

**DECLARATION OF DEED RESTRICTION AND AGREEMENT CONCERNING THE
SALE, OCCUPANCY, AND RESALE OF CERTAIN UNITS WITHIN MOUNTAIN
TRACE PLANNED DEVELOPMENT, LA PLATA COUNTY, COLORADO**

THIS DECLARATION OF DEED RESTRICTION AND AGREEMENT CONCERNING THE SALE, OCCUPANCY, AND RESALE CERTAIN UNITS WITHIN MOUNTAIN TRACE PLANNED DEVELOPMENT, La Plata County, Colorado (“Agreement”) is made and entered into this ____ day of _____, 20___, by Mountain Trace Holding, LLC, (the “Declarant”), for the benefit of the parties and enforceable by HomesFund (“HomesFund”), a duly constituted nonprofit organization established pursuant to Colorado law, its successor or agent, and the City of Durango, Colorado, a municipal corporation established pursuant to Colorado law (the “City”).

RECITALS AND DEFINITIONS

- A. Declarant is the owner of and is in the process of developing a residential community known as Mountain Trace Planned Development, which is located in La Plata County, Colorado; and
- B. Declarant desires and voluntarily agrees to set aside 10 Units within Development (one of which has already been completed and conveyed), for the purpose of providing affordable housing in the manner set forth in the Guidelines in accordance with the Amended and Restated Mountain Trace Attainable Housing Compliance Agreement, recorded in the office of the La Plata County Clerk and Recorder at Reception No. 1150476 (“Compliance Agreement”). In the event of any conflict between the terms of the Compliance Agreement and this Agreement, this Declaration shall control. ____ of the nine (9) Units subject to this Agreement is identified in Exhibit A, attached hereto and by reference incorporated herein. For purposes of this Declaration and Agreement, such real property and all dwellings, appurtenances, improvements and fixtures associated therewith shall be referred to herein individually as a Unit or collectively as Units; and
- C. After completion of construction, each Unit, together with fixtures, equipment and appurtenances thereto, shall be conveyed to “Qualified Buyers” as defined below on the terms and conditions further set forth herein; and
- D. The City and HomesFund each, collectively and individually, have rights to enforce this Agreement as set forth herein; and
- E. For purposes of this Agreement, the following terms shall have the meaning set forth herein:
1. “Agreement” means this Declaration of Deed Restriction and Agreement Concerning the Sale, Occupancy, and Resale of the Units.
 2. “City” has the meaning provided in the preamble hereto.
 3. “Declarant” has the meaning provided in the preamble hereto.
 4. “Development” or “Property” means the Mountain Trace Planned Development.

5. “Fair Share Manual” means the Administrative Procedures Manual for City of Durango Fair Share Requirements originally adopted by the Durango City Council on December 2, 2009, as the same may be amended, superseded, or replaced from time to time.
6. “Fair Share Ordinance” means the Fair Share housing requirements under Article 17 of Chapter 27 of the City of Durango’s Code of Ordinances, which establishes policies requiring that certain types of new residential developments include a share of affordable and attainable housing or provide alternative means of compliance, as it may be amended, superseded, or replaced from time to time.
7. “First Deed of Trust” means a deed of trust or mortgage which is recorded senior to any other deed of trust or lien against the Unit to secure a loan used by a Qualified Buyer to purchase the Unit, or a deed of trust or lien against the Unit to refinance the initial loan and which is approved by the City or HomesFund.
8. “Guidelines” mean the Fair Share Manual and Fair Share Ordinance, collectively.
9. “HomesFund” has the meaning provided in the preamble hereto.
10. “Institutional Lender” means any bank, savings and loan association, or any other institutional lender which is licensed to engage in the business of providing purchase money mortgage financing for residential real estate.
11. “Maximum Resale Price” means the maximum price that a Unit may be sold for, as determined by HomesFund in accordance with the Guidelines.
12. “Non-Qualified Transferees” means an individual(s) or entity(ies) who are not Qualified Buyers.
13. “Notice of Election and Demand (NED)” means a notice of election and demand for sale related to a public trustee foreclosure in accordance with C.R.S., § 38-38-100.3, *et seq.*
14. “Owner” means the person(s), other than a Non-Qualified Transferee, who acquires an ownership interest in a Unit in compliance with the terms and provisions of this Agreement, it being understood that such person(s) shall be deemed an “Owner” hereunder during the period of his, her, or their ownership interest in the Unit and shall be obligated hereunder for the full and complete performance and observance of all covenants, conditions and restrictions contained herein during such period.
15. “Permitted Capital Improvements” means an improvement made by the Owner to the Unit, in the manner set forth in Section 3 and Exhibit C of this Agreement and as provided in the Guidelines, which shall qualify as an improvement that can be used to increase the Maximum Resale Price. Permitted Capital Improvements must comply with and be permissible under the CC&Rs per Section 2.7.
16. “Primary Residence” means a person’s principal place of abode that is the address at which the person will reside the majority of the calendar year, which shall not be less than nine (9) consecutive months of each calendar year.

17. "Purchaser" means the party electing to exercise the option set forth in subsection 9.6 below.
18. "Qualified Buyer" means natural persons meeting the income, residency, and all other qualifications contained in the Guidelines, as amended, who must represent and agree pursuant to this Agreement to occupy the Unit as their sole and Primary Residence, and not use, sell or otherwise transfer the Unit.
19. "Unit" means one of the Units described in Exhibit A, and includes all fixtures, equipment, and appurtenances thereto, that qualifies under the Guidelines as an affordable housing unit and as set forth in this Agreement.

NOW, THEREFORE, for value received, the receipt and sufficiency of which is hereby acknowledged, Declarant hereby declares, covenants, and agrees as follows:

SECTION 1

DECLARATION

1.1 For the purposes set forth herein, Declarant, for itself and its successors and assigns, hereby declares that the Units shall be owned, held, transferred, conveyed, sold, leased, rented, hypothecated, encumbered, used, occupied, improved, altered, and enjoyed subject to the covenants, conditions, restrictions, privileges, rights, and other provisions herein set forth, for the duration hereof, and all of which shall run with the Units and be binding upon all Owners, occupants, and other persons, including Non-Qualified Transferees, having or acquiring any right, title, or interest in or to the Units, and their respective heirs, personal representatives, successors, and assigns and shall be binding upon and inure to the benefit of HomesFund, the City, and its respective successors and assigns.

1.2 Declarant hereby restricts the acquisition or transfer of the Units to Qualified Buyers who fall within the qualifications established and published by HomesFund from time-to-time in the manner set forth in the Guidelines. In addition, Declarant agrees that this Agreement shall constitute a resale agreement setting forth the maximum resale price for which the Units may be sold ("Maximum Resale Price"), the amount of appreciation, and the terms and provisions controlling the resale of the Units. Declarant restricts the Units against use and occupancy inconsistent with the terms of this Agreement.

1.3 By the acceptance of any deed conveying any Unit subject hereto, the grantee of such deed shall accept all of the terms, conditions, limitations, restrictions, and uses contained in this Agreement. In addition, prior to the delivery of a deed conveying any Unit to a grantee, such grantee shall execute a Memorandum of Acceptance in the form attached hereto as Exhibit B, evidencing grantee's acknowledgment and agreement to the terms, conditions, limitations, restrictions, and uses contained in this Agreement.

1.4 Notwithstanding any provision of this Agreement to the contrary, it is expressly agreed and acknowledged that the terms, conditions, and restrictions of the Agreement with respect to the use and occupancy of any Unit thereof shall not apply to Declarant during the Declarant's ownership

thereof following the issuance of a Certificate of Occupancy for the Unit, provided, however, that the Declarant shall make no transfer of any Unit except to a Qualified Buyer or, where applicable, accompanied by payment of the difference between the market resale price and the maximum resale price less an allowance for a 3% sales commission as described in section 3.7.

1.5 The parties agree that they intend to enter this agreement to assure that the Units are maintained over the long terms as affordable housing under the provisions of the Guidelines. The parties further acknowledge that the Guidelines provide in certain circumstances that a Unit may be sold in a manner that it will no longer be subject to the restrictions contained in this Agreement and the parties desire to assure that the Units subject to this Agreement are sold as Price Capped Units under the provisions of section 14.2 of the Fair Share Manual and Section C(1) of Appendix D to the Fair Share Manual regardless of whether the subsidy for the Unit is more than or less than 20% of the appraised value. No sale of any Unit may be made by an Owner in a manner other than to a Qualified Buyer for the Maximum Resale Price.

1.6 The parties agree that HomesFund may record a Mortgage as part of any sale of a Unit to secure the performance of the terms of this Agreement, which obligations shall constitute a junior lien on the Unit, and to provide record notice of the obligations contained in this Agreement.

SECTION 2

USE AND OCCUPANCY OF UNIT; OWNER RESIDENCY REQUIRED

2.1 Except as otherwise provided herein, the use and occupancy of any Unit shall henceforth be limited exclusively to housing for natural persons who meet the definition of Qualified Buyer(s) and their families.

2.2 An Owner, in connection with the purchase and ownership of a Unit, must: (a) occupy the Unit as his, her, or their sole and Primary Residence during the time that such Unit is owned; (b) satisfy the residency and employment requirements of the Guidelines; and (c) sell, convey, or otherwise transfer such Unit only in accordance with this Agreement and the Guidelines.

2.3 In the event an Owner ceases to utilize a Unit as his/her/their sole and Primary Residence, the Unit shall be offered for sale pursuant to the provisions of subsection 3.1 of this Agreement.

2.4 From time to time, HomesFund will conduct an occupancy audit to ensure that the Unit is the primary residence of the Owner.

2.5 The Owner shall also be subject to and shall abide by the terms and conditions of that certain Declaration of Covenants, Conditions and Restrictions for Mountain Trace Townhomes recorded September 23, 2008 in the La Plata County office of the clerk and recorder at Reception No. 983925 (the "CC&Rs"), as subsequently supplemented and amended.

2.6 No Permitted Capital improvements shall be made to a Unit unless said improvements comply with the CC&Rs and have been approved by the Declarant and/or Board of Directors as provided in the CC&Rs.

SECTION 3

SALE OF UNIT; MAXIMUM RESALE PRICE

3.1 In the event that an Owner desires to sell his/her/their Unit, the Owner shall consult with HomesFund to review the requirements of this Agreement, including the Maximum Resale Price. Following approval of the Maximum Resale Price by HomesFund, the Owner shall list such Unit for sale at a sales price not exceeding the Maximum Resale Price, determined at the time the Unit is listed for sale, and in accordance with the procedures set forth in the Guidelines.. To offer the Unit for sale at the Maximum Resale Price, the Unit must be professionally cleaned, all fixtures must be in working condition, and any damage to the Unit beyond normal wear and tear must be repaired. If these conditions are not satisfied, HomesFund may require that the Owner agree to escrow at closing a reasonable amount to achieve compliance with these requirements or reduce the Maximum Resale price accordingly. The Owner shall grant HomesFund access to the Unit for purposes of performing inspections to ensure compliance with this subsection 3.1.

3.2 In no event shall a Unit be sold for an amount in excess of the Maximum Resale Price plus Permitted Capital Improvements.

NOTHING HEREIN SHALL BE CONSTRUED TO CONSTITUTE A REPRESENTATION OR GUARANTEE BY THE DECLARANT, HOMESFUND, OR THE CITY THAT UPON RESALE THE OWNER SHALL OBTAIN THE MAXIMUM RESALE PRICE.

3.3 The Owner may include Permitted Capital Improvements in the Maximum Resale Price, if approved by HomesFund, and such Permitted Capital Improvements are made in accordance with this Agreement, as provided in Exhibit C, attached hereto and by reference incorporated herein, and the Guidelines.

3.4 An Owner shall not permit any prospective buyer to assume any of the Owner's customary closing costs nor accept any other consideration which would cause an increase in the purchase price above the Maximum Resale Price so as to induce the Owner to sell to such prospective buyer.

3.5 Prior to Owner entering into a sales contract for the sale of his/her/their Unit to a prospective buyer, such prospective buyer shall be qualified by HomesFund pursuant to the requirements of the Guidelines then in effect. Documented proof of qualification shall be provided by the prospective buyer prior to purchase. An Owner shall neither enter into a sales contract for the sale of his/her/their Unit with any person other than a Qualified Buyer or HomesFund or the City. Nor shall an Owner enter into any contract which provides for a sales price greater than the Maximum Resale Price, determined at the time the Unit is listed for sale, established in accordance with this Section. The Owner must accept a Maximum Resale Price offer, and offers in excess of the Maximum Resale Price shall be countered at the Maximum Resale Price. Prior to execution by an Owner, all sales contracts for the sale of a Unit subject to this Agreement shall be submitted to HomesFund for its review and approval of the contract for consistency with this Agreement.

3.6 Owner shall comply with all applicable state and federal laws and regulations, including but not limited to, all Fair Housing rules and regulations, and the Guidelines.

3.7 For the initial sale of a Unit from the Developer, if a Unit does not sell within 90 days of issuance of a Certificate of Occupancy despite the Developer making a bona-fide effort to market and sell the Unit to an eligible Qualified Buyer, the Developer may sell the Unit at a market price. Market price is defined as the appraised value of the Unit that is determined by a market-rate third-party appraisal, the cost of which shall be paid by the Developer. When the Unit is sold at market price the Developer will deliver to HomesFund an amount based on the following formula: market price less a 3% sales commission less the Maximum Resale Price. If after the Unit has been marketed for 90 days at appraised value (market value), the sales price may be decreased by up to 10%. If after 60 additional days the Unit still does not sell, the price may be dropped an additional 5% every 30 days until the home is sold. If the Unit is sold by the Developer at market-rate under conditions allowed in this Agreement or in the Guidelines, it shall not subject to subsequent Fair Share requirements or restrictions.

3.8 For the second and all subsequent sales of a Unit, if a purchase offer from a Qualified Buyer to buy the Unit for ninety-five percent (95%) of the Maximum Resale Price or eighty-five (85%) of the appraised market value, whichever is less, is not received within 120 days of listing the Unit on the Multiple Listing Service (MLS), the Owner may request that HomesFund purchase the Unit. HomesFund shall have the right and option, but not the obligation, to purchase the Unit from the Owner. For HomesFund to agree to purchase the Unit, it must be in reasonably clean condition, and all necessary repairs must be paid-for by the Owner prior to sale. Additionally, HomesFund must have the funds available to purchase the Unit.3.9 In the event a sale of a Unit by an Owner to a Qualified Buyer at the Maximum Resale Price results in sale proceeds in excess of amounts required to pay the costs of closing and to pay all other encumbrances against the Unit or other amounts due to the HomesFund or other parties under the terms of this Agreement, then the Owner may share in those appreciation proceeds, not to exceed the amount determined by multiplying the Purchase Price when that Unit was purchased by the Owner by three percent (3%), further multiplied by the number of full years the Unit was owned by the Owner. Any appreciation proceeds over the share due to the Owner shall be paid to the HomesFund at closing for use in carrying out its purposes.

SECTION 4

NON-QUALIFIED TRANSFEREE

4.1 In the event that title to a Unit transfers or vests to a Non-Qualified Transferee(s), and such individuals are not approved by HomesFund as Qualified Buyers within thirty (30) days after obtaining title to the Unit, the Unit shall immediately be listed for sale or advertised for sale by the Non-Qualified Transferee(s) in the same manner as provided for Owners in subsection 3.1 above; provided such action does not otherwise conflict with applicable law. The highest offer by a Qualified Buyer, for ninety-five percent (95%) of the Maximum Resale Price or eighty-five (85%) of the appraised market value, whichever is less, that satisfies all obligations under any existing first lien deed of trust or mortgage, shall be accepted. If all such offers are below the lesser of ninety-five percent (95%) of the Maximum Resale Price or eighty-five percent (85%) of the appraised market value, the Unit shall continue to be listed for sale or advertised for sale by the Non-Qualified Transferee(s) until an offer in accordance with this subsection is made, which offer

must be accepted. The cost of any appraisal shall be paid by the Non-Qualified Transferee(s). In the event the Non-Qualified Transferee(s) elect to sell the Unit without the assistance of a real estate broker or agent, such Non-Qualified Transferee(s) shall advertise the subject Unit for sale in a manner approved by HomesFund and shall use due diligence and make all reasonable efforts to accomplish the sale of the Unit. In the event HomesFund finds and determines that such Non-Qualified Transferee(s) have failed to exercise such due diligence, HomesFund may require the Non-Qualified Transferee(s) to execute a standard listing contract on forms approved by the Colorado Real Estate Commission, or its successor, with a licensed real estate broker or agent.

- a. Non-Qualified Transferee(s) shall join in any sale, conveyance, or transfer of the Unit to Qualified Buyer(s) and shall execute any and all documents necessary to effect such conveyance.
- b. Unless written permission is granted by HomesFund, Non-Qualified Transferee(s) shall not: (1) occupy the Unit; (2) rent all or any part of the Unit, except in strict compliance with Section 5, below; (3) engage in any other business activity on or in the Unit; (4) sell, convey, or otherwise transfer the Unit except in accordance with this Agreement and the Guidelines; or (5) sell or otherwise transfer the Unit for use in a trade or business.
- c. Where the provisions of this subsection 4.1 apply, HomesFund may require the Non-Qualified Transferee(s) to rent the Unit in the same manner as provided for Owners in Section 5, below.
- d. Until sale to a Qualified Buyer is effected, Non-Qualified Transferee(s) shall comply with all obligations of Owners set forth in this Agreement.

SECTION 5

RENTAL OF UNIT

5.1 An Owner may not, except with prior written approval of HomesFund and subject to HomesFund's conditions of approval, rent the Unit. If HomesFund grants approval of a rental request, no lease shall have a rental term in excess of twelve (12) months. A signed copy of the lease must be provided to HomesFund prior to occupancy by any tenant.

5.2 NOTHING CONTAINED HEREIN SHALL BE CONSTRUED TO REQUIRE THE CITY OR HOMESFUND TO PROTECT OR INDEMNIFY THE OWNER AGAINST ANY LOSSES ATTRIBUTABLE TO THE RENTAL, INCLUDING (NOT BY WAY OF LIMITATION) NON-PAYMENT OF RENT OR DAMAGE TO THE PREMISES; NOR TO REQUIRE THE CITY OR HOMESFUND TO OBTAIN A QUALIFIED TENANT FOR THE OWNER IN THE EVENT THAT NONE IS FOUND BY THE OWNER.

5.3 Short-term or vacation rental of all or a portion of the Unit is strictly prohibited.

5.4 Lease-to-purchase, contracts for deed, or other similar agreements involving the right to acquire title in the future are strictly prohibited.

5.5. In connection with rental of the Unit, the Owner must comply with all rental and leasing restrictions, covenants, and conditions contained in the CC&Rs.

SECTION 6

BREACH OF AGREEMENT; OPPORTUNITY TO CURE

6.1 In the event that HomesFund has reasonable cause to believe the Owner is violating the provisions of this Agreement, HomesFund, by its authorized representative, may inspect a Unit after providing the Owner with no less than 24 hours written notice.

6.2 In the event a violation of this Agreement is discovered, HomesFund may send a notice of violation to the Owner detailing the nature of the violation and allowing the Owner fifteen (15) days to cure. If the violation is not cured within the fifteen (15) day period, the Owner shall be considered in violation of this Agreement, and HomesFund may exercise its remedies as provided in Section 8, below.

6.3 The failure of HomesFund to insist upon the strict and prompt performance of any of the terms, conditions, and restrictions of this Agreement shall not constitute or be construed as a waiver or relinquishment of HomesFund's right or rights thereafter to enforce any term, condition, or restriction and the same shall continue in full force and effect.

SECTION 7

DISPUTE RESOLUTION

7.1 In the event of a dispute by an Owner of any of the terms of this Agreement, the Owner shall submit a formal grievance to HomesFund at the address provided in the Notice section of this Agreement. The parties will attempt to resolve any dispute within thirty (30) days of the date the dispute is received by HomesFund. In the event the dispute cannot be resolved in this time period, the parties may pursue any remedies available to them as set forth in this Agreement or at law or equity.

SECTION 8

REMEDIES

8.1 This Agreement shall constitute covenants running with the Units, described hereinabove as a burden thereon, for the benefit of, and shall be specifically enforceable by the City, HomesFund, and their respective successors and assigns, as applicable, by any appropriate legal action against any non-complying Owners and/or occupants.

8.2 In the event the parties resort to litigation with respect to any or all provisions of this Agreement, the prevailing party shall be entitled to recover damages and costs, including reasonable attorneys' fees.

8.3 With the exception of a Public Trustee's or Sheriff's sale in a foreclosure proceeding for the benefit of a first lien mortgage holder; in the event of any sale, transfer, or conveyance of the Units thereof, each and every conveyance of a Unit, for all purposes, shall be deemed to include and

incorporate by this reference the covenants, conditions, limitations, and restrictions herein contained, even without reference therein to this Agreement.

8.4 In the event that the Owner fails to cure any breach, the City or HomesFund may resort to any and all available legal action, including, but not limited to requiring sale of the Unit by Owner on the terms and conditions specified in Section 3.

8.5 In the event of a breach of any of the terms or conditions contained herein by the Owner, his/her/their heirs, successors, or assigns, the Owner's sale price of the Unit as referred to in Section 3 of this Agreement shall, upon the date of such breach as determined by HomesFund, automatically cease to increase as set out in Section 3 of this Agreement, and shall remain fixed until the date of cure of said breach.

SECTION 9

REFINANCE; DEFAULT IN LOAN PAYMENTS; FORECLOSURE

9.1 The Owner may finance a portion of the initial purchase of the Unit with a loan from an Institutional Lender that is secured by a First Deed of Trust. The Owner may only refinance a loan secured by a First Deed of Trust with written permission of HomesFund, and the terms of the refinance must meet the requirements set forth in this Agreement and the Guidelines.

9.2 HomesFund is authorized to negotiate, execute, and record such consents or agreements as it may deem necessary which have the effect of subordinating this Agreement to the terms of a First Deed of Trust to facilitate favorable financing for the benefit of a Qualified Buyer of the Unit.

9.3 It shall be a breach of this Agreement for an Owner to default in payment or other obligations due or to be performed under a promissory note secured by any deed of trust or mortgage encumbering a Unit, including the First Deed of Trust, or to breach any of Owner's duties or obligations under said deed or deeds of trust. It shall also be a breach of this Agreement for the Owner to default in the payment of real property taxes or any assessments, dues, or other obligations to any applicable homeowners association, if applicable. The Owner must notify HomesFund, in writing, of any such default and provide a copy of any notification received from a lender, or its assigns or loan servicer, of past due payments or default in payment or other obligations due or to be performed under a promissory note secured by a deed of trust, as described herein, or of any breach of any of Owner's duties or obligations under said deed of trust, within five (5) calendar days of Owner's notification from lender, or its assigns or within five (5) calendar days of Owner's notification from any other creditor specified herein, of any default, past due payment, or breach. The Owner must also notify HomesFund of any notices received from any governmental entity or homeowners association claiming a violation or non-payment, within five (5) calendar days of receiving such notice.

9.4 Upon notification of a default as provided in subsection 9.3, above, HomesFund is entitled to require the Owner to sell the Unit in order to avoid the commencement of or the completion of foreclosure proceedings. If HomesFund requires sale of the Unit, Owner shall, immediately upon request, execute a standard Listing Contract on forms approved by the Colorado Real Estate Commission providing for a ninety (90) day listing period. In the event of a listing of the Unit

pursuant to this subsection, HomesFund is entitled to require the Owner to accept a qualified offer for the Maximum Resale Price, determined at the time the Unit is listed for sale, or, if none are received, to accept a qualified offer for an amount less than the Maximum Resale Price which is sufficient to satisfy the Owner's financial obligations pursuant to the promissory note or notes secured by the First Deed of Trust and any junior deeds of trust. The Listing contract shall obligate the Owner to pay the standard listing fee and normal closing costs and expenses that would be the obligation of the Owner in the event of a sale pursuant to Section 3 of this Agreement.

9.5 Upon receipt of notice as provided in subsection 9.3, above, HomesFund shall have the right, but not the obligation, to cure the default or any portion thereof. In such event, the Owner shall be personally liable to HomesFund for any payments made by HomesFund on the Owner's behalf together with interest thereon at the rates specified in the obligation then in default, plus 1%, together with all actual expenses of HomesFund incurred in curing the default, including reasonable attorneys' fees. The Owner shall be required by HomesFund to execute a promissory note to be secured by a junior deed of trust encumbering the Unit in favor of HomesFund for the amounts expended by HomesFund as specified herein, including future advances made for such purposes. HomesFund shall not be limited by the provisions in subsection 9.1. The Owner may pay the promissory note at any time prior to the sale of the Unit. Otherwise, Owner's indebtedness to HomesFund shall be satisfied from the Owner's proceeds at the closing upon sale of the Unit.

9.6 The City and HomesFund shall be a "person who appears to have an interest in the property" as described in C.R.S. § 38-38-103(1)(a)(II)(E) and, thus, shall be entitled to receive the combined notice required by and described in C.R.S. § 38-38-103(1)(a). In addition, HomesFund shall be a "contract vendee" pursuant to C.R.S. § 38-38-104(1)(d), and shall be entitled to cure any default which is the basis for a foreclosure action in accordance with C.R.S. § 38-38-104, *et seq.* Upon filing with the Public Trustee of La Plata County of a Notice of Election and Demand pursuant to C.R.S. § 38-38-101(4) by the holder of the First Deed of Trust, HomesFund shall have the right and option, but not the obligation, to purchase the Unit from the Owner for 95% of the Maximum Resale Price established as of the date of the NED, less the amount of any debt secured by the Unit (including interest, late fees, penalties, costs, and other fees and reimbursement due to lender) to be assumed by HomesFund. HomesFund may assign the foregoing option to the City. The party electing to exercise the option shall be referred to herein as the "Purchaser." The Purchaser shall give written notice thereof to the Owner within thirty (30) days following the filing of the NED. In the event that the option is exercised, the closing on the purchase of the Unit shall occur no less than seventy-five (75) days nor more than ninety (90) days after the date of the NED. At closing, Owner shall execute and deliver a Special Warranty Deed conveying the Unit free and clear of all monetary liens and encumbrances, except those to be assumed by the Purchaser, and shall execute normal and customary closing documents. The proceeds of the sale shall be applied first to cure the default by paying off the indebtedness secured by the Unit which is the subject of the pending foreclosure action, then to the Owner's closing costs, and the balance, if any, shall be disbursed to the Owner. If the Owner cures the default prior to closing resulting in withdrawal of the NED and cancellation of the foreclosure sale, the option of HomesFund shall terminate. Such termination shall not, however, operate to extinguish the option of HomesFund to purchase the Unit in the event that any subsequent NED is filed.

9.7 The provisions of this Agreement may be subordinate only to the lien of a First Deed of Trust to secure a loan to purchase the Unit made by an Institutional Lender. This Agreement shall not impair the rights of such Institutional Lender, or such lender's assignee or successor in interest, to exercise its remedies under the First Deed of Trust in the event of default by Owner; these remedies include the right to foreclose or exercise a power of sale or to accept a deed or assignment in lieu of foreclosure. In the event of foreclosure by a holder of a First Deed of Trust, and upon the issuance of a Public Trustee's or Sheriff's Deed, these Covenants shall automatically terminate.

9.5 With the exception of the First Deed of Trust provided by an Institutional Lender, this Agreement shall be senior to any lien or encumbrance recorded in the Office of the Clerk of Recorded of La Plata County, Colorado, after the date on which this Agreement is recorded in said Office. Any purchaser acquiring any rights in a Unit by virtue of foreclosure of a lien other than a First Deed of Trust, as defined herein, shall be deemed a Non-Qualified Transferee subject to the provisions of subsection 4.1 of this Agreement. In the event of a foreclosure of a lien other than a First Deed of Trust, as defined herein, nothing herein shall be construed to create a release or waiver of the covenants, conditions, limitations, and restrictions contained in this Agreement.

SECTION 10

GENERAL PROVISIONS

10.1 Notices. Any notice, consent, or approval which is required to be given hereunder shall be given by mailing the same, certified mail, return receipt requested, properly addressed and with postage fully prepaid, to any address provided herein or to any subsequent mailing address of the party as long as prior written notice of the change of address has been given to the other parties to this Agreement. Said notices, consents, and approvals shall be sent to the parties hereto at the following addresses unless otherwise notified in writing:

To Declarant:

Mountain Trace Holding, LLC
162 Stewart Street, Unit B
Durango, CO 81301

To HomesFund:

HomesFund
PO Box 2179
Durango, CO 81302

To City:

City of Durango
949 East Second Avenue
Durango, CO 81301

To Owner:

10.2 Severability. Whenever possible, each provision of this Agreement and any other related document shall be interpreted in such a manner as to be valid under applicable law, but if any provisions of any of the foregoing shall be invalid or prohibited under said applicable law, such provisions shall be ineffective to the extent of such invalidity or prohibition without invalidating the remaining provisions of this Agreement or other related document.

10.3 Choice of Law. This Agreement and each and every related document are to be governed and construed in accordance with the laws of the State of Colorado.

10.4 Successors. Except as otherwise provided herein, the provisions and covenants contained herein shall inure to and be binding upon the heirs, successors, and assigns of each of the parties.

10.5 Section Headings. Paragraph or section headings within this Agreement are inserted solely for convenience of reference, and are not intended to, and shall not govern, limit, or aid in the construction of any terms or provisions contained herein.

10.6 Perpetuities Savings Clause. If any of the terms, covenants, conditions, restrictions, uses, limitations, obligations, or options set forth in this Agreement shall be unlawful or void for violation of: (a) the rule against perpetuities or some analogous statutory provision; (b) the rule restricting restraints on alienation; or (c) any other statutory or common law rules imposing like or similar time limits, then such provision shall continue only for the period of the lives of the current duly elected and seated governing board of the City, their now living descendants, if any, and the survivor of them, plus twenty-one (21) years.

10.7 Waiver. No claim of waiver, consent, or acquiescence with respect to any provision of this Agreement shall be valid against any party hereto except on the basis of a written instrument executed by the parties to this Agreement. However, the party for whose benefit a condition is inserted herein shall have the unilateral right to waive such condition.

10.8 Gender and Number. Whenever the context so requires herein, the neuter gender shall include any or all genders and vice versa and the use of the singular shall include the plural and vice versa.

10.9 Personal Liability. Each Owner agrees that he or she shall be personally liable for any of the transactions contemplated herein.

10.10 Further Action. The parties to this Agreement, including any Owner, agree to execute such further documents and take such further actions as may be reasonably required to carry out the provisions and intent of this Agreement or any agreement or document relating hereto or entered into in connection herewith.

10.11 Modifications. The parties to this Agreement agree that any modifications of this Agreement shall be effective only when made by writings signed by the parties, approved by HomesFund and the City, and recorded with the Clerk and Recorder of La Plata County, Colorado. Notwithstanding the foregoing, the City or HomesFund reserves the right to amend this Agreement unilaterally when deemed necessary to effectuate the purpose and intent of this Agreement, when such unilateral action does not materially impair an Owner or lender's rights under this Agreement, and when such amendment has been approved by the City. Further, the City or HomesFund may

unilaterally amend, supersede, or replace the Guidelines from time-to-time, and that the then current version shall be applicable to this Agreement.

10.12 Delegation. The City and HomesFund, with written consent of all parties, may delegate their authority hereunder to another organization qualified to manage and enforce the rights and obligations of either the City or HomesFund pursuant to this Agreement.

[Signatures on following pages.]

EXHIBIT A
Legal Description

EXHIBIT B

**MEMORANDUM OF ACCEPTANCE OF DECLARATION OF DEED RESTRICTION
AND AGREEMENT CONCERNING THE SALE, OCCUPANCY AND RESALE OF
CERTAIN UNITS WITHIN MOUNTAIN TRACE PLANNED DEVELOPMENT**

RECITALS:

WHEREAS, _____, the Buyer, is purchasing from Mountain Trace Holding, LLC, the Seller, at the price of \$_____, a unit described as _____, County of La Plata, State of Colorado (hereinafter, the “Unit”).

WHEREAS, the Seller of that unit is requiring, as a prerequisite to the sale transaction, that the Buyer acknowledges and agrees to the terms, conditions, limitations, restrictions, and uses found in that certain instrument entitled Declaration of Deed Restriction and Agreement Concerning the Sale, Occupancy and Resale of Certain Units within Mountain Trace Planned Development. Said Deed Restriction and Agreement is recorded under reception number _____ in the records of the Clerk and Recorder for La Plata County, Colorado.

NOW, THEREFORE, as required by the Deed Restriction and Agreement and in consideration of the covenants and agreements contained therein and contained herein, the Buyer agrees and acknowledges the following:

1. Buyer has carefully reviewed the Administrative Procedures Manual for City of Durango Fair Share Requirements (“Administrative Procedures Manual”), and has read the entire Appendix D attached to the Administrative Procedures Manual, and has had the opportunity to consult with legal and financial counsel of his/her/their own choosing concerning said Administrative Procedures Manual. Buyer fully understands the Administrative Procedures Manual and agrees to comply with all covenants, restrictions, and requirements thereof.
2. Buyer has carefully read the entire Deed Restriction and Agreement and has had the opportunity to consult with legal and financial counsel of his/her/their own choosing concerning said Deed Restriction and Agreement. Buyer fully understands the Deed Restriction and Agreement and agrees to comply with all covenants, restrictions, and requirements thereof.
3. Buyer hereby acknowledges and accepts the Deed Restriction and Agreement, in its entirety, including all exhibits, as the same is defined herein, with the following changes and/or additions:
 - a. That the closing of Buyer’s acquisition of the Unit occurred on _____.
 - b. The purchase price that Buyer is paying for the Unit is \$297,500.
 - c. The Unit contains 2 bedrooms and is in Tier 4.
 - d. The Unit contains 1,473 square feet of heated living space.

e. The Fair Share price for the home when it was sold from the developer to the first homebuyer in 2018-2019 (year of first sale of the home) was \$297,500. This price was based on the home's tier and number of bedrooms in the home and was published in the FAIR SHARE PROGRAM: 2018 INCOME LIMITS, PRICE LIMITS AND IN-LIEU AMOUNTS created and published by HomesFund. Attached to this document is the FAIR SHARE PROGRAM: 2018 INCOME LIMITS, PRICE LIMITS AND IN-LIEU AMOUNTS for the year that the home was sold from the developer/builder to the first Fair Share homeowner.

The tier and number of bedrooms for the home will remain the same as long as the home is part of the Fair Share Program. The sale price for the home will be determined by referencing the FAIR SHARE PROGRAM: 20xx INCOME LIMITS, PRICE LIMITS AND IN-LIEU AMOUNTS for the year that the sale takes place.

It is understood that the Unit is part of the Fair Share Program, and that the future sales price of the home will be limited to the maximum Fair Share price for homes in tier 4 with 2 bedrooms, not to exceed the amount determined by multiplying the Purchase Price when that Unit was purchased by the Owner by three percent (3%), further multiplied by the number of full years the Unit was owned by the Owner. Any appreciation proceeds over the share due to the Owner shall be paid to the HomesFund at closing for use in carrying out its purposes.

4. Buyer hereby specifically acknowledges and agrees to the following provisions as set forth in the Deed Restriction and Agreement:

a. That the Unit can only be sold to a Qualified Buyer in accordance with the terms of the Deed Restriction and Agreement and any other Fair Share Program document.

b. That nothing contained in this Memorandum, the Deed Restriction and Agreement, or any other Fair Share Program document shall be construed to constitute a representation or guarantee by the Declarant, as the same is defined in the Deed Restriction and Agreement, HomesFund, or the City of Durango that upon resale the Buyer shall obtain the Maximum Resale Price, as the same is defined in the Deed Restriction and Agreement.

c. That nothing contained in this Memorandum, the Deed Restriction and Agreement, or any other Fair Share Program document shall be construed to require the City or HomesFund to protect or indemnify the Buyer against any losses attributable to the rental, including (not by way of limitation) non-payment of rent or damage to the premises, if the Unit is rented in accordance with the terms of the Deed Restriction and Agreement; nor to require the City or HomesFund to obtain a qualified tenant for the Buyer in the event that none is found by the Buyer.

d. That it shall be a breach of the Deed Restriction and Agreement for Buyer to default in payment or other obligations due or to be performed under a promissory note secured by any deed of trust or mortgage encumbering the Unit, including the First Deed of Trust,

or to fail to pay any real property taxes or homeowners assessments as the same become due.

e. That the Owner of the Unit may only refinance a loan secured by a First Deed of Trust on the Unit with written permission of HomesFund, and that the terms of the refinance must meet the requirements set forth in the Deed Restriction and Agreement.

5. The address of Owner is as follows:

6. This Memorandum shall be recorded in the Office of the Clerk and Recorder of La Plata County, Colorado.

IN WITNESS WHEREOF, the undersigned Owner(s) has/have executed this Memorandum of Acceptance on the date set forth opposite his/her signature.

Owner Date

Owner Date

STATE OF COLORADO)
) ss.

COUNTY OF LA PLATA)

The above and foregoing document was acknowledged before me this ____day of _____, 20__ by _____ and _____.

Witness my hand and official seal.

Notary Public

My commission expires: _____.

EXHIBIT C

PERMITTED CAPITAL IMPROVEMENTS

1. The “Permitted Capital Improvements” as used in the Agreement shall only include the following:

a. Increased heated living space added to the Unit.

i. Receipts for Permitted Capital Improvements shall be reported to HomesFund no later than 180 calendar days after the improvement is made. Failure to provide such evidence within the timeframe stated above shall disqualify any such improvements from being considered a Permitted Capital Improvement.

b. Other capital improvements that materially benefit the Unit and are approved, in writing, by HomesFund prior to their installation in accordance with the Guidelines.

2. Permitted Capital Improvements as used in this Agreement shall NOT include any items that are not approved in accordance with paragraph 1 above, examples of such items, include but are not limited to the following:

a. Upgrades/replacements of appliances, plumbing and mechanical fixtures, carpets, and other similar items included as part of the original construction of the unit;

b. Improvements required to repair, replace and maintain existing fixtures, appliances, plumbing, and mechanical fixtures, painting, carpeting, and other similar items;

c. Upgrades or addition of decorative items, including lights, window coverings, floor coverings, and other similar items; or

d. Jacuzzis, spas, saunas, steam showers, and other similar items.

3. In order to qualify as Permitted Capital Improvements, the Owner must furnish to HomesFund, in a form acceptable to HomesFund in its or their sole and absolute discretion, the following information with respect to the improvements which the Owner seeks to include in the calculation of Maximum Resale Price:

a. Original or duplicate receipts to verify the actual costs expended by the Owner for the Permitted Capital Improvements;

b. Owner’s affidavit verifying that the receipts tendered are valid and correct; and

c. True and correct copies of any building permit or certificate of occupancy required to be issued by the City of Durango, or such other City as jurisdiction requires, with respect to the Permitted Capital Improvements.

4. In calculating the costs under paragraph 3 above only the Owner’s actual out-of-pocket costs and expenses shall be eligible for inclusion. Such amount shall not include any amounts attributable to Owner’s “sweat equity” or to any appreciation in the value of the improvements.

5. All Permitted Capital Improvement items and costs must be approved by HomesFund prior to being added to the Maximum Resale Price as defined herein.

6. No Permitted Capital Improvements shall be made to a Unit unless said improvements comply with the CC&Rs and have been approved by the Declarant and/or Board of Directors as provided in the CC&Rs.

EXHIBIT D

Fair Share Mortgage

_____ (“Mortgagor”), whose address is _____, Durango, CO 81301 hereby mortgage(s) to HomesFund, a Colorado nonprofit corporation (“Mortgagee”), whose address is PO Box 2179 in Durango, State of Colorado executes this Fair Share Mortgage to secure the payment of all sums and amounts due and performance of all obligations owed under that certain Deed Restriction Agreement dated _____ and recorded at reception number _____ in the records of La Plata County, by and between Mountain Trace Holding, LLC, HomesFund, and the City of Durango, as well as the Memorandum of Acceptance of Deed Restriction. This mortgage hereby encumbers the following real property:

_____, County of La Plata, State of Colorado.

also known by street and number as: _____

with all its appurtenances, and warrant(s) the title to the same.

Signed this _____ day of _____, 20_____.

IN WITNESS WHEREOF, the Mortgagor has executed this deed on the date set forth above.

By: _____

Print Name: _____

STATE OF COLORADO)

) ss.

County of)

The foregoing instrument was acknowledged before me this day of _____, 20____
by _____.

Witness my hand and official seal.

My commission expires:

Notary Public