

## DECLARATION

This Declaration is made effective the 16<sup>th</sup> day of November, 2001, in El Paso, El Paso County, Texas by MOUNTAINSIDE VILLAGE, L.P., a Texas limited partnership ("Declarant") whose mailing address is 5819 Sun Valley Drive, El Paso, Texas 79912.

### RECITALS

1. Declarant is the owner of all of the real property, including the land, all improvements and structures on the property and all easements, rights, and appurtenances belonging to the property that is located in the City of El Paso, El Paso County, Texas (the "Property"), more particularly described in Exhibit "A", which is attached and incorporated by reference.

2. Declarant submits the Property to a condominium regime established by the Texas Uniform Condominium Act (TUCA), which is codified in Chapter 82 of the Texas Property Code.

3. The Property constitutes a condominium project (the "Project") within the meaning of TUCA. The formal name of the Project is "Mountainside Village Condominiums".

4. Declarant intends and desires to establish by this Declaration a plan of ownership for the condominium project ("Project"). The plan consists of individual ownership of residential apartment units (the "Unit(s)") and other areas. The Project shall be divided into no more than twenty (20) Units.

5. The Declarant intends to impose on the Project mutually beneficial restrictions for the benefit of all Units and the persons who own those Units (the "Owners"). The Declarant further intends, in accordance with the terms set forth herein, that the Owners will govern the Project by means of an organization of Owners (herein the "Association"), as more particularly set forth herein. The formal name of the Association is Mountain Walk Association of Owners, Inc.

6. The Units and other areas of the Project are more particularly described in Exhibits "B" and "C", which are attached and incorporated by reference. The Owners each have or will have an undivided interest in the remaining property of the Project (referred to as the "Common Elements"), which is also more particularly described in Exhibits "B" and "C". Exhibit "D" sets forth the allocation to each Unit of (a) a fraction or percentage of undivided interests in the common elements of the condominium, (b) a fraction or percentage of undivided interests in the common expenses of the Association, and (c) a portion of votes in the Association, by the formulas set forth therein.

7. Therefore, the Declarant declares that the Project is held and shall be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied, and improved subject to the following covenants, conditions, and restrictions, all of which are declared and agreed to be in furtherance of a plan for the improvement of the Property and the division of the Property into Units, and all of which are established and agreed on for the purpose of enhancing and perfecting the value, desirability, and attractiveness of the Project and every part of the Project. All of the covenants, conditions, and restrictions shall run with the Property and shall be binding on all parties having or acquiring any right, title, or interest in or any part of the Property and shall be for the benefit of each Owner of the Project or any interest in the Project and shall inure to the benefit of and be binding on each successor in interest of the Owners.

### ARTICLE I

#### DEFINITIONS

1.01. *Articles* mean the Articles of Incorporation of the Association that are or shall be filed in the Office of the Secretary of State of the State of Texas.

1.02. *Association* means the Mountain Walk Association of Owners, Inc., a corporation organized under the Texas Corporation Act for the management of the Project, the membership of which consists of all of the Owners in the Project.

1.03. *Board* means the Board of Directors of the Association.

1.04. *Bylaws* mean the Bylaws of the Association and amendments to the Bylaws that are or shall be adopted by the Board.

1.05. *Condominium* means the separate ownership of single units in a multiple-unit structure or structures with common elements.

1.06. *Common Elements* mean all elements of the Project except the separately owned Units, and includes both general and limited common elements.

1.07. *Declarant* means Mountainside Village, L.P. and its successors and assigns.

1.08. *Declaration* means this Declaration document and all that it contains.

1.09. *General Common Elements* mean all the Common Elements except the Limited Common Elements.

1.10. *Governing Instruments* mean the Declaration, and the Articles of Incorporation and Bylaws of the Association.

1.11. *Limited Common Elements* mean the Common Elements allocated for the exclusive use of one or more but less than all of the Units.

1.12. *Manager* means the person or corporation, if any, appointed by the Board to manage the Project.

1.13. *Owner(s)* means any person that owns a Unit within the Project.

1.14. *Person* means an individual, firm, corporation, partnership, association, trust, other legal entity, or any combination of persons or entities.

1.15. *Project* means the entire parcel or the Property described in Exhibit "A", including the land, all improvements and structures on the Property, and all easements, rights, and appurtenances belonging to the Property that are divided or are to be divided into Units to be owned and operated as a Condominium. The Project shall be divided into no more than twenty (20) Units.

1.16. *Rules* mean and refer to the Rules and Regulations for the Project adopted by the Board pursuant to this Declaration.

1.17. *Unit* means a physical portion of the condominium designated by Exhibits "B" and "C" for separate ownership and occupancy.

## ARTICLE 2

### THE PROPERTY

2.01. All the real property described in Exhibit "A" to this declaration, including the land, all improvements and structures on the property, and all easements, rights, and appurtenances belonging to the property (referred to collectively as the "Property") shall be subject to this Declaration.

2.02. Each Owner shall be entitled to the exclusive ownership and possession of the Owner's Unit. Any Unit may be jointly or commonly owned by more than one Person. No Unit may be subdivided. The boundaries of the Unit shall be and are the exterior surfaces of the perimeter walls, floors, ceilings, and the exterior surfaces of balconies and terraces. All

lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring, and other finish surface materials are a part of the Unit. An Owner shall not be deemed to own the utilities running through the Owner's Unit that are utilized for or serve more than one Unit, except as a tenant in common with the other Owners. An Owner shall be deemed to own and shall have the exclusive right to paint, repaint, tile, wax, paper, or otherwise refinish and decorate the interior surfaces of the walls, floors, ceilings, windows, and doors bounding the Owner's Unit.

2.03. Each Owner shall be entitled to an undivided interest in the Common Elements described in Exhibit "D" in the percentage expressed in Exhibit "D". The percentage of the undivided interest of each Owner in the Common Elements, as expressed in Exhibit "D", shall have a permanent character and shall not be altered without the consent of all Owners, expressed in an amended, duly recorded Declaration. The percentage of the undivided interest in the Common Elements shall not be separated from the Unit to which it pertains and shall be deemed to be conveyed or encumbered or released from liens with the Unit even though the interest is not expressly mentioned or described in the conveyance or other instrument. Each Owner may use the Common Elements in accordance with the purpose for which they are intended as long as the lawful rights of the other Owners are not hindered or encroached on.

2.04. The Common Elements designated as Limited Common Elements in Exhibit "C" are reserved for the exclusive use of the Owners of the Units to which they are appurtenant. Those Units having the exclusive use of Limited Common Elements shall not operate those Limited Common Elements to the detriment of other Units having the use of the same Limited Common Elements (i.e. failing to participate in the reasonable heating and cooling of enclosed areas common to those Units).

2.05. The Common Elements, both General and Limited, shall remain undivided and shall not be the object of an action for partition or division of ownership so long as the Property remains a Condominium Project. In any event, all mortgages must be paid prior to the bringing of an action for partition or the consent of all mortgagees must be obtained.

2.06. Each Owner shall have a nonexclusive easement for the use and enjoyment of the General Common Elements and for ingress, egress, and support over and through the General Common Elements. These easements shall be appurtenant to and shall pass with the title to each Unit and shall be subordinate to the exclusive easements granted elsewhere in this Declaration, as well as to any rights reserved to the Association to regulate time and manner of use, to charge reasonable admission fees, and to perform its obligations under this Declaration.

2.07. The Association may grant to third parties easements in, on, and over the Common Elements for the purpose of constructing, installing, or maintaining necessary utilities and services. Each Owner, in accepting the deed to the Unit, expressly consents to such easements. No such easement may be granted, however, if it would interfere with any exclusive easement or with any Owner's use, occupancy, or enjoyment of the Owner's Unit.

2.08. None of the rights and obligations of the Owners created in this Declaration or by the deeds granting the Units shall be altered in any way by encroachments due to settlement or shifting of structures or any other cause. There shall be valid easements for the maintenance of such encroachments so long as they shall exist provided, however, that in no event shall a valid easement for an encroachment be created in favor of any Owner if the encroachment occurred because of the willful conduct of the Owner.

### ARTICLE 3

#### UNIT OWNERS ASSOCIATION

3.01. The Association, organized as a corporation under the Texas Corporation Act, operating under the name Mountain Walk Association of Owners, Inc., is charged with the duties and invested with the powers prescribed by law and set forth in this Declaration and in the Association's Articles of Incorporation and Bylaws.

3.02. Membership in the Association is automatically granted to the Owner or Owners of each Unit in the Project. On the transfer of title to any Unit, the membership of the transferor automatically ceases and each new Owner becomes a member.

3.03. Voting shall be on a percentage basis. The Owner of each Unit is entitled to a percentage of the total vote equal to the percentage interest that the Owner's Unit bears to the entire Project as assigned in Exhibit C. If a Unit has more than one Owner, the aggregate vote of the Owners of the Unit may not exceed the percentage of the total vote assigned to the Unit.

3.04. Meetings of the Owners shall be called, held, and conducted in accordance with the requirements and procedures set forth in the Bylaws.

3.05. The Association shall have all of the powers allowed by TUCA, as well as all the powers of a corporation established under Texas law, subject only to the limitations contained in this Declaration and in the other Governing Instruments. The Association may perform all acts that may be necessary for, or incidental to, the performance of the obligations and duties imposed on it by this Declaration and the other Governing Instruments. The powers of the Association shall include, but are not limited to the following:

- (a) The power to establish, fix, and levy assessments against Owners in accordance with the procedures and subject to the limitations set forth in Article 4 of this Declaration.
- (b) The power to adopt reasonable operating rules governing the use of the Common Elements and any facilities located on the Common Elements, as well as the use of any other Association property.
- (c) The right to institute and maintain actions for damages or to restrain any actual or threatened breach of any of the provisions of the Governing Instruments or Association Rules in its own name, either on its own behalf or on behalf of any consenting Owner.
- (d) The right to discipline Owners for violation of any of the provisions of the Governing Instruments or Association Rules by suspension of the violator's voting rights or privileges for use of the Common Elements or by imposition of monetary penalties, subject to the following limitations:
  - (i) The accused Owner must be given written notice of the violation or property damage, stating the amount of any proposed fine or damage charge and that the Owner may request a written hearing before the Board within thirty (30) days of the notice.
  - (ii) The accused Owner must be given a reasonable time, by a date specified in the notice, to cure the violation and avoid the fine, unless the Owner was given notice and a reasonable opportunity to cure a similar violation within the preceding twelve (12) months.
  - (iii) The accused Owner must be given written notice of a levied fine or damage charge within thirty (30) days after the date of levy.
  - (iv) Any suspension of privileges or imposition of monetary penalties shall be reasonably related to the Owner's violation.
- (e) The power to delegate its authority, duties, and responsibilities, through the Board of Directors, to such committees, officers, or employees as are permitted to be retained under the Governing Instruments.
- (f) The right, through its agents or employees, to enter any Unit when necessary in connection with any maintenance, landscaping, or construction for which the Association is responsible. Such entry shall be made with as little inconvenience to the Owner as is practicable and any and casualty insurance as the Board shall determine gives substantially equal or greater protection to the Owners and their mortgagees, as their respective interests may appear.

3.06 The affairs of the Association shall be managed and its duties and obligations performed by a Board of Directors. Provisions regulating the number, term, qualifications, manner of election, and conduct of meetings of the members of the Board of Directors shall be set forth in the Bylaws of the association. The Board shall elect officers, which shall include a President, Treasurer, Secretary, and such other officers as the Board may deem proper. Provisions regulating the numbers, term, qualifications, manner of election, powers and duties of the officers shall be set forth in the Bylaws of the Association.

3.07 In addition to the duties delegated to the Association or its agents and employees elsewhere in the Governing Instruments, the Association shall be responsible for the following:

- (a) Operation and maintenance of the Common Elements and the facilities located on the Common Elements. This duty shall include, but shall not be limited to, exterior painting, maintenance, repair and landscaping of the Common Elements and of the furnishings and equipment for the Common Elements as the Board shall determine are necessary and proper.
- (b) Acquisition of and payment from the maintenance fund for the following:
  - (i) Water, sewer, garbage, electrical, telephone, gas, elevator, and other necessary utility service for the Common Elements and, to the extent not separately metered and charged, for the Units.
  - (ii) A policy or policies insuring the Board, the Owners and/or the Association against any liability to the public or to the Owners and their tenants and invitees, incident to the ownership and/or use of the Project, including the personal liability exposure of the Owners. The limits and coverage shall be reviewed

at least annually by the Board and varied in its discretion. The policy or policies shall be issued on a comprehensive liability basis and shall provide cross-liability endorsement in which the rights of named insureds under the policy or policies shall not be prejudiced as respects his, her, or their action against another named insured.

- (iii) Workers' compensation insurance to the extent necessary to comply with any applicable laws.
  - (iv) The services of personnel that the Board shall determine to be necessary or proper for the operation of the Common Elements.
  - (v) Legal and accounting services necessary or proper for the operation of the Common Elements or the enforcement of this Declaration.
- (c) Preparation and distribution, on a regular basis, of financial statements to the Owners in accordance with the following:
- (i) A pro forma operating statement for each fiscal year shall be distributed not less than sixty (60) days before the beginning of the fiscal year.
  - (ii) A balance sheet, as of an accounting date that is the last day of the month closest in time to six months from the date of closing of the first sale of a Unit in the Project, and an operating statement for the period from the date of the first closing to the accounting date shall be distributed within sixty (60) days after the accounting date. This operating statement shall include a schedule of assessments received and receivable identified by the numbers of the Project Units and the names of the persons assessed.
  - (iii) A balance sheet as of the last day of the Association's fiscal year and an operating statement for the fiscal year shall be distributed within 90 days after the close of the fiscal year.
- (d) Maintenance of the following books and records, such books and records to be kept in accordance with generally accepted accounting procedures:
- (i) Financial records with a detailed account of the receipts and expenditures affecting the Project and its administration and specifying the maintenance and regular expenses of the Common Elements and any other expenses incurred by or on behalf of the Project.
  - (ii) Minutes of proceedings of Owners, Board of Directors, and Committees to which any authority of the Board of Directors has been delegated.
  - (iii) Record of the names and addresses of all Owners with voting rights.
  - (iv) Plans and specifications used to construct the Project.
  - (v) The condominium information statement given to all Owners by the Declarant before sale.
  - (vi) Voting records, proxies, and correspondence relating to declaration amendments.

3.08. Declarant shall have the power to appoint and remove officers and members of the Board until one hundred twenty (120) days after Declarant has conveyed seventy-five (75) percent of the Units in the Project to Owners other than Declarant, provided, however, that, not later than the one hundred twentieth (120th) day after Declarant's conveyance of fifty (50) percent of the Units to Owners other than a Declarant, not less than one third of the Board members must be elected by Owners other than Declarant.

3.09. The Board shall act in all instances on behalf of the Association, unless otherwise provided by this Declaration. The Board's powers and duties shall include, but shall not be limited to, the following:

- (a) Enforcement of the applicable provisions of this Declaration, the Bylaws, and any Rules of the Association.
- (b) Payment of taxes and assessments that are or could become a lien on the Common Elements or a portion of the Common Elements.
- (c) Contracting for casualty, liability, and other insurance on behalf of the Association.
- (d) Contracting for goods and services for the Common Elements, facilities, and interests of the Association.
- (e) Delegation of its powers to such committees, officers, or employees of the Association as are expressly authorized by the Governing Instruments.
- (f) Preparation of budgets and financial statements for the Association as prescribed in the Governing Instruments.

(g) Formulation of rules of operation for the Common Elements and facilities owned or controlled by the Association.

(h) Initiation and execution of disciplinary proceedings against Owners for violations of provisions of the Governing Instruments in accordance with procedures set forth in the Governing Instruments.

(i) Authorizing entry into any Unit as necessary in connection with construction, maintenance, or emergency repair for the benefit of the Common Element or the Owners in the aggregate.

3.10. Notwithstanding the powers set forth in Paragraph 3.08 of this Declaration, the Board shall be prohibited from taking any of the following actions except with the approval of a majority of the voting power of the Association residing in the Owners:

(a) Entering into (i) a contract with a third person under which the third person will furnish goods or services for a term longer than three years, except for a management contract approved by the Federal Housing Administration or Veterans' Administration; (ii) a contract with a public utility if the rates charged are regulated by the Public Utilities Commission, provided that the term shall not exceed the shortest term for which the utility will contract at the regulated rate; or (iii) prepaid casualty and/or liability insurance of not more than three (3) years' duration, provided that the policy provides for short-rate cancellation by the insured.

(b) Incurring aggregate expenditures for capital improvements to the Common Elements in any fiscal year in excess of five (5) percent of the budgeted gross expenses of the Association for that fiscal year.

(c) Selling during any fiscal year property of the Association having an aggregate fair market value in excess of five (5) percent of the budgeted gross expenses of the Association for that fiscal year.

(d) Paying compensation to Directors or to officers of the Association for services rendered in the conduct of the Association's business, provided, however, that the Board may cause a Director or officer to be reimbursed for expenses incurred in carrying out the business of the Association.

#### ARTICLE 4

#### ASSESSMENTS

4.01. The Declarant covenants and agrees for each Unit owned by it in the Project, and each Owner by acceptance of the deed to such Owner's Unit is deemed to covenant and agree, to pay to the Association the regular and special assessments levied pursuant to the provisions of this Declaration. All moneys collected shall be put into a maintenance fund to be used to defray expenses attributable to the ownership, operation, and maintenance of common interests by the Association. The Owner may not waive or otherwise escape liability for these assessments by nonuse of the Common Elements or by abandonment of the Owner's Unit.

4.02. Regular assessments shall be made in accordance with the following. Within sixty (60) days prior to the beginning of each calendar year, the Board shall estimate the net charges to be paid during that year including a reasonable provision for contingencies and replacements with adjustments made for any expected income and surplus from the prior year's fund. This estimated cash requirement shall be assessed to each Owner according to the ratio of the number of Units owned by said Owner to the total number of Units in the Project subject to assessment. Each Owner is obligated to pay assessments to the Board in equal monthly installments on or before the first day of each month.

4.03. Special assessments shall be made in accordance with the following. If the Board determines that the amount to be collected from regular assessments will be inadequate to defray the common expenses for the year because of the cost of any construction, unexpected repairs, replacements of capital improvements on the Common Elements, or for any other reason, it shall make a special assessment for the additional amount needed. Such special assessments shall be levied and collected in the same manner as regular assessments.

4.04. The Board may not, without the approval of a majority of the voting power of the Association residing in Owners other than Declarant, impose a regular annual assessment per Unit that is more than twenty (20) percent greater than the regular annual assessment for the preceding year, or levy special assessments that in the aggregate exceed five (5) percent of the budgeted gross expenses of the Association for that year. These limitations shall not apply to a special assessment levied against an Owner to reimburse the Association for funds expended in order to bring the Owner into compliance with the provisions of the Association's Governing Instruments.

4.05. Regular assessments shall commence on the date of closing of the first sale of a Unit in the Project.

4.06. Each monthly portion of a regular assessment and each special assessment shall be a separate, distinct, and personal debt and obligation of the Owner against whom the assessments are assessed. The amount of any assessment not paid when due shall be deemed to be delinquent.

4.07. On the sale or conveyance of an Unit, all unpaid assessments against an Owner for the Owner's share in the expenses to which Articles 4.02 and 4.03 of this Declaration refer shall first be paid out of the sale price or by the purchaser in preference over any other assessments or charges of whatever nature, except the following:

- (a) Assessments, liens, and charges in favor of the State of Texas and any political subdivision of the State of Texas for taxes past due and unpaid on the Unit.
- (b) Amounts due under mortgage instruments duly recorded.

4.08. The Association shall have a lien on each Unit for any delinquent assessments attributable to that Unit. The Association is authorized to enforce the lien through any available remedy, including nonjudicial foreclosure pursuant to Texas Property Code Section 51.002. The Owners expressly grant to the Board a power of sale, through a trustee designated in writing by the Board, in connection with any such liens.

## ARTICLE 5

### RESTRICTIONS AND COVENANTS

5.01. The right of an Owner and the Owner's guests to occupy or use the Owner's Unit or to use the Common Elements or any of the facilities on the Common Elements is subject to the following restrictions:

- (a) No Owner shall occupy or use the Owner's Unit, or permit the Unit or any part of it to be occupied or used, for any purpose other than as a private residence. Nothing in this Declaration shall prevent the Owner from leasing or renting out the Owner's Unit, provided that the Unit is not used for transient or hotel purposes and that the term of the lease is for a period of at least sixty (60) days and is subject to the Association's Governing Instruments and Rules.
- (b) There shall be no obstruction of the Common Elements. Nothing shall be stored in the Common Elements without the prior consent of the Board, except as expressly provided for in the Declaration, or in designated storage areas.
- (c) Nothing shall be done or kept in any Unit or in the Common Elements that will increase the rate of insurance on the Common Elements without the prior written consent of the Board. No Owner shall permit anything to be done or kept in the Owner's Unit or in the Common Elements that will result in the cancellation of insurance on any Unit or on any part of the Common Elements or that would be in violation of any law. No waste shall be permitted in the Common Elements. No gasoline, kerosene, cleaning solvents, or other flammable liquids shall be stored in the Common Elements or in any Unit, provided, however, that reasonable amounts in suitable containers may be stored in the storage spaces.
- (d) No sign of any kind shall be displayed to the public view on or from any Unit or the Common Elements without the prior written consent of the Board, except a sign advertising the property for sale.
- (e) No animals, livestock, or poultry of any kind shall be raised, bred, or kept in the Unit or in the Common Elements, except that dogs, cats, or other household pets may be kept in Units, subject to the Rules and Regulations adopted by the Board.
- (f) No noxious or offensive activity shall be carried on in any Unit or in the Common Elements, nor shall anything be done in any Unit or in the Common Elements that may be or become an annoyance or nuisance to the other Owners.
- (g) Nothing shall be altered or constructed in or removed from the Common Elements, except on the written consent of the Board.
- (h) There shall be no violation of the Rules adopted by the Board and furnished in writing to the Owners pertaining to the use of the Common Elements. The Board is authorized to adopt such Rules.

- (i) No Owner shall park any automobile or other motor vehicle in the Common Elements except in a space designated for the Owner by the Board.

5.02. Except for those portions that the Association is required to maintain and repair, each Owner shall, at the Owner's sole cost and expense, maintain and repair the Owner's Unit so as to keep it in good condition and repair. Each Owner shall also maintain and repair those portions of the Common Elements subject to an exclusive easement appurtenant to the Owner's Unit.

5.03. Each Owner shall be liable to the Association for all damage to the Common Elements or to other Association property that is sustained by reason of the negligence or willful misconduct of that Owner or the Owner's family, guests, or tenants.

5.04. Declarant shall be exempt from the restrictions of Article 5.01 of this Declaration to the extent reasonably necessary for completion of construction, sales, or additions to the Project. Such exemption includes, but is not limited to maintaining Units as model homes, placing advertising signs on Project property, and generally making use of the Project lots and Common Elements as is reasonably necessary to carry on construction activity.

## ARTICLE 6

### DAMAGE OR DESTRUCTION

6.01. If the Project is damaged by fire or any other disaster, the insurance proceeds, except as provided in Paragraph 6.01(b) of this Declaration, shall be applied to reconstruct the Project. Reconstruction shall not be compulsory if at least 80 percent of the vote of the Owners, which shall include the vote of each Owner of a unit or assigned limited common element that will not be rebuilt or repaired, is cast not to rebuild. If the Owners so vote to not rebuild any Unit, that Unit's allocated interests shall be automatically reallocated on the vote as if the Unit had been condemned, and the Association shall prepare, execute, and record an amendment to Exhibit "D" of the Declaration reflecting the reallocation. If the entire Project is not repaired or replaced and unless otherwise unanimously agreed to by the Owners, the proceeds shall be delivered pro rata to the Owners or their mortgagees, as their interest may appear, in accordance with the percentages or fractions set forth in Exhibit "D" of this Declaration.

6.02. When reconstruction is required by the terms of Article 6.01 of this Declaration, but the insurance proceeds are insufficient to cover the cost of reconstruction, the costs in excess of the insurance proceeds and reserves shall be considered a common expense that is subject to the Association's lien rights.

6.03. If the Project is damaged by fire or any other disaster, the Board shall obtain firm bids, including the obligation to obtain a performance bond, from two or more responsible contractors to rebuild the Project in accordance with its original plans and specifications. The Board shall also, as soon as possible after obtaining the bids, call a special meeting of the Owners to consider the bids. If the Board fails to do so within sixty (60) days after the casualty occurs, any Owner may obtain bids and call and conduct a meeting as provided by this Article 6.03. At such meeting, the Owners may, by a vote of not less than sixty-seven (67) percent of the votes present, elect to reject all of the bids or, by not less than fifty-one (51) percent of the votes present, elect to reject all the bids requiring amounts more than five hundred dollars (\$500) in excess of available insurance proceeds. If all bids are rejected, the Board shall obtain additional bids for presentation to the Owners. Failure to reject all bids shall authorize the Board to accept the unrejected bid it considers most favorable.

## ARTICLE 7

### RIGHTS OF BENEFICIARIES UNDER DEEDS OF TRUST

Declarant warrants that beneficiaries under deeds of trust to Units in the Project shall be entitled to the following rights and guaranties:

- (a) Should any of the Association's Governing Instruments provide for a "right of first refusal," such right shall not impair the rights of a beneficiary under a first lien deed of trust to the following:

- (i) To exercise the power of sale, foreclose, or take title to a Unit pursuant to the remedies provided in the deed of trust.
- (ii) To accept a deed or assignment in lieu of sale or foreclosure in the event of default by a grantor.



- (iii) To interfere with a subsequent sale or lease of a Unit so acquired by the beneficiary,
- (b) A beneficiary under a first lien deed of trust is entitled, on request, to written notification from the Association of any default in the performance by the grantor of any obligation under the Association's Governing Instruments that is not cured within sixty (60) days.
- (c) Any beneficiary under a first deed of trust who obtains title to a Unit pursuant to the remedies provided in the deed of trust will not be liable for such Unit's unpaid assessments that accrue prior to the acquisition of title to the Unit by the beneficiary,
- (d) Unless at least two thirds (2/3) of the beneficiaries under first deeds of trust (based on one vote for each first deed of trust owned) or Owners other than Declarant give their prior written approval, the Association shall not be entitled to the following:
  - (i) By act or omission, to seek to abandon or terminate the Project.
  - (ii) To change the pro rata interest or obligations of any individual Unit for the purpose of:
    - (A) Levying assessments or charges.
    - (B) Allocating distributions of hazard insurance proceeds or condemnation awards.
    - (C) Determining the pro rata share of ownership of each Unit in the Common Elements and in the improvements in the Common Elements.
  - (iii) To partition or subdivide any Unit.
  - (iv) By act or omission, to seek to abandon, partition, subdivide, encumber, sell, or transfer the Common Elements. The granting of easements for utilities or for other public purposes consistent with the intended use of the Common Elements shall not be deemed a transfer within the meaning of this clause.
  - (v) In case of loss to a Unit and/or Common Elements of the Project, to use hazard insurance proceeds for losses to any Project property (whether to Units or to the Common Elements) for other than the repair, replacement, or reconstruction of such property, except as provided by statute.
- (e) All taxes, assessments, and charges that may become liens prior to the first mortgage under local law shall relate only to the individual Units and not to the Project as a whole.
- (f) No provision of the Governing Instruments of the Association gives any Owner, or any other party, priority over any rights of a beneficiary under a first deed of trust to a Unit pursuant to its deed of trust in the case of a distribution to such Owner of insurance proceeds or condemnation awards for losses to or taking of Units and/or the Common Elements or portions of the Common Elements. (g) Association assessments shall be large enough to provide for an adequate reserve fund for maintenance, repairs, and replacement of those Common Elements that must be replaced on a periodic basis. The reserve fund will be funded through the regular monthly assessments rather than by special assessments.

## ARTICLE 8

### GENERAL PROVISIONS

8.01. This Declaration may be amended only at a meeting of the Unit Owners at which the amendment is approved by the holders of at least sixty-seven (67) percent of the ownership interests in the Project. An amendment of the Declaration may not alter or destroy a Unit or a Limited Common Element without the consent of the affected Owners and the Owners' first lien mortgagees. Any amendment shall be evidenced by a writing that is prepared, signed, and acknowledged by the President or other officer designated by the Board to certify amendments. The amendment shall be effective on filing in the office of the county clerk of County, Texas.

8.02. Each remedy provided for in this Declaration is separate, distinct, and nonexclusive. Failure to exercise a particular remedy shall not be construed as a waiver of the remedy.

8.03. The provisions of this Declaration shall be deemed, independent and severable. The invalidity, partial invalidity, or unenforceability of anyone provision shall not affect the validity or enforceability of any other provision.

8.04. This Declaration, as well as any amendment to this Declaration, and any valid action or directive made pursuant to it shall be binding on the Declarant and the Owners and their heirs, grantees, tenants, successors, and assigns.

8.05. The provisions of this Declaration shall be liberally construed and interpreted to effectuate its purpose of creating a uniform plan for the development and operation of a Condominium Project. Failure to enforce any provision of this Declaration shall not constitute a waiver of the right to enforce the provision or any other provision of this Declaration.

8.06. The liability of any Owner for performance of any of the provisions of this Declaration shall terminate on sale, transfer, assignment, or other divestment of the Owner's entire interest in the Owner's Unit with respect to obligations arising from and after the date of such divestment.

8.07. Neither Declarant nor any Owner shall, either directly or indirectly, forbid the conveyance, encumbrance, renting, leasing, or occupancy of the Owner's Unit to any person on the basis of race, color, sex, religion, ancestry, or national origin.

8.08. Notices provided for in this Declaration shall be in writing and shall be deemed sufficiently given with when delivered personally at the appropriate address set forth in Article 8.08(b) of this Declaration, or seventy-two (72) hours after deposit in any United States post office box, postage prepaid, addressed as set forth in Article 8.08(b) of this Declaration. Any notice to an Owner required under this Declaration shall be addressed to the Owner at the last address for the Owner appearing in the records of the Association or, if there is none, at the address of the Unit in the Project. Notice to the Association shall be addressed to the address designated by the Association by written notice all Owners. Notices to the Manager shall be addressed to the address designated by the Manager. Notices to Declarant shall be addressed to 5819 Sun Valley Drive, El Paso, Texas 79912.

8.09. As used in this Declaration, the singular shall include the plural and the masculine shall include the feminine and the neuter, unless the context requires the contrary. All headings are not a part of this Declaration and shall not affect the interpretation of any provision.

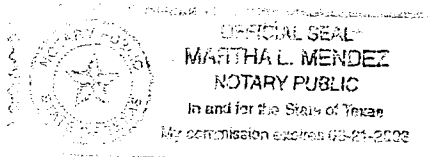
**MOUNTAINSIDE VILLAGE, L.P.,**  
a Texas limited partnership

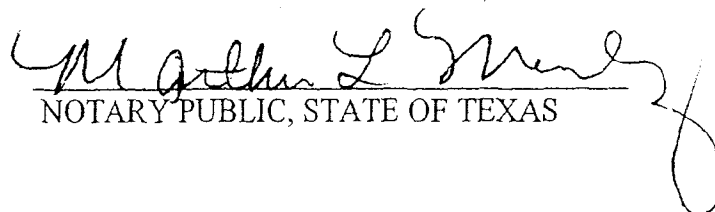
By: **MONTANA PALMS, INC.,** Its General Partner

By:   
**R. L. BOWLING, III, President**

STATE OF TEXAS       )  
                                  )  
COUNTY OF EL PASO   )

This instrument was acknowledged before me on this 21<sup>st</sup> day of Nov, 2001, by R. L. BOWLING, III, President of MONTANA PALMS, INC., a Texas corporation and general partner of MOUNTAINSIDE VILLAGE, L.P., a Texas limited partnership, on behalf of said limited partnership.



  
**NOTARY PUBLIC, STATE OF TEXAS**

## EXHIBIT A - LEGAL DESCRIPTION

A portion of Lot 1, Block 1, Mountainside Unit One Replat A, City of El Paso, El Paso County, Texas, being more particularly described by metes and bounds as follows:

Commencing for reference at an existing point of curve city monument centerline Stoney Hill Drive; From this monument another city monument at the centerline intersection of Stoney Hill Drive and Big Bend Drive bears South  $83^{\circ}58'09''$  West a distance of 406.74 feet; Thence from said point of curve monument and along the centerline of Stoney Hill Drive North  $76^{\circ}38'52''$  East a distance of 215.60 feet to a point; Thence leaving said centerline North  $13^{\circ}00'08''$  East a distance of 30.00 feet to a set  $\frac{1}{2}$ " rebar with cap marked Tx 5152 on the Northerly right-of-way line of Stoney Hill Drive for the "TRUE POINT OF BEGINNING";

Thence leaving said right-of-way line North  $12^{\circ}21'08''$  East a distance of 22.74 feet to a set  $\frac{1}{2}$ " rebar with cap marked Tx 5152;

Thence 54.15 feet along the arc of a curve to the left whose radius is 237.00 feet, whose interior angle is  $13^{\circ}05'26''$ , whose chord bears North  $06^{\circ}48'25''$  East a distance of 54.03 feet to a set  $\frac{1}{2}$ " rebar with cap marked Tx 5152;

Thence North  $00^{\circ}15'42''$  East a distance of 179.33 feet to a set X on concrete curb;

Thence 40.99 feet along the arc of a curve to the right whose radius is 188.00 feet, whose interior angle is  $12^{\circ}29'33''$ , whose chord bears North  $06^{\circ}30'28''$  East a distance of 40.91 feet to a set X on concrete curb;

Thence North  $12^{\circ}45'14''$  East a distance of 15.24 feet to a set  $\frac{1}{2}$ " rebar with cap marked Tx 5152;

Thence 31.42 feet along the arc of a curve to the left whose radius is 20.00 feet, whose interior angle is  $90^{\circ}00'00''$ , whose chord bears North  $32^{\circ}14'46''$  West a distance of 28.28 feet to a set X on concrete curb;

Thence North  $12^{\circ}45'14''$  East a distance of 43.00 feet to a set  $\frac{1}{2}$ " rebar with cap marked Tx 5152;

Thence South  $77^{\circ}14'46''$  East a distance of 184.48 feet to a set  $\frac{1}{2}$ " rebar with cap marked Tx 5152;

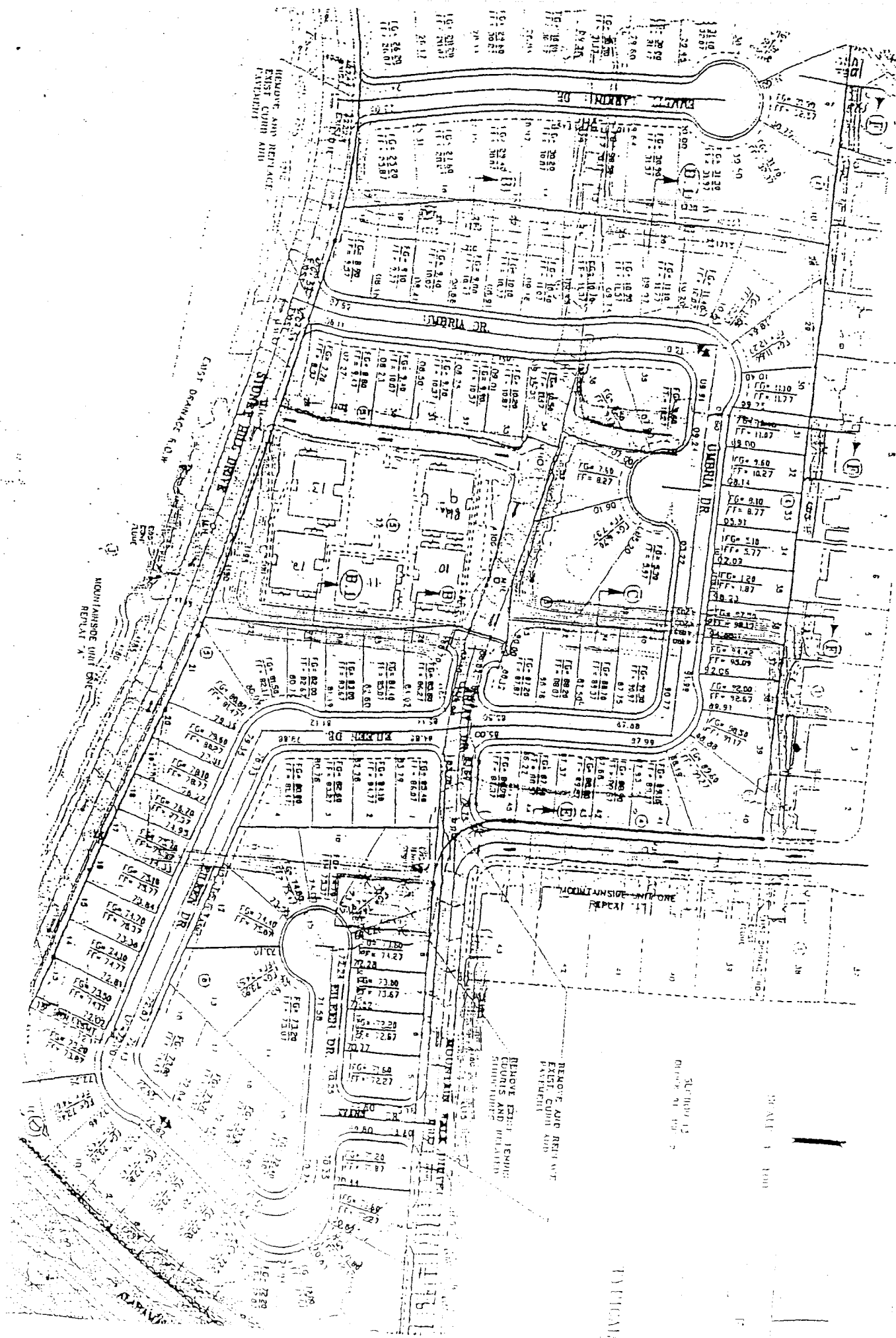
00041 00000000

00041 00000000

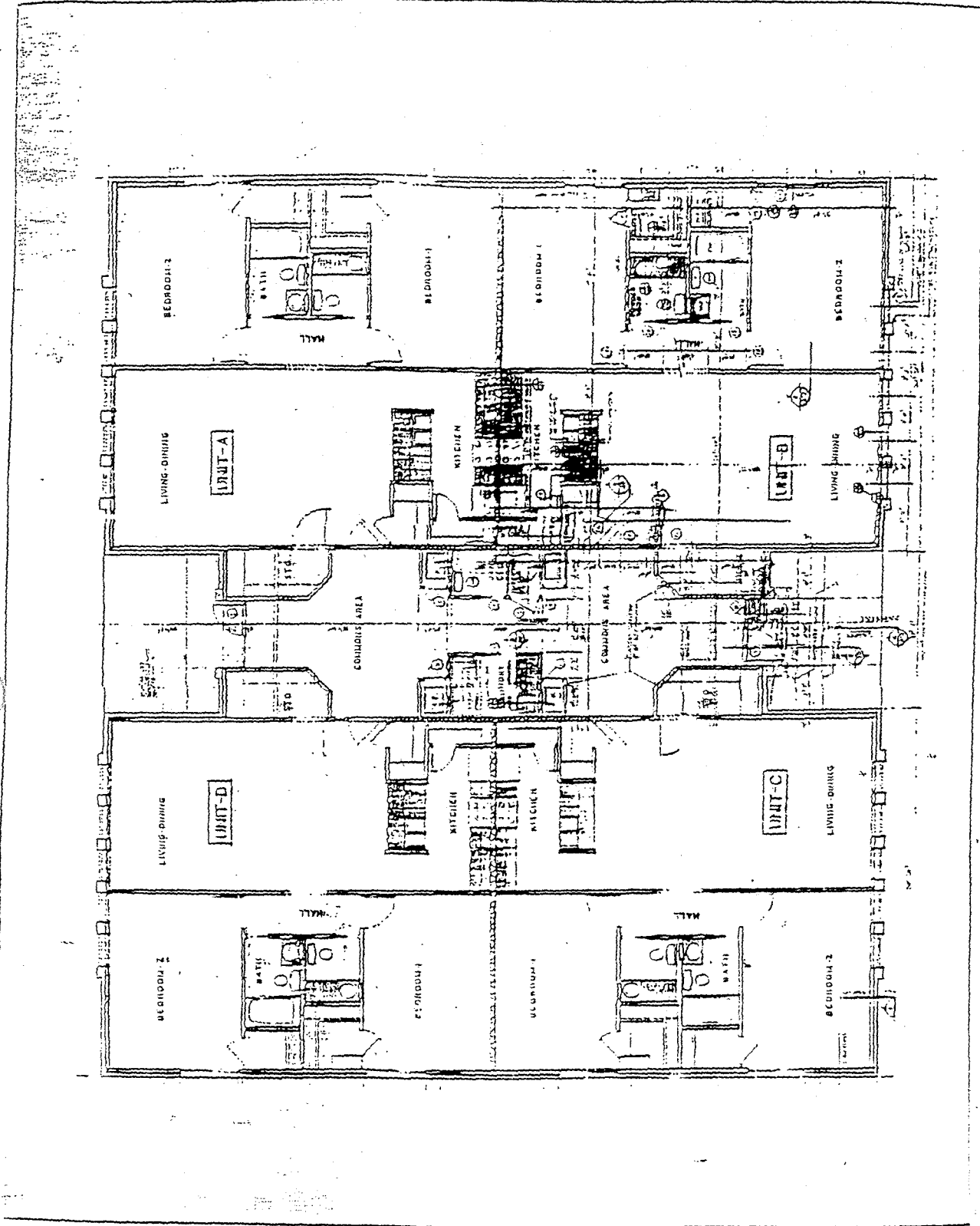
00041 00000000

00041 00000000

00041 00000000



# FLOOR PLAN



## MOUNTAINSIDE VILLAGE CONDOS-SUMMARY

- OWNERS PAY ELECTRIC AND GAS FOR EACH UNIT
- ASSOCIATION PAYS FOR WATER, ~~CABLE~~ AND TRASH SERVICE (DUMPSTER) *R.I.B. IV 11/04*
- ASSOCIATION PAYS FOR GAS (WATER HEATERS) AND ELECTRIC (WASHER/DRYERS) FOR COMMON AREAS
- WASHER/DRYER USE FREE (SUBJECT TO CHANGE BY ASSOCIATION)
- ASSOCIATION RESPONSIBLE FOR INSURANCE AND TAXES OF COMMON AREA
- ASSOCIATION PAYS FOR WATER AND MAINTENANCE OF ALL LANDSCAPING
- ASSOCIATION ASSIGNS ONE COVERED PARKING SPACE FOR EACH UNIT. UNCOVERED PARKING FOR GUESTS
- EACH OWNER WILL PAY 1/20 SHARE OF CAPITAL EXPENDITURES FOR COMMON AREAS
- DUES FOR ALL SERVICES SCHEDULED TO BE \$150 (INCLUDES \$30 FOR MANAGEMENT/ADMISTRATION TO MOUNTAINSIDE VILLAGE LTD.)
- DUES SUBJECT TO ANNUALL ADJUSTMENT UPON REVIEW OF FINANCIALS (IN FEBRUARY EACH YEAR)
- EACH CONDO OWNER RESPONSIBLE FOR TAXES AND INSURANCE ON INDIVIDUAL UNITS
- EACH CONDO OWNER HAS A 1/20<sup>th</sup> VOTE AT ANNUAL ASSOCIATION MEETING, AND OWNS 1/20<sup>TH</sup> OF ALL COMMON AREAS