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12/19/2007 10:17:00 AM Jean Alberico
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**DECLARATION
OF
COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS
OF
THE MOUNTAIN SAGE TOWNHOMES**

THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS of The Mountain Sage Townhomes (the "Declaration") is made as of DECEMBER 17, 2007, by Colorado-Main Development, LLC (the "Declarant").

RECITALS

- A. Declarant is owner of that certain real property located in the Town of Carbondale, Garfield County; State of Colorado more particularly described on the attached Exhibit A (the "Property").
- B. Declarant desires to create on the Property a townhome planned unit development project pursuant to the Colorado Common Interest Ownership Act as set forth in Colorado Revised Statute 38-33.3-101, *et. seq.* (the "Act"), the name of which is the Mountain Sage Townhomes P.U.D.

**ARTICLE 1
DECLARATION AND SUBMISSION**

1.1 **Declaration.** Declarant hereby declares that the Property shall be held, sold and conveyed subject to the following covenants, conditions, restrictions and easements which are for the purpose of protecting the value and desirability of the Property, and which shall run with the land and be binding on all parties and heirs, successors, and assigns of parties having any right, title, or interest in all or any part of the Property. Additionally, Declarant hereby submits the Property to the provisions of the Act.

**ARTICLE 2
DEFINITIONS**

The following words when used in this Declaration or any Supplemental Declaration, unless inconsistent within the context of this Declaration, shall have the following meanings:

(a) **"Allocated Interests"** means the Sharing Ratio in Common Expenses, and the votes in the Association. The Allocated Interests for each Lot have been allocated so that each Lot's initial share shall be as shown on the attached Exhibit B.

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- (b) *"Annual Assessment"* means the Assessment levied annually.
- (c) *"Articles"* mean the Articles of Incorporation for the Mountain Sage Townhomes Homeowners Association, Inc. as amended from time to time.
- (d) *"Assessments"* mean the Annual, Special, and Default Assessments levied pursuant to Article 10 below. Assessments are also referred to as a Common Expense Liability as defined under the Act.
- (e) *"Association"* means The Mountain Sage Townhomes Homeowners Association, inc. a Colorado nonprofit corporation, and its successors and assigns.
- (f) *"Association Documents"* means this Declaration, the Articles of Incorporation, and the Bylaws of the Association, and any procedures, rules, regulations, or policies adopted under such documents by the Association.
- (g) *"Board of Directors"* means the governing body of the Association elected to perform the obligations of the Association relative to the operation, maintenance, and management of the Property and all improvements on the Property.
- (h) *"Bylaws"* means the Bylaws adopted by the Association, as amended from time to time.
- (i) *"Common Area"* shall mean that portion of the Property depicted on the Plat that shall be subject to easements and restrictions described in Section 16.
- (j) *"Common Expenses"* means (i) all expenses expressly declared to be common expenses by this Declaration or the Bylaws of the Association, (ii) insurance premiums for the insurance carried under Article 9, and (iii) all expenses lawfully determined to be common expenses by the Board of Directors of the Association.
- (k) *"Declarant"* means Colorado-Main Development, LLC, and its successors and assigns.
- (l) *"Declaration"* means and refers to this Declaration of Covenants, Conditions, Restrictions and Easements of The Mountain Sage Townhomes.
- (m) *"Default Assessment"* means the Assessments levied by the Association pursuant to 10.7 below.

(n) "*Mountain Sage Townhomes*" shall mean the townhome project created by this Declaration, consisting of seven buildings and a maximum of twenty-six (26) Lots upon the Property, the Lot, and any other improvements constructed on the Property and as shown on the Plat.

(o) "*Manager*" shall mean a person or entity engaged by the Association to perform certain duties, powers, or functions of the Association, as the Board of Directors may authorize from time to time.

(p) "*Member*" shall mean every person or entity that holds membership in the Association.

(q) "*Mortgage*" shall mean any mortgage, deed of trust, or other document pledging any Lot or interest therein as security for payment of a debt or obligation.

(r) "*Mortgagee*" means any person named as a mortgagee or beneficiary in any Mortgage, or any successor to the interest of any such person under such Mortgage.

(s) "*Owner*" means the owner of record, whether one or more persons or entities, of fee simple title to any Lot, and "Owner" also includes the purchaser under a contract for deed covering a Lot with a current right of possession and interest in the Lot, but excludes those having such interest in a Lot merely as security for the performance of an obligation, including a Mortgage, unless and until such person has acquired fee simple title to the Lot pursuant to foreclosure or other proceedings.

(t) "*Plat*" means the P.U.D. Plat of the Mountain Sage Townhomes; recorded 12/19, 2007, as Reception No. 739581 in the records of the Clerk and Recorder of Garfield County, Colorado and all supplements and amendments thereto.

(u) "*Property*" means and refers to that certain real property described in Recital A above.

(v) "*Sharing Ratio*" means the percentage allocation of Assessments to which an Owner's Lot is subject as shown on Exhibit B.

(w) "*Special Assessment*" means an assessment levied pursuant to Section 10.6 below on an irregular basis.

(x) "*Successor Declarant*" means any party or entity to whom Declarant assigns any or all of its rights, obligations, or interest as Declarant, as evidenced by an assignment or deed of record executed by both Declarant and the transferee or assignee and
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recorded in the Office of the Clerk and Recorder of Garfield County, Colorado, designating such party as a Successor Declarant. Upon such recording, Declarant's rights and obligations under this Declaration shall cease and terminate to the extent provided in such document.

(y) "Lot" means a Lot together with all improvements thereon, including the individual townhome, and all other rights and burdens hereunder.

Each capitalized term not otherwise defined in this Declaration or in the Plat shall have the same meanings specified or used in the Act.

ARTICLE 3 NAME, DIVISION INTO LOTS

3.1 **Name.** The name of the townhome project is the Mountain Sage Townhomes. The townhome project is a Planned Community pursuant to the Act.

3.2 **Association.** The name of the Association is the Mountain Sage Townhomes Association, Inc. Declarant has caused to be incorporated under the laws of the State of Colorado the Association as a nonprofit corporation with the purpose of exercising the functions as herein set forth.

3.3 **Number of Lots.** The maximum number of Lots in the townhome project is twenty six (26). The project may be constructed in phases.

3.4 **Identification of Lots.** The identification number of each Lot is shown on the Plat as filed.

3.5 **Division of Property Into Lots, and Common Expense Sharing Ratios.** The Property is divided into fee simple estates, each such estate consisting of the separately designated Lot as shown on the Plat, as may be supplemented or amended from time to time. The Common Expenses shall be allocated according to the Sharing Ratios

3.6 **The Use of Lots.** Each Owner shall be entitled to exclusive ownership and possession of his Lot. Each Owner may use the area of the Owner's Lot outside of the building in accordance with the purpose for which it is intended, without hindering or encroaching upon the lawful rights of the other Owners, subject to such reasonable rules and regulations as may, from time to time, be established pursuant to the Bylaws of the Association.

3.7 **Description of Lot.**

(a) Each Lot and improvements thereon shall together comprise one (1) Lot, and shall be inseparable. Each Lot may be leased, devised or encumbered only as a Lot subject however to any lease restrictions contained with Lot specific deed restrictions recorded in the public records.

(b) Title to a Lot may be held individually or in any form of concurrent ownership recognized in Colorado. In case of any such concurrent ownership, each co-owner shall be jointly and severally liable for performance and observance of all the duties and responsibilities of an Owner with respect to the Lot in which he owns an interest. For all purposes herein, there shall be deemed to be only one (1) Owner for each Lot. The parties, if more than one, having the ownership of a Lot shall agree among themselves how to share the rights and obligations of such ownership, but all such parties shall be jointly and severally liable for performance and observance of all of the duties and obligations of an Owner hereunder with respect to the Lot in which they own an interest.

(c) Any contract of sale, deed, lease, Mortgage, will or other instrument affecting a Lot may describe it by its Lot number, The Mountain Sage Townhomes P.U.D.; Town of Carbondale, Garfield County; State of Colorado, according to the Plat thereof recorded 12/19, 2007 as Reception No. 739583, and any recorded amendment and supplement thereto, and this Declaration, which will be recorded in the records of the Clerk and Recorder of Garfield County, Colorado, and any recorded amendment and supplement hereto.

(d) Each Lot shall be considered a separate parcel of real property and shall be separately assessed and taxed.

(e) Each Lot shall be used and occupied solely for single family dwelling purposes and any home occupation consistent with the Town of Carbondale Municipal Code. All of the above stated uses and occupancies shall be only as permitted by and subject to the appropriate and applicable governmental zoning and use ordinances, rules and regulations from time to time in effect. Notwithstanding the foregoing, Declarant, for itself and its successors and assigns, hereby retains a right to maintain any Lot or Lots as sales offices, management offices or employee or model residences so long as Declarant, or its successor or assigns, continues to be an Owner of a Lot. The use by Declarant of any Lot as a model residence, office or other use shall not affect the Lot's designation on the Plat as a separate Lot.

(f) Subject to Lot specific deed restrictions recorded in the public record, an Owner shall have the right to lease his Lot upon such terms and conditions as the Owner may deem advisable; provided, however, that (i) any such lease shall be in writing and shall provide that the lease is subject to the terms of this Declaration, (ii) a Lot may be leased only for the uses provided hereinabove, and (iii) any failure of a lessee to comply with the terms of this Declaration, Articles of Incorporation, Bylaws or rules of the Association shall be a default under the lease enforceable by the Association.

**ARTICLE 4
MEMBERSHIP AND VOTING RIGHTS; ASSOCIATION OPERATIONS**

4.1 **The Association.** Every Owner of a Lot shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot. Each Owner of a Lot shall be a 1/26th owner of the Association.

4.2 **Transfer of Membership.** An Owner shall not transfer, pledge, hypothecate or alienate his membership in the Association in any way, except upon the sale or encumbrance of his Lot and then only to the purchaser or Mortgagee of his Lot.

4.3 **Membership.** The Association shall have one (1) class of membership consisting of all Owners including the Declarant so long as Declarant continues to own an interest in a Lot. Except as otherwise provided for in this Declaration, each Member shall be entitled to vote in Association matters pursuant to this Declaration on the basis of the voting ratio shown on Exhibit B. When more than one (1) person holds an interest in any Lot, all such persons shall be Members. One (1) person shall exercise the vote for such Lot or an alternative person appointed by proxy in accordance with the Bylaws. In the absence of a proxy, the vote allocated to the Lot shall be suspended in the event more than one (1) person or entity seeks to exercise the right to vote on any one (1) matter.

4.4 **Declarant Control.** Notwithstanding anything to the contrary provided for herein or in the Bylaws, Declarant shall be entitled to appoint and remove the members of the Association's Board of Directors and officers of the Association to the fullest extent permitted under the Act. The specific restrictions and procedures governing the exercise of Declarant's right to so appoint and remove Directors and officers shall be set out in the Bylaws of the Association. Declarant may voluntarily relinquish such power evidenced by a notice executed by Declarant and recorded in the office of the Clerk and Recorder for Garfield County, Colorado, but in such event, Declarant may at its option require that specified actions of the Association or the Board of Directors as described in the recorded notice, during the period Declarant would otherwise be entitled to appoint and remove directors and officers, be approved by Declarant before they become effective.

4.5 **Compliance with Association Documents.** Each Owner shall abide by and benefit from each provision, covenant, condition, restriction and easement contained in the Association Documents. The obligations, burdens, and benefits of membership in the Association concern the land and shall be covenants running with each Owner's Lot for the benefit of all other Lots and for the benefit of Declarant's adjacent properties.

4.6 Books and Records. The Association shall make available to Owners and to Mortgagees for inspection, upon request, during normal business hours or under other reasonable circumstances, current copies of the Association Documents and the books, records, and financial statements of the Association prepared pursuant to the Bylaws. The Association may charge a reasonable fee for copying such materials. The Association shall maintain such books and records as may be required under the Act.

4.7 Manager. The Association may employ or contract for the services of a Manager to whom the Board of Directors may delegate certain powers, functions, or duties of the Association, as provided in the Bylaws of the Association. The Manager shall not have the authority to make expenditures except upon prior approval and direction by the Board of Directors. The Board of Directors shall not be liable for any omission or improper exercise by a Manager of any duty, power, or function so delegated by written instrument executed by or on behalf of the Board of Directors.

4.8 Implied Rights and Obligations. The Association may exercise any right or privilege expressly granted to the Association in the Association Documents, and every other right or privilege reasonably implied from the existence of any right or privilege given to the Association under the Association Documents or reasonably necessary to effect any such right or privilege. The Association shall perform all of the duties and obligations expressly imposed upon it by the Association Documents, and every other duty or obligation implied by the express provisions of the Association Documents or necessary to reasonably satisfy any such duty or obligation.

ARTICLE 5 POWERS OF THE BOARD OF DIRECTORS OF THE ASSOCIATION

The Board of Directors shall have power to take the following actions:

- (1) suspend the voting rights of a Member during any period in which such Member is in default on payment of any Assessment levied by the Association, as provided in Section 10.7; and
- (2) exercise for the Association all powers, duties, and authority vested in or delegated to the Association and not reserved to the Members or Declarant by other provisions of this Declaration or the Articles or Bylaws of the Association or as provided by law.

ARTICLE 6 MECHANIC'S LIENS

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If any Owner shall cause any material to be furnished to his Lot or any labor to be performed therein or thereon, no Owner of any other Lot shall under any circumstances be liable for the payment of any expense incurred or for the value of any work done or material furnished. All such work shall be at the expense of the Owner causing it to be done, and such Owner shall be solely responsible to contractors, laborers, materialmen and other persons furnishing labor or materials to his Lot.

**ARTICLE 7
PROPERTY RIGHTS OF OWNERS AND RESERVATIONS BY DECLARANT**

7.1 Recorded Easements. The Property shall be subject to all easements and public dedications as shown on any recorded plat affecting the Property and to any other easements and licenses of record or of use as of the date of recordation of this Declaration. In addition, the Property is subject to those easements set forth in this Article 7.

7.2 Other Easements.

(a) **Easements for Encroachments** The town home buildings constructed shall be built substantially within the boundaries of the Lots as shown on the Plat. If, however, any portion of an improvement upon a Lot, encroaches upon an adjoining Lot or Lots, a valid easement shall exist for the encroachment and for the maintenance of same for the life of the improvement. In the event that any of the improvements upon any Lot are partially or totally destroyed and are then rebuilt or reconstructed in substantially the same location, and as a result of such rebuilding, any portion thereof shall encroach as provided in the preceding sentence, a valid easement for such encroachment shall exist. Such encroachments and easements shall not be considered or determined to be encumbrances on the Lot.

(b) **Easement for Benefit of Owners.** All of the Owners of Lots shall have a nonexclusive right in common with all of the other Owners to use of the Common Area. This easement is subject to the rights of the Association to establish uniform rules as to the use of any facilities on the Property, including without limitation the right to establish and enforce parking restrictions;

(c) Each Lot is subject to a blanket easement for support and a blanket easement for the maintenance of the structures or improvements presently situated, or to be built in the future, on the Lots.

(d) There is hereby created a blanket easement upon, across, over, in and under the Property for the benefit of all of the Lots and the structures and improvements situated thereon, for ingress and egress, installation, replacing, repairing and maintaining all utilities,

including, but not limited to, water, sewer, gas, telephone, cable TV and electricity. Said blanket easement includes future utility services not presently available to the Lots which may reasonably be required in the future. By virtue of this easement, it shall be expressly permissible for the companies providing utilities to erect and maintain the necessary equipment on any of the Lots and to affix and maintain electrical and/or telephone wires, circuits and conduits on, above, across and under the roofs and exterior walls of the improvements, all in a manner customary for such companies in the area surrounding the Property subject to approval by the Association as to locations.

7.3 Utility Easements. There shall be utility easements as shown on the Plat for the benefit of all of the Lots.

7.4 General Maintenance Easement. An easement is hereby reserved to Declarant, and granted to the Association, and any member of the Board of Directors or the Manager, and their respective officers, agents, employees, and assigns, upon, across, over, in, and under the Property and a right to make such use of the Property as may be necessary or appropriate to make emergency repairs, to perform the duties and functions which the Association is obligated or permitted to perform pursuant to the Association Documents, or to exercise its rights under Article 8 below, including the right to enter upon any Lot for the purpose of performing maintenance, including but not limited to work involving drainage, irrigation and other water features, as set forth in Article 8 below.

7.5 Association as Attorney-in-Fact. Each Owner, by his acceptance of a deed or other conveyance vesting in him an interest in a Lot, does irrevocably constitute and appoint the Association and/or Declarant with full power of substitution as the Owner's name, place and stead to deal with Owner's interest in order to effectuate the rights reserved by Declarant or granted to the Association, as applicable, with full power, right and authorization to execute and deliver any instrument affecting the interest of the Owner and to take any other action which the Association or Declarant may consider necessary or advisable to give effect to the provision of this Section and this Declaration generally. If requested to do so by the Association or Declarant, each Owner shall execute and deliver a written, acknowledged instrument confirming such appointment.

7.6 Emergency Access Easement. A general easement is hereby granted to all police, sheriff, fire protection, ambulance, and other similar emergency agencies or persons to enter upon the Property in the proper performance of their duties.

7.7 Model Unit Reservation. Declarant reserves for itself and for any Successor Declarant or assigns the right to construct and maintain a model unit for the purpose of town home sales efforts upon any Lot in the Project.

7.8 **Declarant's Reserved Right to Construct the Project in Phases.** The Declarant shall have the right to construct the project in phases provided that the total number of town home units does not exceed twenty six (26). In the event Declarant elects to construct less than 26 Units in the initial phase, Declarant shall have 10 years from the date of the recording of the townhome subdivision P.U.D. Plat to construct buildings upon the Property not completed in Phase I and create the remainder of the 26 Units upon the Lots provided however that the exercise of Declarant's right to construct future units shall be consistent with town approvals. Declarant shall complete all improvements required under town approvals within the timeframes required by such approvals.

ARTICLE 8 MAINTENANCE, LANDSCAPING AND SPECIAL EASEMENT

8.1 **Maintenance.** In order to maintain a uniform appearance and a high standard of maintenance within The Mountain Sage Townhomes, the Association shall have the right and obligation to maintain the following portions of each Lot:

(a) the exterior of all structures upon any Lot, which shall include and be limited to, painting and residing of the exterior, roof repair and replacement (unless any of the foregoing are covered by an Owner's insurance) of the buildings' structural components including, but not limited to, the foundations, girders, beams, supports, bearing and structural walls, chimneys, electrical, mechanical and plumbing service installations such as gas lines, pipes, wires, conduits or systems. The Association shall have the sole discretion to determine the time and manner in which such maintenance shall be performed as well as the color or type of materials used to maintain the building upon the Lot. The Owner shall be responsible for repair or replacement of exterior doors, balconies, windows, windowpanes, garage doors and all other exterior maintenance and repairs not listed above. In the event insurance proceeds under Article 9 are payable to an Owner but the maintenance responsibility of the area to which such proceeds relate is the Association's, the Association shall complete any such repair or replacement at the Owner's cost; and

(b) All landscaping and improvements within the Common Areas, all landscape, utility, drainage, and public access easements as shown on the Plat. The maintenance provided under this Section shall be performed at such time and in such a manner as the Association shall determine. The Association shall maintain all landscaping within the public right of way as required by the Ordinance of Approval of the P.U.D.

(c) **Association's Right to Grant Owner's Maintenance Area.** The Association reserves the right to grant the maintenance responsibility of certain areas on each Lot to the Lot Owner, and the Lot Owner is obligated to accept said maintenance responsibility, provided said assignment is done in a uniform and nondiscriminatory manner. Furthermore, the
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Association shall have the right to promulgate reasonable rules and regulations regarding the maintenance by the Owner.

8.2 Special Easements for Association Maintenance and Owner's Utility Lines and Solar Panels . The Association and the Board of Directors and their respective representatives are hereby granted a nonexclusive easement to enter the building and any other area of a Lot as may be necessary or appropriate to perform the duties and functions which they may be obligated or permitted to perform pursuant to this Article 8. Each Owner and the Association may access the chase area above the garages and the rooftop surfaces of all other Owners' Lots within the same building to install, service and maintain gas, electric, phone, rooftop solar utility panels and cable lines to service their Lot.

8.3 Maintenance Contract. The Association or Board of Directors may employ or contract for the services of an individual or maintenance company to perform certain delegated powers, functions, or duties of the Association to maintain the building and Common Area. The employed individual or maintenance company shall have the authority to make expenditures upon prior approval and direction of the Board of Directors. The Board of Directors shall not be liable for any omission or improper exercise by the employed individual or management company of any duty, power, or function so delegated by written instrument executed by or on behalf of the Board of Directors.

8.4 Maintenance Responsibilities of Owners. Each Owner is responsible for providing all maintenance within the building on their Lot at their own expense, unless modified by Section 8.1(a). Such responsibility shall include, without limitation, maintenance of the interior surfaces of the walls, ceilings, doors, windows and floors within the building upon the Lot and any finished or additional surfaces, decoration or materials installed by Declarant, the Owner, or their predecessors-in-interest such as carpets, wallpaper, counter tops, painting or staining, plug-in appliances and personalty of any kind within the building upon the Lot. Each Owner is also responsible, at his own expense, for all machines, attachments, installations and fixtures within the building upon the Lot, the interior surfaces of the walls, ceilings, doors, and windows and floors of the garages. The Association shall have the right and power to prohibit storage or other activities deemed unsafe, unsightly, unreasonably noisy or otherwise offensive to the senses and perceptible from another Lot.

8.5 Additions, Alterations, and Improvements. Subject to the reservation of rights of Declarant hereof, no improvement to the Property (other than for maintenance) which results in a Common Expense shall be constructed except with the prior approval of the members of the Association having at least sixty-seven percent (67%) of the total number of votes outstanding and entitled to be cast at a membership meeting as provided in the Bylaws. Dissenting Owners shall not be relieved of their obligation to pay their proportionate share of any Common Expenses.

An individual Owner shall do no alterations, additions, or improvements to any area that is maintained by the Association (including landscaping of any kind for his individual benefit or for the benefit of his Lot) without prior written approval of the Board of Directors. No Owner shall decorate or fence any area within the Common Area without the prior written approval of the Members of the Association. Utilities shall not be disturbed or relocated by an Owner without the written consent and approval of the Board. All repairs, alterations or remodels are coupled with the obligation to replace materials removed with similar or better quality materials. An Owner shall do no act nor any work that will or may impair any easement without the written consent of the Board of Directors, after first proving to the satisfaction of the Board of Directors that structural soundness will be maintained during and after any such act or work shall be done or performed. Any expense to the Board of Directors for investigation under this paragraph shall be borne by the Owner.

Any proposed construction that includes structural modification must be approved by the Board of Directors and any decision relating thereto shall be in their absolute discretion. The Board of Directors may hire a structural engineer at the Owner's expense for the purpose of obtaining an opinion. The Board of Directors may also require, as a condition of approval, the posting of security for the completion of any approved alterations, and costs attendant thereto with respect to recording and effecting the approval. Any Owner that receives approval for and constructs improvements of any kind, including balconies or landscaping, must maintain such improvements in good repair and condition and must remove such improvements at the Owners' expense in the event the Board of Directors deems that the improvements have not been properly constructed

8.6 Owner's Failure to Maintain or Repair. In the event that the improvements upon a Lot are not properly maintained by the Owner of the Lot as required herein, or the improvements are damaged or destroyed by an event of casualty, the Owner must take reasonable measures to diligently pursue the repair and reconstruction of the damaged or destroyed improvements to substantially the same condition in which they existed prior to the damage or destruction. If the Owner does not meet this obligation, the Association, after notice to the Owner and with the approval of the Board of Directors, shall have the right to enter upon the Lot to perform such work as is reasonably required to restore the Lot and the buildings and other improvements thereon to a condition of good order and repair. The Owner of the Lot upon demand shall reimburse all costs incurred by the Association in connection with the restoration to the Association. All unreimbursed costs shall be a lien upon the Lot until reimbursement is made. The lien may be enforced in the same manner as a lien for an unpaid Assessment levied in accordance with Article 10 of this Declaration.

8.7 Right to Combine Lots; Subject to any approvals and permits which may be required by the Town of Carbondale, an Owner has the right to combine a Lot with one or more adjoining Lots after obtaining written approval from the Board of Directors and from each first priority Mortgagee of the Lot affected. A combination of Lots shall become effective only when

the Owner of the Lots which are to be combined and an officer of the Association execute and record in the office of the Clerk and Recorder of Garfield County, Colorado, a written statement describing such Lots and declaring that the same are to be combined. Such combination, however, shall not affect the designation or prevent the separate ownership of the Lots in the future. The Owners of Lots requesting the relocation of boundaries must submit a signed application to the Board of Directors including the following:

- (a) evidence sufficient to the Board of Directors that the applicant has complied with all local rules and ordinances and that the proposed relocation of boundaries does not violate the terms of any document evidencing a security interest;
- (b) the proposed form for amendments to the Declaration, including the plats or maps, as may be necessary to show the change in altered boundaries of the combined Lot, and their dimensions and identifying numbers;
- (c) a deposit against attorney's fees and costs which the Association will incur in reviewing and effectuating the application, in an amount reasonably estimated by the Board of Directors; and
- (d) such other information as may be reasonably requested by the Board of Directors.

All costs and attorney's fees incurred by the Association as a result of such an application shall be the sole obligation of the applicant.

8.8 Association Rights. In the event that any improvements on a Lot (as described in Paragraph 8.6 hereof) located anywhere within the Mountain Sage Townhomes are not properly maintained or are damaged or destroyed by an event of casualty and neither the Owner thereof or the Association takes reasonable measures to diligently pursue the repair and reconstruction of the damage or destruction, then the Association, after notice to the Owner, if applicable, shall have the right to enter the affected property and perform such work as is reasonably required to restore the property and any improvement thereon to a condition of good order and repair. All costs incurred by the Association in connection with the restoration shall be reimbursed to the Association by the Owners of the affected Lot(s). All unreimbursed costs shall be a lien upon the affected Lot or Lots until reimbursement is made. This lien may be enforced in the same manner as a lien for an unpaid Assessment levied in accordance with Article 10 of this Declaration.

8.9 Further Subdivision Prohibited. Lots within the Mountain Sage Townhomes P.U.D. may not be further subdivided.

ARTICLE 9

INSURANCE/CONDEMNATION

9.1 **Insurance Carried.** The Association shall obtain and maintain in full force and effect to the extent reasonably available, and at all times, the insurance coverage set forth herein, which insurance coverage shall be provided by financially responsible and able companies duly authorized to do business in the State of Colorado. All insurance purchased by the Association shall be purchased from companies with ratings of "A" or better, to the extent that insurance is available at reasonable cost to the Association through such companies. The Association shall maintain, to the extent reasonably available and necessary, policies with the following terms or provisions:

(a) All policies of insurance shall contain waivers of subrogation and waivers of any defense based on invalidity arising from any acts of a Owner and shall provide that such policies may not be canceled or modified without at least forty-five (45) days prior written notice to all of the Owners, holders of First Mortgages and the Association.

(b) If requested, certificates of insurance and renewals thereof, together with proof of payments of premiums, shall be delivered to any First Mortgagees at least ten (10) days prior to expiration of the then current policies.

(c) All liability insurance shall be carried in blanket form naming the Association, the Board, the manager or managing agent, if any, and the officers of the Association, as insureds.

(d) Prior to renewing casualty insurance and not less than every three (3) years, pursuant to the provisions hereof, the Board may obtain an appraisal from a duly qualified real estate or insurance appraiser, which appraiser shall reasonably estimate the full replacement cost of the Townhouses and the Common Area, without deduction for depreciation, review any increases in the cost of living, and/or consider other factors, for the purpose of determining the amount of the insurance to be effected pursuant to the provisions hereof. All appraisals shall be maintained as part of a permanent record showing that the insurance in any year represents one hundred percent (100%) of the replacement value of each Lot and the facilities in the Common Area. In no event shall any casualty insurance policy contain a co-insurance clause.

(e) Owners are advised to carry other insurance on their Lots and personal property located within their Lots for their benefit and at their expense provided that the liability of the carriers issuing insurance obtained by the Association shall not be affected or diminished by reason of any such additional insurance carried by Owners and provided, further, that the policies of insurance carried by the Association shall be primary, even if an Owner has other insurance

that covers the same loss or losses as covered by policies of the Association. Owners are further advised to obtain liability coverage for their individual Lots and personal actions.

(f) All policies of insurance shall provide that the insurance thereunder shall not be invalidated or suspended due to an Owner guilty of a breach of warranty, act, omission, negligence or non-compliance of any provision of such policy, including payment of the insurance premium applicable to the Owner's interest, or who permits or fails to prevent the happening of any event, whether occurring before or after a loss, which under the provisions of such policy would otherwise invalidate or suspend the entire policy, but the insurance under any such policy shall not be invalidated or suspended and shall remain in full force and effect.

9.2 Real Property Insurance on the Townhomes and Common Areas. The Association shall obtain casualty and hazard insurance providing all risk coverage or the nearest equivalent available for the full replacement cost, without deduction for depreciation, for all insurable improvements, the Common Area, and the other property of the Association in such amounts as it deems adequate to protect the Community. The Association shall also provide insurance providing all risk coverage or the nearest equivalent available for the full replacement cost, without deduction for depreciation, for the Townhomes and party walls, specifically excluding betterments and improvements of the Townhomes as made by Owners, and specifically excluding, personal property within a Townhome and general liability within a Townhome, so that the Association has no requirement, duty or obligation for any liability within a Townhome. All policies shall contain a standard non-contributory mortgage clause in favor of each First Mortgagee, and their successors and assigns, which shall provide that the loss, if any thereunder, shall be payable to the Association for the use and benefit of such First Mortgagee, and their successors and assigns, as their interests may appear of record in the records of the office of the Clerk and Recorder of the Garfield County. The Association may also obtain any additional endorsements which it deems advisable and in the best interests of the Community by the Board of Directors, including but not limited to "inflation guard endorsement", "agreed upon amount endorsement," "Demolition endorsement," "increased cost of construction endorsement," "contingent liability endorsement," and a "code compliance or operation of building laws endorsement." The insurance described in this Section shall be inflation coverage insurance, if such insurance is available, which shall at all times represent one hundred percent (100%) of the replacement value of all facilities in the Common Area except land, foundation, excavation and other items normally excluded from coverage and except for any deductible provisions as permitted under this Article.

9.3 Liability Insurance. The Association shall obtain an adequate comprehensive policy of public liability and property damage liability insurance covering all of the Townhomes and the Common Areas, including structural coverage of the Townhomes, in such limits as the Board may from time to time determine, but not in any amount less than One Million Dollars (\$1,000,000) per injury, per person, and per occurrence, and in all cases covering all claims for bodily injury or property damage. Coverage shall include, without limitation, liability for

personal injuries, operation of automobiles on behalf of the Association, and activities in connection with the ownership, operation, maintenance and other uses of the Lots and the Common Area. The foregoing liability insurance shall name the Association as the insured.

9.4 Fidelity Insurance. The Association shall obtain adequate fidelity coverage or fidelity bonds to protect against dishonest acts on the parts of its officers, directors, trustees, volunteers and employees and on the part of all others who handle or are responsible for handling the funds of the Association, including persons who serve the Association with or without compensation. The clause "officers, directors, trustees and employees" shall include any officer, director, agent or employee of any independent, professional manager or managing agent heretofore or hereafter employed by the Association. The fidelity coverage or bonds should be in an amount sufficient to cover the maximum funds that will be in the control of the Association, its officers, directors, trustees and employees. If the Association retains a Managing Agent, the Managing Agent shall also be required to provide such fidelity insurance covering itself and its employees and naming the Association as the loss payee.

9.5 Workers Compensation. The Association shall obtain and maintain workers' compensation and employer's liability insurance and all other similar insurance with respect to employees or uninsured contractors of the Association in the amounts and in forms now or hereafter required by law.

9.6 Director and Officer Liability Insurance. The Association shall purchase directors' and officers' professional liability insurance in an amount reasonably necessary to protect the directors and officers.

9.7 Other Insurance. The Association may obtain insurance against such other risks, of similar or dissimilar nature, including flood insurance, as it shall deem appropriate with respect to the Association's responsibilities and duties.

9.8 Insurance Premium. Except as assessed in proportion to risk, insurance premiums for the above provided insurance shall be a Common Expense to be included as a part of the annual Assessments levied by the Association.

9.9 Managing Agent Insurance. The manager or managing agent, if any, shall be adequately insured for the benefit of the Association, and shall maintain and submit evidence of such coverage to the Association, including workers' compensation, liability and fidelity coverage.

9.10 Waiver of Claims Against Association. As to all policies of insurance maintained by or for the benefit of the Association and Owners, the Association and the Owners hereby waive and release all claims against one another and the Board, to the extent of the insurance proceeds available, whether or not the insurance damage or injury is caused by the negligence of

or breach of any agreement by these persons.

9.11 Adjustments by the Association. Any loss covered by an insurance policy described above shall be adjusted by the Association, and the insurance proceeds for that loss shall be payable to the Association, and not to any First Mortgagee. The Association shall hold any insurance proceeds in trust for the Association, Owners and First Mortgagees as their interests may appear. The proceeds must be distributed first for the repair or restoration of the damaged property, and the Association, in its sole discretion, shall determine the use of any surplus of proceeds after the damaged property has been completely repaired or restored.

9.12 Duty to Repair. Any portion of the Property and Common Area for which insurance is required under this Article which is damaged or destroyed must be repaired or replaced promptly by the Association or Owner.

9.13 Condemnation and Casualty Insurance Allocations and Distributions. In the event of a distribution of condemnation proceeds or hazard insurance proceeds to the Owners, the distribution shall be to the parties as their interests and rights are determined or allocated by record or as set forth in the Act.

9.14 Insurance Obtained by Owners. Each Owner shall be responsible for maintaining all insurance which covers personal property within a Townhome and general liability within a Townhome. Each Owner shall be responsible for maintaining insurance on and for all areas for which the Owner has a maintenance responsibility under the provisions of this Declaration, as well as loss or damage to personal property in his Townhome and upon his Lot and liability for injury, death or damage occurring inside his Townhome or upon his Lot. Such personal property may include, but is not limited to, all furnishings, fixtures, appliances and equipment within a Townhome. Any such policy shall contain waivers of subrogation and shall be so written that the liability of the carriers issuing insurance obtained by the Association shall not be affected or diminished thereby.

9.15 Claims. The Board may, in its discretion, choose to submit a claim under the Association's insurance policy. If a claim is submitted, the payment of the deductible amount for claims which the Association is responsible for insuring shall be as follows:

(a) The Association shall pay or absorb said deductible for any work, repairs or reconstruction for damage incurred to Common Area or an area for which the Association has a maintenance responsibility, or for damage to Common Area or any area which the Association maintains that originates in the Common Area or an area that the Association maintains, or for damages to the Common Area or an area which the Association maintains which originates from natural causes, unless said damage is caused by the negligent or willful act or omission of an Owner, his family, guests, or invitees.

(b) The Owner shall pay or absorb said deductible for any work, repairs, reconstruction or replacement for damage incurred to his or her Lot, to the Common Area, or to any area that the Association maintains, as the Board of Directors shall, in its sole discretion, determine to be the responsibility of the Owner.

(c) If a Lot or Party Wall is damaged, then the Owner of that Lot or the Owners sharing the Party Wall shall have primary responsibility, either directly or through his insurance company, for handling and paying for, any work, repairs, reconstruction or replacement.

9.16 Association as Attorney-in-fact. Each Owner hereby irrevocably appoints the Association as the Owner's true and lawful attorney-in-fact for the purposes of dealing with any improvements covered by insurance written in the name of the Association pursuant to this Article upon their damage or destruction as provided in this Declaration, or a complete or partial taking or condemnation as provided in this Declaration. Acceptance by a grantee of a deed or other instrument of conveyance conveying any portion of the Property shall constitute appointment of the Association as the grantee's attorney-in-fact, and the Association shall have full authorization, right, and power to make, execute, and deliver any contract, assignment, deed, waiver, or other instrument with respect to the interest of any Owner which may be necessary to exercise the powers granted to the Association as attorney-in-fact. Furthermore, if so requested, an Owner shall execute a separate instrument specifically setting forth this appointment.

ARTICLE 10 ASSESSMENTS

10.1 Obligation. Each Owner, including Declarant, by accepting a deed for a Lot, is deemed to covenant to pay to the Association (i) the Annual Assessments imposed by the Board of Directors as necessary to meet the common expenses necessary to perform the functions of the Association, (ii) Special Assessments for capital improvements and other purposes as stated in this Declaration, if permitted under the Act, and (iii) Default Assessments which may be assessed against a Lot for the Owner's failure to perform an obligation under the Association Documents or because the Association has incurred an expense on behalf of the Owner under the Association Documents.

10.2 Purpose of Assessments. The Assessments shall be used exclusively to promote the health, safety and welfare of the Owners and occupants of The Mountain Sage Townhomes, and for the improvement and maintenance of the Property and other areas of Association responsibility referred to herein, as more fully set for the in this Article below.

10.3 Budget. Within thirty (30) days after the adoption of any proposed budget for the Association, the Board of Directors shall mail, by ordinary first-class mail, or otherwise deliver a summary of the budget to all the Owners. Unless a meeting of the Membership is called pursuant to the timeline and process outlined in the Bylaws to protest the adoption of the proposed budget, the budget is deemed ratified, and automatically becomes effective. In the event the proposed budget is rejected in a meeting of the Membership called for that purpose of ratification of the budget, the periodic budget last ratified by the Owners must be continued until such time as a subsequent budget is adopted by the Board of Directors. The Board of Directors shall adopt and submit a budget to the Owners as provided herein no less frequently than annually. The Board of Directors shall levy and assess the Annual Assessments in accordance with the annual budget. Upon the issuance of the first certificate of occupancy for Phase Two Units listed on Exhibit B, The Board shall amend the budget to include the additional revenue and expenses attributable to the Phase II Units.

10.4 Annual Assessments. Annual Assessments made shall be based upon the estimated cash requirements as the Board of Directors shall from time to time determine to be paid by all of the Owners, subject to Section 10.3 above. Estimated Common Expenses shall include, but shall not be limited to, the cost of routine maintenance and operation of the Property; expenses of management; insurance premiums for insurance coverage as deemed desirable or necessary by the Association; landscaping of the Property and related areas required by the Town of Carbondale P.U.D. approval, care of grounds, routine repairs and renovations, including wages, common water and utility charges, legal and accounting fees; management fees; expenses and liabilities incurred by the Association under or by reason of this Declaration; payment of any debts remaining from a previous assessment period; and the creation of a reasonable contingency or other reserve or surplus fund for general, routine maintenance, repairs, and replacement of improvements built and maintained by the Association, as needed. The Association is specifically empowered and required to budget and assess for maintenance, repair, and replacement of all utility, drainage, landscaping, irrigation easements and the improvements upon the two public access easements as shown on the Plat of the Mountain Sage Townhomes P.U.D inclusive of signage, striping and maintenance of the raised surfaces. Assessments for maintenance shall include all maintenance for specific improvements referred to in the Subdivision Improvements Agreement, Development Agreement and Easement Deed to the Town of Carbondale of public record. This provision may not be modified or removed without town approval.

Annual Assessments shall be payable in quarterly installments on a prorated basis in advance and shall be due on the first day of each quarter. The omission or failure of the Association to fix the Annual Assessments for any assessment period shall not be deemed a waiver, modification, or release of the Owners from their obligation to pay the same. In the event assessment levels are not fixed for any period, the assessment levels form the prior period shall

remain in effect. The Association shall have the right, but not the obligation, to make prorated refunds of any Annual Assessments in excess of the actual expenses incurred in any fiscal year.

10.5 Apportionment of Annual Assessments. Each Lot shall pay the allocated assessment based on the factors and formulas attached as See Exhibit "B". No assessment shall be collected for Phase II Lots until the first certificate of occupancy is issued by the Town of Carbondale for any Lot listed as a Phase II Lot. Each Owner shall be responsible for that Owner's share of the Common Expenses, which shall be divided among the Lots on the basis of the Sharing Ratio in effect on the date of assessment, subject to the following provisions: Expenses (including, but not limited to, costs of maintenance, repair, and replacement) relating to fewer than all of the Lots, to the extent not covered by insurance, may, in the sole discretion of the Board of Directors, be assessed only to Owners of the affected Lots.

10.6 Special Assessments. In addition to the Annual Assessments authorized by this Article, the Association, if permitted under the Act, may levy in any fiscal year one or more Special Assessments, payable over such a period as the Association may determine, for the purpose of defraying, in whole or in part, the cost of any unexpected repair or replacement of improvements on the Property or for such other expense incurred or to be incurred as provided in this Declaration. This Section 10.6 shall not be construed as an independent source of authority of the Association to incur expense, but shall be construed to prescribe the manner of assessing expenses authorized by other sections of this Declaration. Any amounts assessed pursuant to this Section shall be assessed to Owners in the same proportion as provided for Annual Assessments in Section 10.5, subject to the requirement that any extraordinary insurance costs incurred as a result of the value of a particular Owner's residence or the actions of a particular Owner (or his agents, servants, guests, tenants, or invitees) shall be borne by that Owner, and subject to Section 10.5 above. Notice in writing of the amount of such Special Assessments and the time for payment of the Special Assessments shall be given promptly to the Owners, and no payment shall be due less than thirty (30) days after such notice shall have been given. No Special Assessments shall be levied that are inconsistent with the terms of the Act.

10.7 Default Assessments. All monetary fines assessed against an Owner pursuant to the Association Documents, or any expense of the Association which is the obligation of an Owner or which is incurred by the Association on behalf of the Owner pursuant to the Association Documents, shall be a Default Assessment and shall become a lien against such Owner's Lot which may be foreclosed or otherwise collected as provided in this Declaration. Notice of the amount and due date of such Default Assessment shall be sent to the Owner subject to such Assessment at least thirty (30) days prior to the due date.

10.8 Effect of Nonpayment; Assessment Lien. Any Assessment installment, whether pertaining to any Annual, Special, or Default Assessment, which is not paid on or before its due

date shall be delinquent. If an Assessment installment becomes delinquent, the Association, in its sole discretion, may take any or all of the following actions:

- (a) assess a late charge for each delinquency in such amount as the Association deems appropriate;
- (b) assess an interest charge from the date of delinquency at the yearly rate of two (2) points above the prime rate charged by the Association's bank, or such other rate as the Board of Directors may establish, not to exceed twenty-one percent (21%) per annum;
- (c) suspend the voting rights of the Owner during any period of delinquency;
- (d) accelerate all remaining Assessment installments so that unpaid Assessments for the remainder of the fiscal year shall be due and payable at once;
- (e) bring an action at law against any Owner personally obligated to pay the delinquent Assessments; and
- (f) proceed with foreclosure as set forth in more detail below.

Assessments chargeable to any Lot shall constitute a lien on such Lot. The Association may institute foreclosure proceedings against the defaulting Owner's Lot in the manner for foreclosing a mortgage on real property under the laws of the State of Colorado. In the event of any such foreclosure, the Owner shall be liable for the amount of unpaid Assessments, any penalties and interest thereon, the cost and expenses of such proceedings, the cost and expenses for filing the notice of the claim and lien, and all reasonable attorney's fees incurred in connection with the enforcement of the lien. The Association shall have the power to bid on a Lot at foreclosure sale and to acquire and hold, lease, mortgage, and convey the same.

10.9 Personal Obligation. The amount of any Assessment chargeable against any Lot shall be a personal and individual debt of the Owner of same. No Owner may exempt himself from liability for the Assessment by abandonment of his Lot. Suit to recover a money judgment for unpaid Assessments, any penalties and interest thereon, the costs and expenses of such proceedings, and all reasonable attorneys' fees in connection therewith shall be maintainable without foreclosing or waiving the Assessment lien provided in this Declaration.

10.10 Successor's Liability for Assessments; Subordination of Lien. The provisions of the Act shall govern and control (i) the obligations of successors to the fee simple title of a Lot on which Assessments are delinquent, and (ii) the subordination of the lien of the Assessments provided for in this Declaration

10.11 **Payment by Mortgagee.** Any Mortgagee holding a lien on a Lot may pay any unpaid Assessment payable with respect to such Lot, together with any and all costs and expense incurred with respect to the lien, and upon such payment that Mortgagee shall have a lien on the Lot for the amounts paid with the same priority as the lien of the Mortgage.

10.12 **Statement of Status of Assessment Payment.** Upon payment of a reasonable fee set from time to time by the Board of Directors and upon fourteen (14) days' written request to the Manager or the Association's registered agent, any Owner, Mortgagee, prospective Mortgagee, or prospective purchaser of a Lot shall be furnished with a written statement setting forth the amount of the unpaid Assessments, if any, with respect to such Lot. Unless such statement shall be issued by personal delivery or by certified mail, first class postage prepaid, return receipt requested, to the inquiring party (in which event the date of posting shall be deemed the date of delivery) within fourteen (14) days, the Association shall have no right to assert a lien upon the Lot over the inquiring party's interest for unpaid Assessments which were due as of the date of the request.

10.13 **Capitalization of the Association.** Upon acquisition of recorded title to a Lot from Declarant or any seller after Declarant, each Owner shall contribute to the working capital and reserves of the Association an amount equal to twenty-five percent (25%) of the Annual Assessment determined by the Board of Directors for that Lot for the year in which the Owner acquired title. Such payments shall not be considered advance payments of Annual Assessments. The unused portion of the working capital deposit shall be returned to each Owner upon the sale of his Lot, provided that the new purchaser of the Lot has deposited the required working capital deposit with the Association.

ARTICLE 11 ASSOCIATION AS ATTORNEY-IN-FACT

Each Owner hereby irrevocably appoints the Association as the Owner's true and lawful attorney-in-fact for the purposes of dealing with any improvements covered by insurance written in the name of the Association pursuant to Article 9 upon their damage or destruction as provided in Article 12. Acceptance by a grantee of a deed or other instrument of conveyance or any other instrument conveying any portion of the Property shall constitute appointment of the Association as the grantee's attorney-in-fact, and the Association shall have full authorization, right, and power to make, execute, and deliver any contract, assignment, deed, waiver, or other instrument with respect to the interest of any Owner which may be necessary to exercise the powers granted to the Association as attorney-in-fact.

ARTICLE 12 DAMAGE OR DESTRUCTION

Declaration of Covenants, Conditions,
Restrictions and Easements of
Mountain Sage Townhomes
Page 22 of 27

12.1 Roll of the Board of Directors. In the event of damage or destruction to any property covered by insurance written in the name of the Association, the Board of Directors shall arrange for and supervise the prompt repair and restoration of the damaged property insured by the Association.

12.2 Estimate of Damages or Destruction. As soon as practicable after an event causing damage to or destruction of any part of the Association-Insured Property, the Board of Directors shall, unless such damage or destruction shall be minor, obtain an estimate or estimates that it deems reliable and complete of the costs of repair and reconstruction. "Repair and reconstruction" as used in Article 12 shall mean restoring the damaged or destroyed improvements to substantially the same condition in which they existed prior to the damage or destruction. Such costs may also include professional fees and premiums for such bonds as the Board of Directors or the Insurance Trustee, if any, determines to be necessary.

12.3 Repair and Reconstruction. As soon as practical after the damage occurs and any required estimates have been obtained, the Association shall diligently pursue to completion the repair and reconstruction of the damaged or destroyed Association-Insured Property. As attorney-in-fact for the Owners, the Association may take any and all necessary or appropriate action to effect repair and reconstruction of any damage to the Association-Insured Property, and no consent or other action by any Owner shall be necessary. Assessments of the Association shall not be abated during the period of insurance adjustments and repair and reconstruction. This section shall not be amended or removed without prior approval of the Town of Carbondale.

12.4 Funds for Repair and Reconstruction. The proceeds received by the Association from any hazard insurance carried by the Association shall be used for the purpose of repair, replacement, and reconstruction of the Association-Insured Property.

If the proceeds of the Association's insurance are insufficient to pay the estimated or actual cost of such repair, replacement, or reconstruction, or if upon completion of such work the insurance proceeds for the payment of such work are insufficient, the Association may, pursuant to Section 10.6, if permitted under the Act, levy, assess, and collect in advance from the Owners, without the necessity of a special vote of the Owners, a Special Assessment sufficient to provide funds to pay such estimated or actual costs of repair and reconstruction. Further levies may be made in like manner if the amounts collected prove insufficient to complete the repair, replacement, or reconstruction.

12.5 Disbursement of Funds for Repair and Reconstruction. The insurance proceeds held by the Association and the amounts received from the Special Assessments provided for above constitute a fund for the payment of the costs of repair and reconstruction after casualty. It shall be deemed that the first money disbursed in payment for the costs of repair and reconstruction shall be made from insurance proceeds, and the balance from the

Special Assessments. If there is a balance remaining after payment of all costs of such repair and reconstruction, such balance shall be distributed to the Owners in proportion to the contributions each Owner made as Special Assessments, then in equal shares per Lot, first to the Mortgagees and then to the Owners, as their interests appear.

ARTICLE 13 DESIGN REVIEW

All modifications to structures on any Lot and within the Property should conform to and harmonize with existing surroundings and structures. Therefore no alteration shall be made of the exterior of the building upon any Lot including any addition or removal of balconies, decks, doors, windows or other structure located on a Lot, and including repainting of the structure unless first approved in writing by the Board of Directors.

ARTICLE 14 DURATION OF COVENANTS AND AMENDMENT

14.1 **Term.** The covenants and restrictions of this Declaration shall run with and bind the land in perpetuity, subject to the termination provisions of the Act.

14.2 **Amendment by Declarant.** Until the first Lot subject to this Declaration has been conveyed by Declarant by a recorded deed, any of the provisions, covenants, conditions, restrictions and equitable servitudes contained in this Declaration may be amended or terminated by Declarant by the recordation of a written instrument executed by Declarant setting forth such amendment or termination. No amendment shall be inconsistent with the terms and conditions of the Town of Carbondale Municipal Code or project specific approvals for the Mountain Sage Townhomes PUD.

14.3 **Amendment of Declaration by Members.** Except as otherwise provided in this Declaration, any provision, covenant, condition, restriction or equitable servitude contained in this Declaration may be amended or repealed at any time and from time to time upon approval of the amendment or repeal by members of the Association holding at least sixty-seven percent (67%) of the votes of the members. The approval of any amendment or repeal shall be evidenced by the certification by the members to the Board of Directors of the Association of the votes of members. The amendment or repeal shall be effective upon recordation of a certificate executed by the president or a vice-president and the secretary or an assistant secretary of the Association setting forth the amendment or repeal in full and certifying that the amendment or repeal has been approved by the members. Any amendment to the Declaration made hereunder shall be effective only when recorded. All amendments hereto shall be indexed in the grantee's index in the name of Declarant and the Association and in the grantor's index in the name of

each person executing the amendment. No amendment shall be inconsistent with the terms and conditions of the Town of Carbondale Municipal Code or approvals.

ARTICLE 15 LIMIT ON TIMESHARING

No Owner of any Lot shall offer or sell any interest in such Lot under a "timesharing" or "interval ownership" plan, or any similar plan without the specific prior written approval of the Association.

ARTICLE 16 COMMON AREA EASEMENT AND PARKING RESTRICTIONS

16.1 Common Area. A Common Area as defined on the Plat shall be an easement in favor of the Association for the benefit of all Lot owners. The Common Area shall be used for open space, recreation, access and ingress of vehicles and utilities for all Lots. Other uses of the Common Area must be approved by the Association in writing. The Association shall maintain the Common Area.

16.2 Parking and Storage Restrictions on Lots. There shall be no parking of any vehicles, campers, trailers or storage of equipment, materials or any other personal property outside of the buildings or within the Common Area without prior written approval of the Association. All Lot Owners must use their garages for parking of active vehicles as required by the Town of Carbondale Municipal Code and the conditions of the development approval as stated in Ordinance No.16 Series of 2007; Town of Carbondale. The storage areas within the garages may not be converted into living, office, or any other non storage related uses. This section shall not be amended or removed without approval of the Town of Carbondale.

ARTICLE 17 OCCUPANCY, USE AND TRANSFER RESTRICTIONS

The use and occupancy of each Lot shall be restricted to one single-family dwelling Lot and any accessory uses allowed under the Town of Carbondale Municipal Code. In addition, each Lot may have up to two additional individual renters; however in no case shall more than two individual adults occupy one bedroom.

Reception#: 739583
12/19/2007 10:17:08 AM Juan Alberico
26 of 29 Rec Fee: \$146.00 Doc Fee: 0.00 GARFIELD COUNTY CO

Carbondale Real Estate Transfer Assessment - All of the Lots in the Project with the exception of Lots B2, G2 F2, E1, E2, E3, and E4 are subject to deed restrictions in perpetuity affecting the transfer of the Lot as shown on the deed restriction recorded at Reception No. 739584 in the records of the Clerk & Recorder of Garfield County Colorado. The transfer restrictions require a Real Estate Transfer Assessment (RETA) to be paid to the Town of Carbondale upon the sale of certain Lots. The RETA shall be assessed as specified in the deed restriction documents. The RETA shall not apply to first sale of a Lot by the Declarant but shall apply to all subsequent transfers of the restricted Lots and shall be utilized by the Town for affordable housing purposes.

Resident Occupancy - Lots F2, G2, and B2 are subject to deed restrictions in perpetuity affecting the transfer of the Lot as shown on the deed restriction recorded at Reception No. 739585 in the records of the Clerk & Recorder of Garfield County Colorado. The transfer restrictions require that only the Lot Owner may occupy the unit upon the Lot as specified in the deed restriction documents recorded at the time of the filing of the Plat and this Declaration.

Affordable Housing Restrictions - Lots E1, E2, E3, and E4 are subject to further specific transfer restrictions as shown on the deed restriction recorded at Reception No. 739586 in the records of the Clerk & Recorder of Garfield County Colorado.

ARTICLE 18 GENERAL PROVISIONS

18.1 **Restriction on Declarant Powers.** Notwithstanding anything to the contrary herein, no rights or powers reserved to Declarant hereunder shall exceed the time limitations or permissible extent of such rights or powers as restricted under the Act. Any provision in this Declaration in conflict with the requirements of the Act shall not be deemed to invalidate such provision as a whole but shall be adjusted as is necessary to comply with the Act.

18.2 **Enforcement.**

(a) Except as otherwise provided in this Declaration, the Board of Directors, Declarant, or any Owner shall have the right to enforce, by a proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Board of Directors of the Association, Declarant, or by any Owner to enforce any covenant or restriction contained in this Declaration shall in no event be deemed a waiver of the right to do so thereafter.

Reception #: 739583
12/19/2007 10:17:08 AM Jean Alberico
28 of 28 Rec Fee: \$146.00 Doc Fee: 0.00 GARFIELD COUNTY CO

Exhibit A to the Declaration of Covenants, Conditions, Restrictions, and
Easements
For the Mountain Sage Townhomes

PARCEL A

A TRACT OF LAND SITUATED IN LOT 12, SECTION 34, TOWNSHIP 7
SOUTH, RANGE 88 WEST OF THE 6TH PRINCIPAL MERIDIAN
DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE WEST LINE OF THE
WEAVER ADDITION TO THE TOWN OF CARBONDALE, COLORADO,
WITH THE NORTH LINE OF COUNTY ROAD WHENCE THE STREET
CENTER MONUMENT LOCATED AT THE CENTERS OF 8TH STREET AND
MAIN STREET IN SAID TOWN OF CARBONDALE BEARS S. 0 DEGREES
03' W 262.99 FEET AND S 89 DEGREES 57' E 330.23 FEET; THENCE S
89 DEGREES 18' W 369.47 FEET ALONG NORTH LINE OF SAID
COUNTY ROAD; THENCE N 0 DEGREES 25' W 117.90 FEET; THENCE N
89 DEGREES 18' E 369.47 FEET TO A POINT ON THE WEST LINE OF
SAID WEAVER ADDITION; THENCE S 0 DEGREES 25' E 117.90 FEET
ALONG THE WEST LINE OF SAID WEAVER ADDITION TO THE POINT
OF BEGINNING.

PARCEL B

A PARCEL OF LAND SITUATED IN LOT 12 OF SECTION 34, TOWNSHIP
7 SOUTH, RANGE 88 WEST OF THE SIXTH PRINCIPAL MERIDIAN,
LYING SOUTHERLY OF A ROAD-WAY AS CONSTRUCTED AND IN
PLACE, SAID PARCEL OF LAND IS DESCRIBED AS FOLLOWS:
BEGINNING AT A POINT ON THE SOUTHERLY LINE OF SAID ROAD-
WAY WHENCE THE STREET CENTER MONUMENT LOCATED AT THE
INTERSECTION OF 8TH STREET AND MAIN STREET IN THE TOWN OF
CARBONDALE, COLORADO, BEARS S. 00 DEGREES 03'00 W 387.89
FEET AND S 89 DEGREES 57'00" E 700.72 FEET; THENCE S 87
DEGREES 58'00" E 248.28 FEET ALONG THE SOUTHERLY LINE OF
SAID ROAD-WAY; THENCE S 89 DEGREES 18'00" W 248.06 FEET;
THENCE N 00 DEGREES 25'00" W 11.84 FEET TO A POINT ON THE
SOUTHERLY LINE OF SAID ROAD-WAY THE POINT OF BEGINNING.

COUNTY OF GARFIELD STATE OF COLORADO

Reception#: 739583
 12/19/2007 10:17:08 AM Jean Alberico
 29 of 29 Rao Fee:\$146.00 Doc Fee:0.00 GARFIELD COUNTY CO

EXHIBIT B
TO THE DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND
EASEMENTS OF THE
MOUNTAIN SAGE TOWNHOMES P.U.D.

Phase 1 Only			Phases 1 and 2		
Allocation of Assessments			Allocation of Assessments		
Unit	SF	Per Unit Allocation	Unit	SF	Per Unit Allocation
C1	1,783	7.8%	C1	1,783	4.4%
C2	1,562	6.8%	C2	1,562	3.9%
C3	1,562	6.8%	C3	1,562	3.9%
C4	1,660	7.3%	C4	1,660	4.0%
D1	1,660	7.3%	D1	1,660	4.0%
D2	1,562	6.8%	D2	1,562	3.9%
D3	1,562	6.8%	D3	1,562	3.9%
D4	1,783	7.8%	D4	1,783	4.4%
F1	1,593	6.9%	F1	1,593	3.9%
F2	1,500	6.6%	F2	1,500	3.7%
F3	1,723	7.5%	F3	1,723	4.3%
G1	1,723	7.5%	G1	1,723	4.3%
G2	1,500	6.6%	G2	1,500	3.7%
G3	1,723	7.5%	G3	1,723	4.3%
Totals	22,896	100.00%	A1	1,783	4.4%
			A2	1,562	3.9%
			A3	1,562	3.9%
			A4	1,660	4.0%
			B1	1,660	4.0%
			B2	1,562	3.9%
			B3	1,562	3.9%
			B4	1,783	4.4%
			E1	1,120	2.8%
			E2	1,080	2.7%
			E3	1,080	2.7%
			E4	1,120	2.8%
			Totals	40,430	100.00%

