

Recording Requested By and
When Recorded Return To:

Planning Administrator
Victor City Planning Department
10 S Main St Unit #101
Victor, Idaho 83455

For Recording Purposes Do Not Write Above This Line

**DEVELOPMENT AGREEMENT
FOR PHASE 3B SUBDIVISION
Mountainside Village**

THIS DEVELOPMENT AGREEMENT FOR PHASE 3B SUBDIVISION MOUNTAINSIDE VILLAGE (“Agreement”) is made and entered into as of the _____ day of _____, 2021, by and between Mountainside Inc., an Idaho corporation, and/or its assigns (hereafter “Developer”) and The City of Victor, an Idaho Municipal Corporation (hereafter the “City”).

RECITALS

WHEREAS, the Developer is the sole owner, in law or equity, of that certain approximately 6.37 acres of real property located in the City of Victor, which property is legally described on Exhibit A, attached hereto and incorporated herein (the “Property”).

WHEREAS, the Property is a portion of Developer’s 121.76 acres of land that was annexed into the City of Victor in 2004 pursuant to that certain Annexation Agreement dated December 9, 2004 and recorded against the Property with the Teton County Recorder on December 21, 2004 as Instrument No. 165316 (the “Annexation Agreement”).

WHEREAS, that certain Master Development Agreement for Mountainside Village by and between City and Developer dated June 16, 2005 was recorded against the Property with the Teton County Recorder on October 7, 2005 as Instrument No. 171687 (the “Master Development Agreement”).

WHEREAS, on September 25, 2019, the City approved a preliminary plat application for Phase 3B of the Mountainside Village development project, preliminarily authorizing the subdivision of the Property into 16 buildable residential lots (the “Preliminary Plat”).

WHEREAS, it is the intent and purpose of this Agreement to ensure Developer complies with the conditions of approval for the Preliminary Plat as approved by the City Council, which conditions of approval are attached hereto and incorporated herein as Exhibit B.

WHEREAS, it is the intent and purpose of the Developer and the City to enter into this Agreement to guarantee the full and satisfactory completion of the Improvements on the Property as described in this Agreement.

WHEREAS, the City has the authority to enter into this Agreement for the construction of Improvements associated with the Development.

AGREEMENT

NOW THEREFORE, in consideration of the mutual covenants and conditions contained herein, the parties agree as follows:

Section 1. Definitions

- 1.1 **DEVELOPMENT:** The residential development project that is the subject of this Agreement, which is designated and identified as Mountainside Village Phase 3B, in the City of Victor, Idaho. This definition shall include any and all future names or titles for the Development located on the Property.
- 1.2 **IMPROVEMENT:** Any alteration to the land or other physical construction located on or off the Property, including Public Improvements, Private Improvements, and Off Site Improvements as defined below, that are associated with the Development.
- 1.3 **DEVELOPER:** means and refers to Mountainside Inc., the party that owns and is developing said Property and shall include any subsequent owner(s) or developer(s) of the Property.
- 1.4 **PROPERTY:** means and refers to the certain real property located in the City of Victor, legally described on Exhibit A.
- 1.5 **UNAVOIDABLE DELAY:** When construction is impeded as a result of strikes, lockouts, acts of God or other factors beyond the control, and ability to remedy, of the Developer.
- 1.6 **PRIVATE IMPROVEMENTS:** Private improvement means the construction, enlargement, extension or other construction of a facility or land area intended for use by the residents of the Development and intended for ownership by an owner's association and/or Developer, including but not limited to alleys, shared driveways, private streets, pathways, landscaping, common areas, parks and open space.
- 1.7 **PUBLIC IMPROVEMENTS:** Public improvement means the construction, enlargement, extension or other construction of a facility intended for dedication to the City, including but not limited to a street, curb and gutter, sidewalk, cross drain, catch basin, traffic control and street name sign, pathway, or other roadway appurtenance other than driveway apron connection; domestic water supply system main, fire hydrant, valve or other appurtenance other than a supply line to a building; or sanitary sewerage main or outfall, lift station, force main, manhole or other appurtenance other than a drain line from a building.

1.8 **OFF SITE IMPROVEMENTS:** Offsite improvements means any construction or reconstruction within a public right-of-way or easement not located on the Property. Offsite improvements include:

- A. The construction of a street section, including grading, base course, pavement, curb and gutter, sidewalk and drainage facilities to City standards.
- B. Storm drainage or flood control facilities.
- C. Water and sanitary sewer facilities.

Section 2. Planned Improvements. Except as otherwise set forth in this Agreement, prior to recording the final plat for the Development, the Developer shall, and at its sole cost and expense, complete construction of all Public Improvements, Private Improvements, and Offsite Improvements as detailed in the plans which the Developer will file with and obtain approval from the City (collectively, the "Improvement Plans"), which plans are identified and summarized on Exhibit C, attached hereto and incorporated herein. The Improvement Plans show all streets, sewer lines, water lines, storm water systems, utilities (telephone and electricity), street signs, lighting, traffic control devices, open space or park improvements and other improvements proposed by the Developer or required by the City in accordance with adopted standards or as a condition of Preliminary Plat approval. Developer agrees that such Improvements shall be installed in compliance with the City's design, performance, and engineering standards separately adopted by the City or other agencies responsible for providing services to the Development.

Section 3. Public Improvements. The Developer shall dedicate on the final plat all roads to the City for public use, however, only those roads actually accepted by the City will be maintained and owned by the City. The Developer shall construct all Public Improvements according to City standards and any standards separately adopted by the agencies responsible for providing services to the Development. See Exhibit C for delineation of Public Improvements.

Section 4. Off Site Improvements. The Developer shall construct all Off Site Improvements shown on the Improvement Plans following the design, engineering, and standards of the agency responsible for the Improvement(s). See Exhibit C for delineation of Off Site Improvements.

Section 5. Roads. The Developer shall install roads and other improvements in the public right-of-way and private road easements as per the Improvement Plans and approved by the City. Only those road improvements within the Development which are dedicated to and accepted by the City will be publicly owned and maintained upon acceptance by the City.

5.1 Victor Cemetery Road: Per the Improvements Plans, the Developer shall construct Victory Cemetery Road to the Sensitive Collector specifications set forth in the Land Development Code for the City of Victor ("LDC"), Section 12.4.14.A. The Developer shall only be responsible for road improvements that abut Phase 3B of the Mountainside Village subdivision.

Section 6. Water Service. The Developer will install central water lines and appurtenances as per the Improvement Plans and approved by the City. Water improvements will be dedicated to and accepted by the City, subject to the terms of this Agreement.

Section 7. Private Improvements. The Developer shall designate on the final plat any alleys, shared driveways, private streets and common areas or parks as privately owned and maintained but dedicated to the public for public use. The Developer shall construct all Private Improvements according to City standards and any standards separately adopted by the agencies responsible for providing services to the Development. See Exhibit C for delineation of Private Improvements.

Section 8.

8.1 Park Space: The Development requires 5% of the land area to be improved as park space, therefore a total of .32 acres. This amount has been accounted for in the Boulevard. This area will be improved with a pathway and landscaping as indicated on the Improvement Plans.

8.2 Maintenance: All Private Improvements, including private streets, alleys, shared driveways, landscaping, common areas, and park space shall be the responsibility of and maintained by the Developer and/or the Owner's Association in perpetuity.

Section 9. Building Permit. No building permits shall be issued prior to the final plat for the Development being recorded in addition to compliance with all other terms and conditions contained herein. The Development's fire protection system shall be completed per the Improvements Plans and operational per the City and Fire District's inspection and written approval before any Building Permit may be issued by the City.

Section 10. Lot Sales. No sales of individually platted lots that transfer ownership or title to lots described in the Preliminary Plat shall occur until the final plat for the Development has been recorded.

Section 11. Financial Security Guarantee. As security to the City for the performance by the Developer of the Developer's obligations to complete the infrastructure improvements pursuant to and in accordance with this Agreement, the Developer shall, prior to installing the Improvements for the Development, issue the City an irrevocable letter of credit or cash bond or other adequate security in form and content satisfactory to the City for the amount of 125% of the projected development costs as determined by the Developer's engineer and as approved by the City for all improvements shown in the Improvement Plans. The amount of the bond required for the Development is set forth in Exhibit D. The guarantee must be in force for a period of 24 months with automatic renewals until such time as the public improvements are completed and accepted by the City. The City may require the Guarantee to give the City the option of using the proceeds of such Guarantee to complete the improvements or restore the land back to its original condition in the event of a breach of this Agreement which causes the Developer to lose the development rights associated with the development. Upon a sale of the Property, or a portion thereof, the City shall release Developer's financial security upon the purchaser's posting of a replacement financial security in compliance with this Agreement.

Section 12. Control of trash, weeds, dust, erosion, and sedimentation. The Developer shall be fully responsible for all dust abatement, erosion, sedimentation, weed, and trash control on the Property. Developer shall use best management practices and industry standards for control as defined by City standards. Trash shall be contained at all times. Dumpsters and sanitary facilities are required on site during every phase of construction. The responsibilities in this Section shall run with the land and they shall therefore apply before, during, and until completion of Improvements.

Section 13. Safety and Appearance. The Developer shall at all times maintain the Property and the Development in a safe and attractive manner. The determination as to the condition of safety and attractiveness of the Property and the Development shall be in the sole discretion of the City. If at any time the Property or the Development is determined to be unsafe or unattractive by the City, the Developer shall take all reasonable measures, as directed by the City, to remedy such a situation.

Section 14. Revegetation. The Developer shall stabilize and re-seed areas of the Property disturbed by installation of Improvements to the pre-development state in accordance with the existing conditions identified in the Grading Plan submitted for the Development taking into consideration additional grading and site disturbance that will result from the development of Developer's adjacent real property. All land disturbed by earth moving must be revegetated using native species already growing on or near the site. Fill piles shall be removed from the Property within 24 months from the filing of the final plat for the Development.

Section 15. Permits. The Developer is responsible for obtaining all right-of-way, access, excavation, and other permits and approvals required by local, State, and Federal regulations.

Section 16. Construction Permit. Prior to construction of the Improvements, Developer shall have a pre-construction meeting with the City Engineer, appropriate City staff, and the Developer's engineer and contractor. Upon completion of the pre-construction meeting the Developer shall receive a construction permit from the City. The Developer will be provided with a copy of the Improvement Plans stamped 'Approved', which shall be available on site at all times that Improvements are being constructed. The Developer's engineer shall make regular inspections and maintain control of the Development while it is under construction. Representatives of the City shall have the right to enter upon the Property at any reasonable time to inspect and to determine whether the Developer is in compliance with this Agreement. The Developer shall permit the City and its representatives to enter upon and inspect the Property at reasonable times. The Developer will not materially deviate from the Improvement Plans without the prior written approval of the City Engineer, which approval will not be unreasonably withheld.

Section 17. As Constructed Plans. Prior to acceptance of any public improvements located within the Development and the City initiating the warranty period of two years as defined below, the Developer will file with the City signed and sealed "As Constructed" Improvement Plans, along with a letter of certification from a licensed engineer as to the accuracy of the corrected plans. Such "As Constructed" Improvement Plans shall show the actual constructed location of all Improvements.

Section 18. Final Inspection and Approval of Improvements. The Developer shall notify the City when it believes that the Improvements have been fully and properly completed and shall request final inspection and approval and acceptance of the Improvements by the City. The City Engineer will provide prompt interim and final inspection of the Improvements when notified by the Developer of completion. Developer must provide a signed and sealed letter from an engineer certifying that all Improvements are 100% completed according to the Improvement Plans. Upon inspection, the City Engineer shall give timely written support for the acceptance of the Improvements or a written checklist of material deficiencies. Such noted deficiencies shall be specific as to location and shall specify, in detail, the necessary corrective action to be taken by the Developer. The City will accept any dedication of land or public improvement as part of approving the Final Plat. Warranty period to begin upon City's approval of the Final Plat or acceptance of the respective Improvement, whichever is later.

Section 19. Filing of Final Plat. Subject to this Section 19 and LDC Section 12.1.3, all Improvements must be completed and accepted by the City prior to the filing of the final plat for the Development. In lieu of completion of the specific Improvements set forth below, prior to final plat, the Developer may submit a cash deposit for ONE HUNDRED FIFTY PERCENT (150%) of the estimated costs as estimated by the registered engineer and approved by the City for the irrigation, domestic water, sewer, landscaping, and roadway (curb, gutter, sidewalk) improvements shown on the Improvement Plans prior to the filing of the plat. The terms of the cash deposit will require the completion of these specific improvements within 24 months from the filing of the final plat for the Development. If Developer elects to submit a cash deposit pursuant to this Section 19, the financial security guaranty set forth in Section 11 of this Agreement shall not be required for the Improvements that are covered by the cash deposit. Developer shall have the right to decrease the amount pledged for the guarantee to 150% of the remaining cost for improvements upon the City's approval after the City review of submitted cost estimates and proofs of completion.

Section 20. Construction Completion Dates. The Improvements shall be substantially completed on or before September 25, 2022. Unavoidable Delay, shall be *per se* just cause. The Developer will be solely and fully responsible for the supervision of subcontractors and timely completion of installation of the Improvements. No occupancy permit for any portion of the Development may be granted until all Improvements are completed.

Section 21. Financial Guarantee Returned. Financial assurances will be returned and/or decreased upon satisfactory completion of work determined by the City.

Section 22. Warranty of the Improvements. The Developer warrants the prompt and satisfactory correction of all defects and deficiencies, for both materials and workmanship, in the Improvements that occur or become evident within two years after final acceptance. If such defect or deficiency occurs or becomes evident during such period, then the Developer shall, within thirty (30) days (as weather and site conditions allow), after written demand by the City to do so, correct it or cause it to be corrected. If the defect or deficiency cannot be reasonably corrected within thirty (30) days after written demand from the City, the Developer shall commence the correction of the deficiency within the thirty (30) day period and proceed with

reasonable diligence to correct the same or cause it to be corrected. The warranty provided by this Section shall be extended for a full year from the date of repair or replacement of any Improvements repaired or replaced pursuant to such demand.

Section 23. Default and Lien. If the Developer defaults or fails to fully perform any of its obligations in accordance with this Agreement or fails or refuses to correct any defect or deficiency in the Improvements required by this Agreement, the City shall inform the Developer in writing of the specific default or failing. If the default or failing continues for thirty (30) days after such written notice and the Developer makes no attempt to remedy the default, the City shall have, in addition to all of its other rights under the law, the right to complete the construction of the Improvement(s) or to correct the defect or deficiency, using either its own forces or contractors hired for that purpose. The City shall have the right to place a lien on the property for an amount equal to all costs incurred by the City in enforcing this Agreement and completing the construction of the Improvements. This lien shall be a continuing lien, the priority of which shall be from the date of this Agreement. Included in the costs of the work, the City is entitled reasonable legal fees and reasonable administrative expenses.

Section 24. Remedies. In the event of a default, the City, following notice and an opportunity to cure by Developer, at its option, may exercise any rights and remedies it may have under law. Furthermore, the City reserves the right, in its absolute discretion, to revoke the Preliminary Plat approval and after such revocation, if Developer chooses to move forward, Developer will have to reapply for approval under the then current City ordinances. The City may impose penalties on the Developer in the form of monetary fines, not to exceed the outstanding balance of work not performed or carried out or not to exceed the work to correct the defect or deficiency. The City may withhold the issuance of any building permit or certificate of occupancy for any structure located in the Development, refuse to accept ownership and maintenance of the Improvements and record a notice of such action in the Teton County Recorder's Office, or issue a "stop work" or "cease and desist" order for any building or Improvement under construction in the Development. All of the above remedies are cumulative and to the extent not wholly inconsistent with each other, may be enforced simultaneously or separately, at the sole discretion of the City.

Section 25. Time of the Essence. Time is of the essence in the performance of all terms and provisions of this Agreement.

Section 26. Binding Upon Successors. This Agreement shall be binding upon and inure to the benefit of the parties' respective heirs, successors, assigns and personal representatives, including City's corporate authorities and their successors in office.

Section 27. Notices. All notices in connection with this Agreement shall be in writing and shall be deemed delivered to the addressee when delivered in person on a business day at the address set forth below or on the third day after being deposited in the United States mail, for delivery by properly addressed, postage prepaid, certified or registered mail, return receipt requested, to the address set forth below.

Notices to the City shall be addressed to, or delivered at, the following address:

City of Victor
ATTN: Planning Administrator
10 S Main St Unit 101
Victor, Idaho 83455

Notices to the Developer shall be addressed to, or delivered at, the following address:

Mountainside Inc.
ATTN: Lawrence Thal
2160 Coyote Loop
Wilson Wy. 83014

By notice complying with the requirements of this Section, each party shall have the right to change the address for all future notices, but no notice of a change of address shall be effective until received as provided above.

Section 28. Enforcement. The parties may, in law or in equity, by suit, action, mandamus, or any other proceeding, without limitation enforce or compel the performance of this Agreement.

Section 29. Indemnification.

- A. No Liability for City Approval. The Developer acknowledges and agrees (1) that the City is not, and shall not be, in any way liable for any damages or injuries that may be sustained as the result of the City's issuance of any approvals or acceptances of the Improvements or use of any portion of the Improvements, and (2) that the City's issuance of any approvals or acceptances does not, and shall not, in any way be deemed to insure the Developer, or any of its heirs, successors, assigns, tenants, or licensees or any third party, against damage or injury of any kind at any time.
- B. Indemnification. Except as provided below, the Developer agrees to, and does hereby, indemnify the City, and all of its elected and appointed officials, officers, employees, agents and representatives from any and all claims, costs and liability of every kind and nature that may be asserted at any time against any such parties for injury or damage received or sustained by any person or entity in connection with (1) the City's review and approval of any plans for the Improvements, (2) the issuance of any approval or acceptance of Improvements, (3) the development, construction, maintenance or use of any portion of the Improvements until such time as the Improvements are accepted by the City, and (4) the performance by the Developer of its obligations under this Agreement and all related agreements. The Developer further agrees to aid and defend the City in the event that the City is named as a defendant in an action concerning the Improvements provided by this Agreement only as to Improvements that have not been accepted by the City. The Developer is not an agent or employee of the City.

Section 30. Amendments or Alterations. All changes, amendments, omissions, or additions to this Agreement shall be in writing and shall be signed by both parties and conform to Idaho Code and the LDC.

Section 31. Severability. The invalidity or unenforceability of any provision of this Agreement shall not affect the other provisions hereof and this Agreement shall be construed in all respects as if such invalid or unenforceable provisions were omitted.

Section 32. Filing; Recording. The City shall have this Agreement recorded in the office of the City Clerk and the Teton County Recorder. The Developer shall reimburse the City for any recording fees associated with this Development. This Agreement shall run with the land.

Section 33. Authority to Execute. The City hereby warrants and represents to the Developer that the persons executing this Agreement on its behalf have been properly authorized to do so by the City Council. The Developer hereby warrants and represents to the City (1) that it is the record owner of fee simple title to the subdivision, (2) that it has the right, power, and authority to enter into this Agreement and to agree to the terms, provisions, and conditions set forth herein and to bind the subdivision as set forth herein, (3) that all legal action needed to authorize the execution, delivery, and performance of this Agreement have been taken, and (4) that neither the execution of this Agreement nor the performance of the obligations assumed by the Developer hereunder will (i) result in a breach or default under any Agreement to which the Developer is a party or to which it or the subdivision is bound or (ii) violate any statute, law restriction, court order, or Agreement to which the Developer or the subdivision is subject.

Section 34. Codes. The Developer agrees to abide by all ordinances, regulations, and codes of the City and those of the special purpose districts providing service to the Development.

Section 35. Governing Law. This Agreement shall be construed and governed according to the laws of the State of Idaho. The venue for any action arising out of this Agreement shall be exclusively in the District Court of the Seventh Judicial District of the State of Idaho, Teton County, or in the United States District Court for the District of Idaho.

Section 36. Attorney's Fees. Should any litigation be commenced between the parties concerning this Agreement, the prevailing party shall be entitled, in addition to any other relief as may be granted, to court costs and reasonable attorney's fees as determined by a court of competent jurisdiction. In addition, the Developer shall pay to the City all attorney fees associated with the drafting and execution of this Agreement prior to the City's execution of this Agreement.

Section 37. Final Agreement. This Agreement sets forth all promises, inducements, agreements, condition and understandings between Developer and City relative to the subject matter hereof, and there are no promises, agreements, conditions or understanding, either oral or written, express or implied, between Developer and City, other than as are stated herein. All Recitals hereto and Exhibits referenced herein are incorporated in this Agreement as if set forth in full including all text information in the Exhibits. Except as herein otherwise provided, no subsequent alteration, amendment, change or addition to this Agreement shall be binding upon

the parties hereto unless reduced to writing and signed by them or their successors in interest or their assigns, and pursuant, with respect to the City, to a duly adopted ordinance or resolution of the City.

Section 38. No Waiver of City Rights. No waiver of any provision of this Agreement will be deemed to constitute a waiver of any other provision nor will it be deemed to constitute a continuity waiver unless expressly provided for; nor will the waiver of any default under this Agreement be deemed a waiver of any subsequent default or defaults of the same type. The City's failure to exercise any obligation under this Agreement will not constitute the approval of any wrongful act by the Developer or the acceptance of any Improvement.

Section 39. Conflicts. In the event of a conflict between the terms and conditions of this Agreement and the Master Development or the Annexation Agreement, the terms and conditions of this Agreement shall prevail. This provision does not create an admission by the City that the Master Development or the Annexation Agreement are in force or affect.

Section 40. Effective Date. This Agreement shall become valid and binding only upon its approval by the City Council and its recording with the City Clerk and Teton County Recorder's Office.

[end of text – signatures on following pages]

Developer:

By: _____

Name: Lawrence Thal

Title: President, Mountainside, Inc.

STATE OF IDAHO)
) ss.
County of Teton)

On this ____ day of _____, 2021, before me, a notary public in and for the State of Idaho, personally appeared Lawrence Thal, known or identified to me the President of Mountainside, Inc., the Idaho corporation that signed the within and foregoing instrument, and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Notary Public for Idaho
My commission expires: _____

Attachments:

- Exhibit A- Legal Description of the Property
- Exhibit B- Preliminary Plat and Conditions of Approval
- Exhibit C- Engineered Improvement Plans
- Exhibit D- Engineer’s Cost Estimate for improvements

Exhibit A

Legal Description of the Property

TOWNSHIP 3 NORTH, RANGE 45 EAST, BOISE MERIDIAN, TETON COUNTY, IDAHO.

SECTION 13: A PORTION OF THE NORTHWEST QUARTER, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID SECTION 13, MARKED BY AN ALUMINUM CAP ON A 5/8" REBAR, AND RUNNING THENCE ALONG THE NORTH LINE THEREOF NORTH 89°45'32" EAST 1645.00 FEET TO THE 5/8" REBAR MARKING THE NORTHEAST CORNER OF MOUNTAINSIDE VILLAGE, PHASE 2B AS SHOWN ON THE OFFICIAL PLAT THEREOF, LAST SAID REBAR BEING THE TRUE POINT OF BEGINNING;

THENCE ALONG THE EASTERN LINES OF SAID PLAT OF MOUNTAINSIDE VILLAGE, PHASE 2B, AS FOLLOWS:

SOUTH 0°14'28" EAST 30.00 FEET,

SOUTHERLY ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 400.00 FEET, A CENTRAL ANGLE OF 21°33'58", AN ARC LENGTH OF 150.56 FEET, A CHORD BEARING OF SOUTH 0°54'47" EAST AND A CHORD LENGTH OF 149.67 FEET,

SOUTH 9°52'11" WEST 32.72 FEET,

SOUTHERLY ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 523.65 FEET, A CENTRAL ANGLE OF 9°01'02", AN ARC LENGTH OF 82.41 FEET, A CHORD BEARING OF SOUTH 5°21'41" WEST AND A CHORD LENGTH OF 82.33 FEET,

NORTH 89°14'42" EAST 160.66 FEET,

SOUTHERLY ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 573.65 FEET, A CENTRAL ANGLE OF 12°41'40", AN ARC LENGTH OF 82.41 FEET, A CHORD BEARING OF SOUTH 5°14'44" EAST AND A CHORD LENGTH OF 126.84 FEET,

SOUTHERLY ALONG A REVERSE CURVE TO THE RIGHT HAVING A RADIUS OF 75.00 FEET, A CENTRAL ANGLE OF 13°12'57", AN ARC LENGTH OF 17.30 FEET, A CHORD BEARING OF SOUTH 4°59'06" EAST AND A CHORD LENGTH OF 17.26 FEET,

SOUTH 1°37'23" WEST 153.99 FEET, AND

SOUTHERLY ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 500.00 FEET, A CENTRAL ANGLE OF 11°55'14", AN ARC LENGTH OF 104.03 FEET, A CHORD BEARING OF SOUTH 7°35'00" WEST AND A CHORD LENGTH OF 103.84 FEET TO A 5/8" REBAR MARKING THE SOUTHEAST CORNER OF LOT 43 AS SHOWN ON SAID PLAT OF MOUNTAINSIDE VILLAGE PHASE 2B;

THENCE ALONG THE NORTHERN LINES OF MOUNTAINSIDE VILLAGE PHASE 3A AS SHOWN ON THE OFFICIAL PLAT THEREOF AS FOLLOWS:

SOUTH 74°16'40" EAST 25.02 FEET,

CONTINUING SOUTH 74°16'40" EAST 25.02 FEET,

SOUTH 88°25'54" EAST 33.03 FEET,

EASTERLY ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 250.00 FEET, A CENTRAL ANGLE OF 5°30'57", AN ARC LENGTH OF 24.07 FEET, A CHORD BEARING OF SOUTH 85°40'26" EAST AND A CHORD LENGTH OF 24.06 FEET TO A 5/8" REBAR,

SOUTH 82°54'57" EAST 174.74 FEET TO A 5/8" REBAR, AND

SOUTHEASTERLY ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 250.00 FEET, A CENTRAL ANGLE OF 19°18'05", AN ARC LENGTH OF 84.22 FEET, A CHORD BEARING OF SOUTH 73°15'55" EAST AND A CHORD LENGTH OF 83.82 FEET TO A 5/8" REBAR AT THE NORTHEAST CORNER OF LOT 80 AS SHOWN ON SAID OFFICIAL PLAT OF MOUNTAINSIDE VILLAGE PHASE 3A;

THENCE LEAVING THE NORTHERN LINES OF SAID PHASE 3A NORTH 17°58'18" EAST 204.69 FEET TO A 5/8" REBAR;

THENCE NORTH 8°21'07" WEST 64.69 FEET TO A 5/8" REBAR;

THENCE NORTH 15°03'33" WEST 57.41 FEET TO A 5/8" REBAR;

THENCE NORTH 1°37'23" EAST 13.00 FEET TO A 5/8" REBAR;

THENCE NORTHERLY ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 75.00 FEET, A CENTRAL ANGLE OF 12°43'49", AN ARC LENGTH OF 16.66 FEET, A CHORD BEARING OF NORTH 4°44'32" WEST AND A CHORD LENGTH OF 16.63 FEET TO A 5/8" REBAR;

THENCE NORTHERLY ALONG A REVERSE CURVE TO THE RIGHT HAVING A RADIUS OF 563.65 FEET, A CENTRAL ANGLE OF 12°14'32", AN ARC LENGTH OF 120.43 FEET, A CHORD BEARING OF NORTH 4°59'11" WEST AND A CHORD LENGTH OF 120.20 FEET TO A 5/8" REBAR;

THENCE SOUTH 89°14'42" WEST 153.44 FEET TO A 5/8" REBAR;

THENCE NORTH 0°45'18" WEST 16.45 FEET TO A 5/8" REBAR;

THENCE NORTHERLY ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 400.00 FEET, A CENTRAL ANGLE OF 10°25'05", AN ARC LENGTH OF 72.73 FEET, A CHORD BEARING OF NORTH 4°27'15" EAST AND A CHORD LENGTH OF 72.63 FEET TO A 5/8" REBAR;

THENCE NORTHERLY ALONG A REVERSE CURVE TO THE LEFT HAVING A RADIUS OF 325.00 FEET, A CENTRAL ANGLE OF 18°08'28", AN ARC LENGTH OF 102.90 FEET, A CHORD BEARING OF NORTH 0°35'34" EAST AND A CHORD LENGTH OF 102.47 FEET TO A 5/8" REBAR;

THENCE NORTH 8°28'39" WEST 32.20 FEET TO A 5/8" REBAR;

THENCE NORTHERLY ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 350.00 FEET, A CENTRAL ANGLE OF 6°44'57", AN ARC LENGTH OF 41.23 FEET, A CHORD BEARING OF NORTH 5°06'10" WEST AND A CHORD LENGTH OF 41.21 FEET TO A 5/8" REBAR;

THENCE NORTH 0°14'28" WEST 30.00 FEET TO A 5/8" REBAR SET ON THE AFORESAID NORTH LINE OF SECTION 13,

THENCE ALONG SAID NORTH LINE SOUTH 89°45'32" WEST 199.02 FEET TO A 5/8" REBAR;

THENCE CONTINUING ALONG SAID NORTH LINE SOUTH 89°45'32" WEST 176.62 FEET TO THE TRUE POINT OF BEGINNING.

MOUNTAINSIDE VILLAGE, PHASE 3B, CONTAINS 6.37 ACRES, MORE OR LESS.

Exhibit B

Mountainside Village Phase 3B Preliminary Plat Conditions of Approval

Public Hearing: SD2019-02 Mountainside Village Phase 3B- Preliminary Plat. Ashely Koehler stated that she was presenting this project on behalf of Ryan Krueger, who prepared the staff report. Koehler confirmed that proper notice has been given and that supporting materials are complete to the best of her knowledge. No Council members declared a conflict of interest. Ashley made staff comment regarding the purpose and history of this project. Koehler supported Ryan's recommendation that Council continue the project to the 10/23/2019 meeting so staff and the applicant can work on completing some of the conditions of approval and prepare a development agreement. Koehler requested that Council discuss that proposed private streets and decide if they should be permitted. Larry Thal made public comment regarding original plan for Mountainside and past reviews, the private streets are not really streets throughout the subdivision, but rear driveways for the homes.

Larry is on board with the water pressure zone upgrade that staff is recommending. Mayor Potter opened public comment. Mayor Potter closed public comment. Discussion followed regarding open space requirements, the private streets not too big of a concern as they are privately maintained and owned and the development agreement would be prepared with water system upgrade options.

A motion was made by Councilman Wells and seconded by Councilman Green Having concluded that the Criteria for Approval of a Full Plat – Preliminary Plat found in Title 10, Article 14.5.10.C.8 have been met, I move to recommend approval of the Full Plat – Preliminary Plat for Mountainside Village Phase 3B as described in the application materials submitted on July 16, 2019, and subject to the Conditions of Approval in the staff report for the hearing date of September 25, 2019. Conditions of Approval: 1. The applicant shall be solely responsible with compliance to these conditions of approval, all applicable development requirements, and all previous land use decisions and the associated conditions rendered for this project site location, including Planning File No. SD2018-04 except as amended herein. 2. The Preliminary Plat shall expire three (3) years after the date of approval, unless the applicant has filed a complete application for a Final Plat. 3. The applicant shall include in the submission for Final Plat a note on the plat that reads as follow: The lands of this subdivision shall be developed in accordance with the conditions of approval contained in the City of Victor land use approvals SD2018-04 and SD2019-02. 4. The applicant shall meet at requirements expected after approval of the Preliminary Plat as established in LDC Div. 14.5.10.C.13 prior to commencing construction or submitting for Final Plat. 5. The final draft of the Development Agreement for Phase 3B shall be authorized by City Council prior to recordation. The Development Agreement for Phase 3B shall be recorded prior to construction or excavation commencing on any portion of this Phase. The Development Agreement shall be required to ensure the timeline, obligations, and approvals are clear. The Development Agreement shall also include precise details on the expectations for the necessary water system upgrades necessary and timelines for the installation of the public infrastructure and streets. 6. All of the comments from the City Engineer's review of the construction drawings shall be addressed and signed off by the City Engineer prior to final approval. This condition of approval shall be addressed prior to commencing construction or excavation. The comments are included in attachments to this Staff Report packet and include the email and memo from the City Engineer dated August 12, 2019. 7. All deficiencies identified in the Zoning and Planning Memo dated August 6, 2019, and attached to this Staff Report, shall be addressed and resolved prior to or concurrent with the submittal for Final Plat. 8. The applicant shall be required to construct Cemetery Road to the Sensitive Collector specification included in LDC Div. 12.4.14.A. The applicant shall only be responsible for improvements that abut Phase 3B of the Mountainside Village subdivision. 9. The City Council shall determine at a public hearing if the proposed private streets are acceptable, as private streets are allowed at the sole discretion of City Council (LDC Div. 12.4.4.B). Should City Council decline to allow private streets as described in the Preliminary Plat application SD2019-02, the applicant shall be required to redesign the private streets to the City's approved alley cross-section and resubmit for Preliminary Plat approval. 10. Prior to submitting the final plat application, the applicant shall be required to restore the entirety of the subdivision (future phases) to the pre-development state in accordance with the existing conditions identified in the Grading Plan submitted for this project, Furthermore, all lands disturbed by earth moving must be revegetate using native species. Mayor Potter called for a roll call vote. Councilman Green- In Favor, Councilman Frohlich- In Favor, Councilman Wells- In Favor. The motion carried.