described by the Design Code springs to life.

However, Mountainside Village will not be frozen in time. Communities, their needs and their built environments, continue to evolve after initial construction is complete. Homes are enlarged to suit a growing family. A tree falls and must be replaced. Children clamor for swimming pools, basketball hoops and swing sets. A puppy requires a fenced yard. The questions surrounding review of proposed modifications or alterations concern not just design but compatibility with the adjacent properties.

The Community Operating Agreement outlines the method for review of both initial construction and modifications to ensure that as Mountainside Village matures it continues to follow the vision set out in the Design Code.

Notice to Owners

The contract for the construction or modification of a home is negotiated between the Parcel Owner and the contractor. Neither the Founder nor the DRC are 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 and the applicable provisions of the Community Operating Agreement 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 and the applicable provisions of the Community Operating Agreement before undertaking any change or improvements of his or her 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.

Enforcement

In addition to the enforcement provisions in the Community Operating Agreement, if any construction or installation is begun which has not been approved or which deviates from approved plans and specifications, the Board may by majority vote approve any of the following actions on behalf of the Association:

- Require the Owner to resolve the dispute through binding arbitration.
- Seek an injunction requiring the Owner to immediately stop construction and remove or correct any improvements that are not in compliance with approved plans.
- Bring suit seeking other remedies, including any combination of damages, specific performance, declaratory decree and/or permanent injunction or other remedy at law or in equity.

If the Association 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 Association shall also be awarded reasonable attorney's fees and costs, even if the relief requested is not granted.

The DRC may require the builder or Owner to post a deposit from which the DRC may deduct published fines and costs of rectifying the deviation for failure to comply with the approved plans and specifications and rules for builder conduct. The collection of a fine shall not in any way diminish the available remedies at law or equity.

Failure to enforce any provision of this Chapter shall not be deemed a waiver of the right to do so at any time thereafter.

Quick View: The Town Architect and the DRC

	Town Architect	DRC
Role	Helps to interpret the Design Code. Suggests modifications when appropriate. Sits on the DRC.	Reviews applications for new construction and modifications to existing improvements.
How Selected	Selected by the Founder.	The Town Architect is a member and the Founder may select a representative. Once the Founder can no longer appoint members of the DRC, or chooses not to appoint the members of the DRC, the members shall be selected as follows: The new DRC shall consist of either three (3) or five (5) members. For a three (3) member DRC, the Association shall appoint two (2) members to the DRC. For a five (5) member DRC, the Association shall appoint four (4) members. The Founder may appoint the final members of the DRC, but if it chooses not to do so, the remaining DRC members shall choose the additional members.
Qualifications	Must have a professional degree in architecture or urban design from an accredited university or comparable qualifications, or qualifications deemed appropriate by the Founder.	No requirements.
Primary Source of Funds	Salary as determined by Board.	Application fees are to cover cost of operation. After the period of Founder control, the Association funds any deficit.

Dialogue

Q. Is the Town Architect the architect who designed the community?

The architect who designs the Master Plan for the community will not necessarily be named the Town Architect. The Town Architect is not responsible for designing individual houses but can facilitate the design of houses consistent with the overall design vision for the neighborhood.

Mountainside Village Book of Operating Principles

Q. If it's my house, why can't I do what I want with it?

By taking title to property in Mountainside Village, Owners have agreed to the provisions of this Book and other recorded instruments placing certain restrictions on the use of the property. Idaho courts have consistently enforced architectural review requirements contained in recorded instruments.

Q. Isn't injunction a harsh remedy?

The right to seek an injunction is the most powerful tool available to the Association. Money damages are usually an inadequate remedy for failure to comply with architectural review provisions as it is difficult for the Association to prove the financial damage caused by an Owner's failure to comply with architectural review provisions. However, an injunction gives the Association the ability to require an Owner to comply with the approved plans and specifications, regardless of a lack of financial damage and regardless of the cost to the Owner of making such a change.

For instance, if an Owner specifies one type of window in the approved plans and specifications, but then substitutes another during the course of construction, it can be quite expensive for the Owner to remove the incorrect windows and replace them with the correct windows. The power to require that change is the greatest tool the Association has to keep the Owner from succumbing to the temptation to substitute unapproved windows. Unless the recorded documents allow this powerful tool, a court might hesitate to grant such a remedy.

5.1 Finance, Part I: Association Budget

The Board is responsible for managing the Association's financial affairs. Although the Directors cannot be expected to make perfect decisions, the Directors are required to act in accordance with good faith judgment concerning the best interests of the Association.

Accounting

The Association has two (2) kinds of accounts: operating funds and reserve funds. Operating funds must be easily accessible and are used for day-to-day expenses. Reserve funds are the Association's savings and are to be invested to pay for major repair and replacement of Commons.

The Association must prepare annual statements of its income and expenses, which are to be made available to each Owner. Unless required by law or the Board, annual statements do not need to be audited.

Budget

Financial planning begins with the annual budgeting process. The fiscal year of the Association begins January 1 of each year and ends on December 31 of that year, unless the Board selects a different fiscal year. The Board may appoint a committee to undertake the preparation of the budget, including holding hearings for Owners. At least two (2) months before the end of the fiscal year, the Board or its budget committee shall hold a budget meeting to consider the proposed budget for the coming year. Notices of budget meetings are to be posted so that Owners can attend. The budget is adopted by majority vote of the Board. At least two (2) weeks before the fiscal year to which the budget applies, the Board shall send to each Owner a copy of the budget and notice of the amount of the General Assessment the Owner will owe.

Balancing a Budget. Like any budget, the Association's budget has two (2) main categories: expenses and income. The Board is responsible for estimating the expenses of the Association for the upcoming year and then setting General Assessments—the Association's main source of income—at a level high enough to pay for the anticipated expenses. (The Association may have other minor income sources, such as interest on its accounts.)

Expenses. Some of the expenses to be included in the budget are mandatory, such as taxes, insurance and required maintenance of Commons. Anticipated fees for professional management of the Association, accounting services, legal counsel and other professional services should also

be included in the budget. The Association also needs a certain amount of working capital—the cash flow necessary to make sure bills can be paid on time. Reserves, as discussed further below, should be considered. The Board may add to the budget the cost of improvements it would like to make to the community.

Budget Review. If General Assessments on Parcels are to be increased by more than fifteen percent (15%) per parcel when compared to the previous year's General Assessment, and review is requested by petitions signed by at least ten percent (10%) of all Owners requesting review within thirty (30) days after the budget is delivered to Owners, the Board is to call a special meeting to present the budget and to answer any questions. After presentation, the budget is deemed approved unless a quorum of the Owners is present and a majority of the voting interests reject the budget. If the budget is rejected, the Board must approve a new budget within ten (10) days and send a copy to each Owner. If, under the new budget, the General Assessments are to be increased by more than fifteen percent (15%) per parcel, then the budget must be reviewed again according to the provisions of this paragraph.

Interim Rules. If the budget is challenged or if for any other reason the Board is late in approving the budget, Owners are not released from their obligation to pay General Assessments whenever the amount of such assessments is finally determined. Until a new budget is approved, each Owner must continue to pay the assessment at the rate established for the previous fiscal year.

Reserves and Deferred Maintenance

Although not required, it is recommended that the Association establish reserves for deferred maintenance, which are significant expenses that occur infrequently (in most cases, no more frequently than every five (5) years). Without sufficient reserves, the Association will be required to levy a Special Assessment when these major expenses arise. Costs that occur more frequently or that are less expensive can probably be handled as an ordinary expense, although reserves may be established for these costs as well.

Using Reserves. When it is time to perform deferred maintenance, the Board can authorize use of the appropriate reserve fund. Reserve funds are an estimate; sometimes one reserve fund will have excess funds while another will not have enough. If specifically authorized by the Board, reserves set aside for one purpose may be used for another purpose. (For instance, money set aside for resurfacing streets may be used for re-roofing a building.)

Calculating Reserves. The amount of reserve required is based on the life expectancy of the item, its replacement cost and the amount of money already in the fund. Different items will require different calculations and different reserve funds. Once the amount of the reserve is determined, the reserve funds may be included in the budget and funded each year from General Assessments.

Investing Reserves. Although separated for the Association's internal bookkeeping purposes, the various reserve funds can be deposited in a single bank or investment account, to be invested in a prudent way. Because the reserves are the Association's savings, reserves must be kept in an account separate from the Association's operating account and must require more than one signature to be accessed.

Excess Reserves. If there is an excess of reserves at the end of the fiscal year, the Board may decide to reduce the following year's assessments for reserves. If sixty percent (60%) of the Board determines (by vote) that a reserve is no longer necessary for its original purpose, the Board may assign all or part of the funds to a reserve for another purpose, or allocate the funds to the Association's operating account.

Unanticipated or Extraordinary Expenses

Sometimes extraordinary expenses will arise during the year that the Association has no choice but to pay. This may include any unexpected expenditures not provided by the budget or unanticipated increases over the budgeted amounts. If insurance rates rise dramatically, an insurance bill may be much higher than budgeted. A casualty may cause extensive landscape damage that is not covered by insurance. When the Association is faced with an expense that cannot be paid from operating funds, it has two choices:

Special Assessment. The Board may impose a Special Assessment for any unusual or emergency maintenance or repair or other expense that this Book or the applicable law requires the Association to pay, or for deferred maintenance or replacement for which reserves are insufficient. Special Assessments require approval by sixty percent (60%) of the members of the Board. The Board may choose to spread the Special Assessment over a period of up to five (5) years.

Using Reserves. If specifically authorized by the Board, reserves may be used for extraordinary expenses that are not included in the annual budget. However, rebuilding that reserve should be a priority in the next budget. A Special Assessment may be used to pay back the reserve fund.

Capital Improvements

Most of the Association's expenses for Commons are considered maintenance – repairing and replacing original improvements. However, the Association may wish to change or add to Commons' facilities. Not all capital improvements are expensive. These changes can be as small as a new park bench or as large as a new building. (Conversely, not all major expenses are capital improvements: resurfacing a sidewalk is deferred maintenance, not a capital improvement.) Alterations and new improvements, except those proposed by the Founder, must go through the architectural review process.

The Association expenditures for most capital improvements may be approved by the Board without membership approval. However, any Substantial Capital Improvement to Commons approved by the Board must be ratified by a majority of the Owners. A capital improvement will be considered substantial if the cost to the Association of the improvement is more than ten percent (10%) of the Association's annual budget or if, when added to other capital improvements for the fiscal year, the sum is more than fifteen percent (15%) of the Association's annual budget. If the Substantial Capital Improvement is approved by the Owners, the Board shall determine whether it is to be paid from General Assessments or by Special Assessments, which the Board may spread over a period of time up to five (5) years.

Zone Expenses

Zones are intended to provide a flexible means for providing additional maintenance, services, or capital improvements to a portion of Mountainside Village that has special needs. The Village Center shall be a Zone within Mountainside Village. Zone boundaries may be designated at the time of the addition of the property by Supplemental Declaration or at any later time by the Board. Some expenses apply only to a certain Zone within Mountainside Village:

- Capital Improvements. Any Zone may, by at least two-thirds (2/3) vote of the Owners within that Zone and approval of the Board; vote to assess all Owners within the Zone for capital improvements to Commons that will primarily benefit that Zone.
- Additional Services. Any Zone may, by majority vote of the Owners within that Zone and approval of the Board, vote to assess all Owners within the Zone for maintenance or services in addition to those normally provided by the Association. Examples of such maintenance include, without limitation, increased levels of road maintenance, increased security, more intensive snow plowing and snow removal, etc. For front-yard landscape maintenance, the Board may define a Zone by Parcel type and may approve landscape service for that Zone, which shall be effective unless a majority of the Owners within that Zone object in writing to the landscape service.

If the assessment is approved, it will be assessed to and allocated among all Owners within that Zone or designated group as Individual Parcel Assessments.

Zones may be combined for assessment purposes. If more than one Zone is to vote, the Board shall determine whether approval and assessment is to be by Zone or by the combined group of Zones. If a group smaller than a Zone wishes to be assessed for capital improvements or services, all of those being assessed must agree to the Assessment.

Contract for Maintenance

The Association may, but is not obligated to, act as agent for an Owner, if so requested by that Owner, to contract for routine maintenance and other services not required to be provided by the

Association, the cost of which will be assessed to that Owner as an Individual Parcel Assessment. The terms and conditions of all such contracts are at the discretion of the Board.

5.2 Finance, Part II: Assessments

The cost of meeting the Association's expenses is divided among all the Owners by the assessments levied on Parcels.

Allocation of Assessments

The common expenses of the Association are to be allocated among the Parcels in accordance with the relative values described in the adjacent table. The annual allocation of the common expenses of the Association may be calculated for each Parcel by dividing the relative value assigned that Parcel, as shown in the adjacent table, by the sum of the values of all Parcels within Mountainside Village. These are the Assessment Interests.

A single outbuilding with a studio or one-bedroom apartment is not subject to assessment if the primary residence on the Parcel is assessed at one (1.0) or greater.

If an Owner combines two (2) Parcels or parts of Parcels and uses them as a single Parcel, the Association may assess them as a single Parcel or by such other formula as is adopted by the Board and consistently applied.

An Owner, other than an Owner of Exempt Community (described below) property, begins paying annual Assessments from the time the Parcel is conveyed, prorated to the month of closing. The Owner may be required to pay the remainder of the current year's Assessments in advance. If there is a Special Assessment in effect for the Parcel, that Special Assessment will also be prorated to the month of closing.

Exempt Community. The following portions of Mountainside Village shall be exempt from the Assessments and liens created herein: (i) all property owned by the Founder except for any Parcel owned by the Founder on which a Building has been constructed, in which case the

<i>Parcel Type</i>	<i>Relative Value</i>
Mansion Building	1
Row House	1
Cottage	1.5
Village House	1.5
Residential 65'	1.7
Boulevard Home	2
Edge Lot	2.6
Hillside Lot	3
Commercial	1.5 for each one thousand (1000) sq. ft of building footprint.
Special Use Parcel	Determined by the Founder based on anticipated use

Assessments shall commence on the first day of the month following the date on which the applicable Governmental Entity issues a certificate of occupancy (temporary or permanent) for the Building, (ii) all properties dedicated to and accepted by a public authority, (iii) all Commons, and (iv) any Parcel deemed exempt pursuant to the Paragraph below regarding Non-Profit Entities. Collectively, the property referred to in items (i) through (iv) of the preceding sentence shall constitute the “Exempt Community”.

Non-Profit Entities. Parcels that are used by non-profit entities primarily for the benefit of residents of Mountainside Village may have a zero (0) allocation. The Founder may grant such exempt status of record at any time up to and including the time of conveyance of the Parcel to someone other than the Founder. Once granted, such exempt status continues so long as the use of the Parcel remains substantially the same. The Board also has the authority to grant exempt status for qualified entities upon terms and conditions established by the Board.

Determination by the Association. The Board, using reasonable discretion, has the authority to determine the type of Parcel and may establish rules for the assessment of unimproved lots, determination of residential and commercial use and other matters relating to Assessments. The Association’s agent may enter and examine buildings at reasonable times for assessment purposes. An Owner shall have the right to a hearing before the Board to appeal an Assessment evaluation; however, the decision of the Board after the hearing is final.

Transfer Fees

Certain assessments are paid upon the conveyance of property:

- **Capital Contribution.** At the closing and transfer of title of each Parcel to the first Owner other than the Founder or a builder, for resale, the purchasing Owner shall contribute an amount equal to three (3) months installments of the General Assessment. This contribution is to be deposited in the general funds of the Association for start-up expenses of the Association and for working capital for the Association and shall not be considered as a pre-payment of General Assessments.
- **Institute Contribution.** To fund the Institute’s arts, cultural and community projects, the seller of a Parcel shall pay an Institute Contribution to the Institute whenever a Parcel is conveyed to a new Owner other than the Founder or its designated entities or a builder for resale, in the amount of one percent (1%) of the purchase price. When a parcel upon which a residence has been constructed is conveyed to a new owner other than the founder or its designated entities, the seller shall pay an Institute Contribution to the Institute in the amount of 0.3% of the purchase price. If the seller fails to pay the Institute Contribution, the buyer shall be responsible for this contribution. A conveyance from the Founder or its designated entities to a new Owner shall not subject the seller or the buyer to the requirement to pay the Institute Contribution. A conveyance from a builder who purchased a Parcel for resale shall not be subject to the requirement to pay an Institute

Contribution upon resale of the Parcel to a new Owner, provided the builder has constructed the primary building type for which the lot type is intended. After establishment of the Institute, the Association shall, if requested by the Institute, collect the Institute Contribution as agent for the Institute. The Institute shall have authority to enforce collection of Institute Assessments in the same manner as the Association may enforce collection of General and Special Assessments.

The Capital Contribution (if then applicable) and Institute Contribution are not required to be paid by an institutional first mortgagee who acquires title as the result of a foreclosure or deed in lieu, but shall be paid by a third-party purchaser at foreclosure or upon the conveyance by the mortgagee to a subsequent Owner.

The Institute. Neither the Founder nor the Association shall have any obligation to maintain the Institute after it is created. If the Institute ceases to exist, then the Association may elect to: (i) continue to collect the Institute Contribution, but utilize the collected funds for arts, cultural and community projects; (ii) direct the funds to another charitable organization having a similar purpose as the Institute; or (iii) discontinue collection of the Institute Contribution.

Collection of Assessments

Each Owner is required to pay all Assessments (General Assessments, Special Assessments, Individual Parcel Assessments, Zone Assessments, Capital Contribution and Institute Contributions) assessed to that Parcel. The Association has the right to institute reasonable policies concerning late fees and interest, which such Owner is also required to pay. The Association may require Owners who are delinquent in paying their Assessments to pay Assessments on a pro-rated monthly or quarterly basis.

Collection Costs. If any Assessment is still delinquent fifteen (15) days after the Association has delivered a warning letter to the Owner's last known address, the Association has the right to also charge the Owner with the Association's collection costs, including a reasonable attorney's fee, whether or not suit is brought. The Association may also establish late fees for delinquent payment of Assessments.

Legal Remedies. The obligation to pay Assessments and costs is both a personal obligation of the Owner and a lien on the Parcel that may be imposed under the terms of the Idaho Contract Lien Act. (The past-due Assessments, plus late fee, interest at a rate not higher than the rate allowed by law to the time of collection, and the Association's attorney's fees and other collection costs are called the "Assessment Charge"). The Association may bring an action at law against the Owner personally obligated to pay the Assessment Charge, or may foreclose the lien in the manner permitted by law, or both.

- Personal Obligation. The Assessment Charge shall be the personal obligation of the person or entity that was the Owner of the Parcel at the time when the Assessment

Charge was levied, and of each subsequent Owner. No Owner may waive or otherwise escape liability for the Assessment Charge by abandonment of the Parcel.

- **Creation of Lien.** The Assessment Charge shall also be a continuing lien upon the Parcel against which the Assessment Charge is made. This lien, in favor of the Association, shall secure the Assessment Charge which is then due and which may accrue subsequent to the recording of the claim of lien and prior to entry of final judgment of foreclosure. Any subsequent Owner of the Parcel shall be deemed to have notice of the Assessment Charge. The lien shall be prior to all other subsequent liens and encumbrances except (i) real estate tax liens on that parcel, (ii) liens and encumbrances recorded prior to the recordation of Mountainside Village Declaration, and (iii) sums unpaid on and owing under any mortgage or deed of trust recorded prior to the perfection of the lien for Assessments. The provisions of this paragraph do not affect the priority of mechanics' and materialmen's liens.

The Association may bid for an interest in any Parcel foreclosed at such foreclosure sale, may acquire a Parcel, and may subsequently hold, lease, mortgage and convey the acquired Parcel.

Other Remedies. The Association shall have the right to suspend the voting rights and the right to use of Commons by an Owner, and may prohibit the leasing of the Parcel for any period during which any Assessment against the Parcel remains unpaid.

Subordination of Lien to Mortgages. The lien upon each of the Parcels securing the payment of the Assessment shall be prior to all other liens except (i) real estate tax liens on such Parcels and other liens having priority as a matter of law, (ii) liens and encumbrances recorded prior to this Book, and (iii) sums unpaid on and owing under any Mortgage recorded prior to the perfection of such lien, whether or not such sums are advanced before or after the filing of the lien notice filed in the Clerk's Office as to such Assessments.

Notice to Purchasers

If there are any Assessments unpaid on the Parcel, you will automatically become liable for those Assessments when you accept a deed. **You should contact the Association before purchasing a Parcel to make sure no Assessments are owed.** You should also inquire about Special Assessments which may have been assessed but which are not yet owed.

The Treasurer of the Association, or managing agent if one has been employed by the Board, upon request of any Owner or contract purchaser, will furnish a certificate signed by a member of the Board or individual designated by the Board stating whether assessments are paid to date by that Owner and whether any Special Assessments have been levied. Such a certificate, when signed by the appropriate individual designated by the Board, may be relied upon by a good faith purchaser or mortgagee. The Association may charge a reasonable amount for such statements.

Quick View: Types of Assessments

	<i>What it's for....</i>	<i>How it's assessed...</i>
General Assessments	All of the regular, budgeted expenses of the Association, including the establishment of reserves.	Annually, payable in installments, based on the budgeted expenses of the Association.
Special Assessments	Substantial Capital Improvements approved by the Owners, or any unusual or emergency maintenance or repair or other expense that the Association is required to pay and for which there is not enough money in the reserves.	As needed. At the discretion of the Board, payment of a Special Assessment may be spread over a period of time, up to five (5) years.
Individual Parcel Assessment	Any special services to that Parcel, for expenses approved by that Zone, or any other charges designated in this Book as an Individual Parcel Assessment.	As needed.
Zone Assessments	Any services for a particular Parcel in a specific Zone.	As needed.
Capital Contribution	Start-up expenses and working capital for the Association.	Payment equal to three (3) months General Assessments upon sale to first Owner.
Transfer Fee	Funding of Mountainside Village's art, cultural and community activities.	Payment of one percent (1%) of the purchase price every time the Parcel is conveyed, other than certain conveyances to the Founder, builders or mortgagees.

Dialogue

Q. If I don't believe the Association is doing a good job, can I withhold assessments?

A. No. Dissatisfaction with the Association is not a legal defense to an assessment collection case. Other avenues, such as discussion at meetings, volunteering for committees or running for the Board, are available to improve the Association's performance.

Q. Is the Capital Contribution for capital improvements?

A. No. The terminology is confusing, but the drafters chose to keep the two meanings of “capital” because both are commonly used in community associations. The Capital Contribution goes to the “working capital” or capital reserves of the Association—the cash flow the Association needs to be able to pay bills while waiting to collect assessments.

Q. Can a company owned or controlled by a Director do business with the Association?

A. There is no prohibition against such contracts. However, when the Board considers the contract, the Director should disclose the interest in the company. In addition, a majority of the remaining uninterested Directors must authorize, approve, or ratify the contract (except that a single Director may not authorize, approve, or ratify such a transaction) and the terms of such contracts must be fair and reasonable—in general, comparable to what would be charged by an outside company.

6 The Future

It's impossible to envision all the things that might happen as Mountainside Village grows and matures. This Book tries to give the residents the tools and flexibility they need to confront issues as they arise.

Additional Association Powers

To the extent permitted by law, the Association may, but is not obligated to, provide the following services or engage in the following activities:

- Provide water, sewer, irrigation systems, drainage, telephone, electricity, television, security, cable television or communication lines and other utility services; supply of irrigation water; garbage and trash collection and disposal; laundry equipment or service;
- In areas other than Commons, provide natural systems management, insect and pest control, improvement of vegetation and wildlife conditions, forestry management, pollution and erosion controls;
- Emergency rescue, evacuation or safety equipment; fire protection and prevention; lighting of Common Roads which are not dedicated roads; restricted or guarded entrances, traffic and parking regulation and security patrols within Mountainside Village;
- Transportation; day care and child care services; landscape maintenance; and recreation, sports, craft and cultural programs in areas other than Commons; and newsletters or other information services;
- Maintenance of easement areas, public rights-of-way and other public or private properties other than Commons located in Mountainside Village if their deterioration would affect the appearance of or access to Mountainside Village or if such maintenance is required or allowed by this Book; and
- Any other service allowed by law.

The Board may, by majority vote, initiate or terminate any of the above services, which shall take effect sixty (60) days after notice to the Owners, except in an emergency. As determined by the Board depending upon the nature of the service, the cost of any such additional service may be part of the common expenses of the Association, may be assessed as an Individual Parcel Assessment to affected Parcels or may be provided on a fee-for-service or other reasonable basis as determined by the Board. If requested by petitions signed by at least ten percent (10%) of the

Owners, a special meeting may be called and, if a quorum is present, the Board action to initiate or terminate an additional service under this section shall be repealed by majority vote of the Owners.

Amendment

The Founder may amend this Book (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 Book's provisions or correct errors or inconsistencies, (iv) to add real property to Mountainside Village and subject that real property to this Book or to withdraw real property from Mountainside Village, or (v) to conform to any law then in effect.

The Founder may amend this Book without approval by the Owners or the Board during the period of time that the Founder has the right to appoint at least three (3) directors to the Board. This Book may also be amended at any time by an instrument signed by the President or Vice President and Secretary of the Association, certifying approval in writing by Owners representing two-thirds (2/3) of the voting rights, with the following limitations:

- Provisions concerning voting rights and allocation of assessments cannot be amended without the consent of two-thirds (2/3) of each category of affected Parcel Owners.
- Rights reserved to the Founder may not be amended without the specific consent of the Founder.
- The rights of Owners of Parcels within the Village Center may not be amended without the specific consent of two-thirds (2/3) of the voting interests of those Owners.

Any amendment takes effect upon its recordation in the public records of the Clerk's Office.

Duration

The covenants and restrictions contained in this Book shall run with and bind Mountainside Village and shall inure to the benefit of and be enforceable by the Founder, the Association and its Board, and all Owners, their respective legal representatives, heirs, successors or assigns for twenty (20) years, and shall be automatically extended for each succeeding twenty (20) year period unless an instrument signed by Owners representing eighty percent (80%) of the voting rights in the Association shall have been recorded, agreeing to terminate the Book as of a specified date.

This Book may also be terminated in any of the following ways:

- The Book may be terminated at any time by the consent in writing of two-thirds (2/3) of all Owners.
- Dedication of Commons. The Book may be terminated by consent in writing by Owners representing at least two-thirds (2/3) of the voting rights in the Association, if Commons have been accepted for dedication or taken by eminent domain by the appropriate unit of local government (except that rear lanes or footpaths between two Parcels may be divided evenly between the adjacent Parcel Owners in accordance with this Chapter).

7 Definitions

Affiliate of the Founder. The “Affiliate of the Founder” means any Person directly or indirectly controlling, controlled by or under common control with the Founder. “Control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise, and the beneficial ownership of shares representing ten percent (10%) or more of the votes entitled to be cast by a Person’s voting shares.

Articles. “Articles” are the Articles of Incorporation of the Association.

Assessments. “Assessments” is the collective term for the following the Association charges, all as further described in Chapter 5:

- **General Assessment.** The “General Assessment” is the amount allocated among all Owners to meet the Association’s annual budgeted expenses.
- **Individual Parcel Assessment.** An “Individual Parcel Assessment” is a charge made to a particular Parcel Owner for charges relating only to that Parcel.
- **Special Assessment.** A “Special Assessment” may be charged to each Parcel for capital improvements or emergency expenses.
- **Zone Assessment.** A “Zone Assessment” is a charge made to a particular Parcel for expenses relating only to Parcels in that Zone.
- **Capital Contribution.** With certain exceptions as described in Chapter 5.2, a “Capital Contribution” is paid upon sale to the first Owner, for start-up expenses and working capital for the Association.
- **Institute Contribution.** An “Institute Contribution” to benefit the Institute is paid upon each sale other than certain sales to the Founder or its designated entities, to a builder, from a builder to a new Owner, or to a mortgagee.

Association. “Association” is Mountainside Village Association, Inc., an Idaho nonprofit corporation.

Board. “Board” is the Board of Directors of the Association.

Book. The “Book” is this Mountainside Village Book of Operating Principles, as amended from time to time.

Building. “Building” shall have the meaning set forth in the building code for Victor, Idaho.

Bylaws. The term “bylaws” refers to the bylaws of the Association, as amended from time to time.

Certificate of Completion. The DRC issues a “Certificate of Completion” in recordable form upon correction of all deficiencies noted in the Certificate of Substantial Conformance.

Certificate of Substantial Conformance. The DRC issues a “Certificate of Substantial Conformance” when the primary building and landscaping are completed in substantial compliance with the approved plans and specifications. The certificate describes any minor areas of deficiency that need to be corrected.

Class A Owner. A “Class A Owner” is an Owner of a residential Parcel in Mountainside Village.

Class B Owner. A “Class B Owner” is an Owner of a Parcel within the Village Center.

Clerk’s Office. The “Clerk’s Office” is the Teton County Clerk’s Office, Driggs, Idaho, or such other place in Teton County where real estate documents and records relating to title to real estate are maintained.

Commercial Property. “Commercial Property” is a Parcel used for office or other retail use, and does not include a live/work Parcel, the Residential Units of a mixed-use Parcel, or a home office on an otherwise Residential Parcel.

Common Roads. “Common Roads” are the streets and rear lanes located within Mountainside Village that are intended for automobile traffic. Most of the Common Roads are intended to be dedicated to the public. Any Common Roads not dedicated to the public shall be part of Commons.

Commons. “Commons” comprises real property within Mountainside Village as designated on a plat or specifically conveyed to the Association, for the common use and enjoyment of all Owners, such as, without limitation, open space, parks, greens, gardens, paths, stormwater ponds, the Mail Center, rear lanes, and the Community Tower. “Commons” also include any improvements on that real property, all utilities, utility easements and other easement rights or personal property for the Owner’s common use, and any other property of any type specifically designated as Commons. Commons may include areas dedicated to the public to the extent that the Association agrees to maintain, or is required to maintain, such property.

Community Operating Agreement. The “Community Operating Agreement” is the Mountainside Village Community Operating Agreement, recorded in the Clerk’s Office, as

amended from time to time. The Community Operating Agreement establishes architectural control, reserves certain rights to the Founder and places other restrictions on the use of Mountainside Village.

DRC. The “DRC” is the Mountainside Village Design Review Committee.

Founder. The “Founder” is Mountainside Inc., an Idaho S Corporation, and its successors or assigns as Founder.

Improvements. “Improvements” mean any Buildings, underground installations, slope alterations, lights, roads, driveways, utility facilities and lines, parking areas, fences, satellite dishes, rooftop installations, screening walls and barriers, retaining walls, stairs, decks, windbreaks, plantings, planted trees or shrubs, poles, signs, loading areas and any Structures or landscaping improvements of every type and kind.

Including. Wherever the term “including” occurs in this Book, it shall be interpreted broadly and without limitations as “including but not limited to”.

Lot. “Lot” means any plot of parcel of land on which a dwelling is located or will be located or a unit within a condominium within Mountainside Village.

Mountainside Village. “Mountainside Village” is the community described in the Community Operating Agreement and the Book.

Mountainside Village Design Review Committee. The Mountainside Village Design Review Committee or “DRC” is the panel established by the Community Operating Agreement to review and approve modifications to Parcels and to perform other tasks described in this Book and the Community Operating Agreement.

Mountainside Village Design Code. The “Mountainside Village Lot Standards which have been recorded with The Plat and The Mountainside Village Design Code” of July 2005, as amended, and other Rules and Regulations and design guidelines as developed, approved, and used from time to time. The Design Code establishes the plan for the development of Mountainside Village through its regulation of land use, architecture and environment. The Design Code is originally adopted by the Founder and may be amended from time to time in accordance with this Book. The Design Code does not need to be recorded to be effective but shall be available from the DRC.

Mortgage. “Mortgage” means any mortgage or deed of trust granted by an owner encumbering real property, encumbering any other security interest therein existing by virtue of any other form of security instrument or arrangement used from time to time in the City of Victor (including, by way of example rather than of limitation, any such other form of security arrangement arising under any deed of trust, sale and leaseback documents, lease and leaseback

documents, security deed or conditional deed, or any financing statement, security agreement or other documentation used pursuant to the provisions of the Uniform Commercial Code or any successor or similar statute); provided that such mortgage, deed of trust, or other form of security instrument, and any instrument evidencing any such other form of security arrangement, has been recorded in the Clerk's Office.

Mortgagee. "Mortgagee" means a mortgagee of a mortgage, a beneficiary under a deed of trust or any other lender, and their successors and assigns, this is secured by a Parcel in Mountainside Village.

Occupant. "Occupant" means any Person who occupies and/or who is entitled to use a part of Mountainside Village as Owner, lessee or licensee, or in any other capacity other than as the beneficiary of an easement.

Owner. "Owner" is the record owner, whether one or more persons or entities, of fee simple title to any Parcel. Owners shall not include those having such interest merely as security for the performance of an obligation, or condominium associations (but shall include the condominium Owners individually).

Parcel. A "Parcel" means any plot or parcel of land designated for separate ownership or occupancy in Mountainside Village other than a common area, and a unit in a condominium association.

Period of Founder Control. The "Period of Founder Control" under Mountainside Village Declaration is that period during which the Founder may appoint the majority of the Directors on the Board.

Person. A "Person" is any natural person, corporation, partnership, trust, limited liability company, or other entity.

Residential Unit. A "Residential Unit" is an individual dwelling unit such as a single-family residence, townhouse or other attached dwelling (such as each half of a duplex unit), an apartment or condominium unit, or a residential dwelling within a mixed-use building.

Rules and Regulations. The "Rules and Regulations" mean any rules and regulations adopted from time to time by the Founder or the Association to implement the objectives of this Book.

Special Use Parcel. A "Special Use Parcel" is a Parcel of unconventional size, shape, location or use that calls for special design considerations. Typically, a Special Use Parcel will be used for commercial purposes, multi-family residential or community or recreation facilities.

Structure. "Structure" shall have the meaning set forth in the building code for Victor, Idaho.

Substantial Capital Improvements. “Substantial Capital Improvements” are those Improvements the cost of which exceed ten percent (10%) of the Association’s annual budget, or if when added to other capital Improvements for the fiscal year, the sum is more than fifteen percent (15%) of the Association’s annual budget.

Supplemental Declaration. “Supplemental Declaration” is any instrument that may be recorded by the Founder or the Association as provided in the Book.

Village Center. The “Village Center” is that area of Mountainside Village shown surrounding the village green. Block 1, lots 9 thru 14 and block 3, lots 4 thru 7.

Wheeled Transport. “Wheeled Transport” means bicycles, scooters, skateboards, roller skates, roller blades, tricycles, wheelchairs, Segway Human Transport, wagons, baby strollers and similar means of transportation, working on wheels or tracks, whether or not motorized, but not including motorcycles, motorized go carts, all terrain vehicles or mini-bikes.

Zone. “Zones” are smaller areas within Mountainside Village of distinct building type or character. Owners of property within a Zone may be assessed for maintenance of property primarily serving that Zone.

Zoning Ordinance. “Zoning Ordinance” means the zoning regulations contained in the Victor Development Ordinance, as amended, applicable to the development of Mountainside Village.

8. Miscellaneous Provisions and Signatures

Authority. This Book shall be administered by the Founder, the Association or by any managing agent for Mountainside Village designated by the Founder.

Effect of Invalidation. If any provision of this Book (including any attachment, exhibit, or items incorporated by reference) is held to be invalid or unenforceable by any court, the invalidity of such provision shall not affect the validity of the remaining provisions of this Book, which shall continue unimpaired and in full force and effect and shall be construed to the fullest extent practicable as if such invalid or unenforceable provision had not been included in this Book.

Interpretation. This Book shall be interpreted for the mutual benefit and protection of the Owners and Occupants of Mountainside Village and in furtherance of the basic goals of this Book. Any discrepancy, conflict or ambiguity, which may be found herein, shall be resolved and determined by the Founder or the Association (to the extent the Founder's rights under this Book have been assigned to the Association) and, in the absence of adjudication by a court of competent jurisdiction to the contrary, such resolution and determination shall be final. This Book and rights of the Owners within Mountainside Village shall be governed by the laws of that State of Idaho.

Exhibits and Appendices. All Exhibits and Appendices attached to this Book are incorporated by reference and made a part of this Book.

Captions; Capitalized Terms; Gender. The section and paragraph headings and captions appearing in this Book are inserted only as a matter of convenience and for reference and in no way limit or otherwise affect the scope, meaning or effect of any provisions of this Book. Terms that are capitalized in this Book shall have the meaning set forth in Chapter 7 of this Book unless the context plainly makes such meaning inappropriate. Whenever the singular number is used in this Book, the same shall also include the plural, and the masculine gender shall include the feminine and neuter genders, and vice versa, as the context requires.

Community Cooperation. Owners of property in Mountainside Village shall cooperate to utilize the Community Areas for the benefit of Mountainside Village. The Owners are encouraged to conduct events and undertakings to build a sense of community as well as to participate with surrounding neighborhoods in creating a "place" for Owners and their neighbors.

Compliance with Zoning Laws. All Owners shall comply with the Zoning Ordinance and all other applicable federal, state, and local laws including the City of Victor noise and nuisance ordinances.

Constructive Notice and Acceptance. Each Owner, Occupant or other Person, by acceptance of a deed conveying title to a part of Mountainside Village, or the execution of a contract for the purchase thereof, or the acceptance of a lease or license therefore, or the taking possession thereof, whether from the Founder or other Owner or lessee, shall for itself, his successors and assigns, be deemed to (i) accept such deed, contract, lease, license or possession upon and subject to each and all of the provisions of this Book, and (ii) covenant, to and with the Founder, and the other Owners to keep, observe, comply with and perform the requirements of this Book, whether or not any reference to this Book is contained in the instrument by which such Person acquired his or her interest. Owners agree to refer to this Book in deeds, leases and licenses covering any portion of Mountainside Village and to make this Book binding upon all Owners and Occupants.

Notice to the Founder. Any and all notices or other communication required or permitted by this Book, or by law to be served on or given to the Founder must be in writing and shall be deemed appropriately served and given when the notice or communication is personally delivered, or in lieu of such personal service, on the third business day after it is deposited in the United States mail, first class, postage prepaid, certified or registered mail, return receipt requested, addressed to the Founder as follows:

Larry Thal
2160 Coyote Loop
Wilson, WY 83014

with copies to: Dan Sloan
McGuire Woods LLP
One James Center
901 E. Cary Street
Richmond, VA 23219-4030

or to such other address as the Founder may specify by Supplemental Declaration executed by the Founder without need for the consent of any other Owners.

Notice to Owners. Notice to any Owner (other than the Founder) or Occupant or to any Mortgagee shall be deemed duly served when personally delivered to the Person to whom it is directed, or in lieu of such personal service, on the third business day after it is deposited in the United States mail, first-class postage prepaid, certified or registered mail, return receipt requested, addressed to (i) the Owner or Occupant at the address as shown in the applicable County or City tax records, or to such other address as designated by the Owner or Occupant, in writing to the Founder, as applicable; and (ii) to such Mortgagee at the address designated by the Mortgagee in writing to the Founder.

Waiver. Neither the Founder, nor the DRC, nor the Association or its Board nor their successors or assigns shall be liable for damages to any Owner, lessee, licensee, or Occupant by reason of any mistake in judgment, negligence, nonfeasance, action or inaction in the administration of the provisions of this Book, the Design Code or the Rules and Regulations or for the enforcement or failure to enforce this Book, the Design Code or the Rules and Regulations or any part thereof; and every Owner or Occupant, by acquiring an interest in Mountainside Village, agrees that he,

she or it will not bring any action or suit against the Founder, the DRC or its members, the Association or its Board to recover damages or to seek equitable relief on account of their enforcement or non-enforcement of this Book.

Re-recording. Unless this Book is terminated, the Association shall rerecord this Book or other notice of its terms at intervals necessary under Idaho law to preserve its effect.

IN WITNESS WHEREOF, the undersigned does hereby make this Mountainside Village Book of Operating Principles, and has caused this Book to be executed as of the day and year first above written.

MOUNTAINSIDE INC., an Idaho S Corporation

By: _____ [SEAL]

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

Name: _____

Appendix I: The Beginning Years

This appendix contains information about how the community is to operate in the earlier years. It gives a timetable for various transitions from complete developer control to independence. When the transition is complete, this appendix is no longer necessary and may be disregarded.

Board

The Association is created before the sale of the first Parcel. When the community gets started, the Founder selects the first Board and operates the Association because, quite simply, there's no one else there to do it. The Founder also has a major interest in seeing that the Association gets off to a good start so that the community is successful. For that reason, the Founder has a lot of control, and the Owners have very little, in the beginning years. However, as the community matures, that responsibility begins to shift—initially, as the first Owner is elected to the Board, and later, when control of the Board is delivered to the Owners. To allow the Founder to complete the development plan, the Founder retains some rights until development is complete, even though the Founder no longer controls the Board.

	<i>Occurs upon the first of the following...</i>	<i>What Happens Then...</i>
Transition Point I	<ol style="list-style-type: none"> 1. At least 20 Parcels have been purchased by individual Owners other than builders, or 2. Voluntary assent of the Founder. 	Class A Owners elect one member of the Board.
Transition Point II	<ol style="list-style-type: none"> 1. At least 85 Parcels have been purchased by individual Owners other than builders, or 2. Voluntary assent of the Founder. 	Owners elect two members of the Board: one member is elected by the Class A Owners and one member is elected by the Class B Owners.
Transition Point III	<ol style="list-style-type: none"> 1. At least 170 Parcels have been purchased by individual Owners other than builders, or 2. Voluntary assent of the Founder. 	This is the turnover point where Owners elect a majority of the Board. Owners elect three members of the Board (two members elected by the Class A Owners and one elected by the Class B Owners). The Founder may designate two Directors. If the Board is more than five members, similar ratios shall be used such that Owners elect a majority of the Board. The

	<i>Occurs upon the first of the following...</i>	<i>What Happens Then...</i>
		Founder continues to appoint the Town Architect and no changes can be made in the Design Code without the Founder's consent.
Transition Point IV	<ol style="list-style-type: none"> 1. Completion of construction for all Parcels, or 2. Voluntary assent of the Founder. 	The Founder no longer designates a director and all remaining Founder's rights under this Appendix end.

Commons

At the time that the first Parcels are conveyed to Owners, the Founder will still be developing portions of community, and this development will likely continue for a period of years. The Founder has reserved in the Community Operating Agreement various easements and rights that it needs to be able to complete development of the community. The Founder may convey to the Association additional Commons as they are completed. The Association is required to accept these additional Commons for maintenance.

Architectural Control

To allow the Founder to complete development in accordance with the Founder's vision for the community, the Founder shall have the right to approve all Initial Improvements. No changes can be made in the Design Code without the Founder's consent until completion of Initial Improvements for all parcels.

Finance

Founder's Assessments; Founder's Guarantee. The Founder or its designated entities shall be excused from payment of General Assessments during the Guarantee Period as defined below. The Founder guarantees to Owners that their General Assessments during the Guarantee Period shall not exceed the initial General Assessment (subject to the increases set forth below). The Founder agrees to pay any Association expenses incurred during the Guarantee Period and normally paid through General Assessments that exceed the amount produced by the General Assessments during that time. The Guarantee Period shall begin upon the recordation in the Clerk's Office, of the first deed of conveyance of a Parcel in Mountainside Village and shall end at the conclusion of the third subsequent full fiscal year (so that three (3) full fiscal years are guaranteed). The Guarantee Period shall then be automatically extended for successive six (6)-month periods up to an additional three (3) years unless terminated upon written notice by the Founder to the Association at least thirty (30) days before the end of then-current Guarantee Period. During the Guarantee Period, the General Assessments may be increased by up to fifteen percent (15%) per year.

Owner's Assessments. Each Owner begins paying annual General Assessments from the time the Parcel is conveyed, prorated to the month of closing. The Owner may be required to pay the remainder of that year's General Assessments in advance. If there is a Special Assessment in effect for that Parcel, it will also be prorated to the month of closing.

Assignment of Developer Rights

The Founder may assign all or any portion of its rights or obligations under Community Operating Agreement or the Book at any time to a successor or assign, or to the Association.

Additional Information

Neither the Association nor the Founder makes any representation or assumes any liability for any loss or injury.

Quick View: Roles of the Founder and the Association

<i>The Founder...</i>	<i>Association...</i>
Constructs the initial improvements on Commons.	Maintains the improvements to Commons and makes capital improvements or replaces improvements as it determines is appropriate.
Installs the initial landscaping on Commons.	Maintains the landscaping of Commons at the level of care it determines is appropriate.
Maintains an office and staff as necessary to conduct its sales operations and to fulfill its Founder duties. May hire a Manager to fulfill its duties.	Maintains an office and staff as necessary to manage Association's affairs. May hire a Manager to fulfill its duties.
Prepares the initial estimated budget for the Association.	Adopts the initial budget and subsequent budgets.
Collects the Capital Contribution at closing and delivers it to the Association.	Collects assessments based on budget.

Dialogue

Q. What is “turnover”?

A. The term “turnover” generally refers to the point at which the Owners elect a majority of the Board. The Association, being a corporate entity, doesn't change, but the control of its Board does.

In Mountainside Village, the change in control of the Association is a gradual process, consisting of three separate transition points, as the Owners gradually grow into roles of more responsibility. Just as various cultures have coming of age ceremonies for their citizens, Mountainside Village could and should celebrate these transition points with appropriate ceremony.

Q. While the Founder designates a majority of the Board, can the Directors vote to have the Association contract with companies the Founder owns or controls?

A. There is no prohibition against such contracts, and because the Founder has a strong interest in the community, it may be appropriate for companies controlled by the Founder to perform the Association work. However, if a director has a conflict of interest as described in Section 30-3-81 of the Idaho Nonprofit Corporation Act, then the contracts should be authorized, approved, or ratified by a majority of the disinterested directors, and the terms of such contracts must be fair and reasonable—in general, comparable to what would be charged by an outside

company—and extra care should be taken with the Association’s bookkeeping to make payments from the appropriate account.

EXHIBIT A

Potential Neighborhood

The Potential Neighborhood 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 _____.

EXHIBIT B

Description of 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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