

**AMENDED AND RESTATED
DECLARATION
OF
PROTECTIVE COVENANTS
FOR
THOMPSON CORNER**

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AMENDED AND RESTATED
DECLARATION
OF
PROTECTIVE COVENANTS
FOR
THOMPSON CORNER

THIS AMENDED AND RESTATED DECLARATION OF PROTECTIVE COVENANTS FOR THOMPSON CORNER (the “Declaration”), is made and entered into this ____ day of February, 1998, by CRYSTAL RIVER LIMITED PARTNERSHIP, a Delaware limited partnership duly authorized to transact business in the State of Colorado (the “Declarant”).

AMENDMENT AND RESTATEMENT

WHEREAS, the Declaration of Protective Covenants for Thompson Corner was recorded September 27, 1996 in Book 994 at Page 121 in the Office of the Clerk and Recorder of Garfield County, Colorado (the “Existing Declaration”), and

WHEREAS, Section 13.3 of said Existing Declaration provides that the Declaration may be amended by the vote or Agreement of Lot Owners to which at least 67 percent of the votes in the Association are allocated; and

WHEREAS, Crystal River Limited Partnership, a Delaware limited partnership, is still the Owner of 100 percent of the platted Lots in the Thompson Corner Common Interest Community, and has agreed that the Existing Declaration shall be amended and restated in its entirety as hereinafter set forth.

NOW, THEREFORE, for and in consideration of the premises and for other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, the said Existing Declaration is hereby amended and restated in its entirety as follows:

RECITALS

1. Declarant is the record owner of that certain real property situated in Garfield County, Colorado, described as Block G, Phase I, River Valley Ranch according to the Final Plat of said Phase I recorded September 27, 1996 at Reception No. 498928 in the Office of the Clerk and Recorder of Garfield County, Colorado, as amended by Amended Plats recorded January 30, 1998 at Reception No. 519809 (Lot 20) and Reception No. 519810 (Lots 27 and 28) (collectively the “Final Plat”), as said Final Plat may be further amended from time to time (the “Common Interest Community, a/k/a the “Thompson Corner Common Interest Community”, or “Thompson Corner”).

2. Declarant is also the record owner of that certain real property described on Exhibit A attached hereto and made a part hereof by this reference (the “Annexable Property”).

3. The Common Interest Community and the Annexable Property have been approved for development pursuant to a Planned Unit Development Plan for River Valley Ranch adopted by the Town of Carbondale, Colorado (the “P.U.D. for River Valley Ranch”).

4. Declarant intends to develop the Thompson Corner Common Interest Community as a planned community under the Colorado Common Interest Ownership Act for the purpose of providing affordable housing. Declarant reserves the right, but shall have no obligation, to annex to the Common Interest Community from time to time some or all of the Annexable Property, and to develop such property as part of the planned community. Such annexation shall be accomplished by the recording of a Supplemental Declaration, together with a Supplemental Plat, which describes and depicts any new Lots thereby added to the Common Interest Community. The Supplemental Declaration shall incorporate this Declaration by reference and shall set forth such amendments to the Declaration and such additional covenants, conditions, uses, restrictions and reserved development rights as may be applicable to the annexed property.

5. The Thompson Corner Common Interest Community shall contain not more than 60 legally separate affordable housing Lots.

6. Thompson Corner Homeowners Association, a Colorado non-profit corporation, has been formed as an association to exercise the functions set forth herein and to own, hold, operate, care for and manage certain property for the common benefit of Owners and Occupants of Lots within, and of any other person acquiring an interest in, the Common Interest Community.

7. Declarant desires to establish covenants, conditions and restrictions upon the Common Interest Community, and certain mutually beneficial restrictions and limitations with respect to the proper use, occupancy, improvement and enjoyment thereof, all for the purposes of enhancing and protecting the value, desirability, attractiveness, and affordability of the Common Interest Community and enhancing the quality of life within the Common Interest Community.

8. Declarant desires and intends that the Owners, Mortgagees, Occupants and all other Persons hereafter acquiring any interest in the Common Interest Community shall at all times enjoy the benefits of, and shall hold their interests subject to, the covenants, conditions, restrictions, assessments, charges, servitudes, liens, reservations and easements contained in this Declaration, as it may be amended from time to time by Supplemental Declaration or otherwise.

ARTICLE 1

DECLARATION

NOW, THEREFORE, for the purposes set forth above and herein, Declarant for itself and its successors and assigns hereby declares that the Common Interest Community, and all other property which becomes subject to this Declaration in the manner hereinafter provided, and each part thereof, shall be owned, held, transferred, conveyed, sold, leased, rented, hypothecated, encumbered, used, occupied, improved, altered, maintained and enjoyed subject to the covenants, conditions, restrictions, assessments, charges, servitudes, liens, reservations, exceptions, easements, privileges, rights and other provisions hereinafter set forth, for the duration hereof, all of which are declared to be part of, pursuant to, and in furtherance of a common and general plan of development, improvement, enhancement, use, occupancy and enjoyment of the Common Interest Community, and all of which shall run with the land and be binding upon and inure to the benefit of (a) the Common Interest Community and every part thereof, (b) Declarant and its successors and assigns, (c) the Association and its successors and assigns, (d) every Member of the Association, and (e) all Owners, Occupants and other Persons having or acquiring any right, title or interest in or to the Common Interest Community or any part thereof, or any Improvement thereon, and their respective heirs, personal representatives, successors and assigns. Provided always, that to the extent this Declaration provides that

Declarant shall not be bound by or is exempt from the application of certain covenants, conditions and restrictions contained herein, Declarant shall not be considered subject to such covenants, conditions or restrictions.

Notwithstanding the foregoing, in no event shall the Annexable Property or any portion thereof be burdened or benefited by or otherwise subject to any of the terms or provisions of this Declaration until such property has been annexed to the Common Interest Community, at Declarant's sole option and discretion, and expressly subjected to the terms and provisions hereof (and any amendments hereof affecting the annexed property as may be contained in the Supplemental Declaration therefor), all as more particularly provided herein. This Declaration shall be recorded in Garfield County, and shall be indexed in the Grantee's index in the name of Thompson Corner and the Association and in the Grantor's Index in the name of Crystal River Limited Partnership.

ARTICLE 2

DEFINITIONS

Unless otherwise expressly provided herein, the following words and phrases when used in this Declaration shall have the meanings hereinafter specified.

Section 2.1 Act. "Act" shall mean the Colorado Common Interest Ownership Act as provided in C.R.S. § 38-33.3-101, et seq., as the same may be amended from time to time.

Section 2.2 Allocated Interests. "Allocated Interests" means the Common Expenses liability and the votes in the Association allocated to each Lot. Such Allocated Interests are allocated as follows:

(a) The Common Expenses liability for each Lot is calculated on the basis of a fraction, the numerator of which is one (1) and the denominator of which is the total number of Lots in the Common Interest Community as of the date of the calculation. The denominator may be increased from time to time by the Declarant upon the addition of Lots to the Common Interest Community which can be conveyed to third parties. Such fraction is then multiplied by the Common Expenses or the Assessment in question to determine that Lot's share thereof. The Common Expenses liability of a Lot is determined without reference to the size, location, value or use of the Lot.

(b) One vote in the Association is allocated to each Lot in the Common Interest Community.

(c) The foregoing allocations may not discriminate in favor of Lots owned by Declarant or an affiliate of Declarant.

(d) If Lots are added or withdrawn from the Common Interest Community or if Lots are converted to Common Area, (i) the Common Expenses liability for each Lot in the Common Interest Community shall be reallocated on the basis of a fraction, the numerator of which is one (1) and the denominator of which is the total number of Lots in the Common Interest Community following the addition, withdrawal or conversion of such Lots, and (ii) one vote in the Master Association shall continue to be allocated to

each Lot in the Common Interest Community following the addition, withdrawal or conversion of such Lots.

The Allocated Interests for the Common Interest Community are specifically set forth on Exhibit B attached hereto and made a part hereof by this reference, as said Exhibit B may be amended from time to time.

Section 2.3 **Annexable Property.** means that certain real property described on attached Exhibit A, which property has not yet been annexed to the Common Interest Community or made subject to the terms and provisions of this document. In the sole discretion of Declarant, all or a portion of the Annexable Property may from time to time be annexed to, and made a part of, the Common Interest Community in the manner provided in this Declaration.

Section 2.4 **Application for Certificate of Compliance.** “Application for Certificate of Compliance” means a written application submitted by a Lot Owner to the Development Review Committee requesting the issuance of a Certificate of Compliance to the effect that the Improvements constructed by the Owner on its Lot have been completed in compliance with the development approvals granted therefor by the Development Review Committee. The procedures pertaining to such Applications are more particularly set forth in Section 4.15 below.

Section 2.5 **Articles of Incorporation.** “Articles of Incorporation” or “Articles” means the Articles of Incorporation of Thompson Corner Homeowners Association, which have been or will be filed in the office of the Secretary of State of the State of Colorado, as the same may be amended from time to time.

Section 2.6 **Assessment.** “Assessment” means a Regular Assessment, Special Assessment or Reimbursement Assessment.

Section 2.7 **Association.** “Association” means the Thompson Corner Homeowners Association, a Colorado nonprofit corporation, its successors and assigns.

Section 2.8 **Bedroom.** “Bedroom” means any room in which persons normally sleep.

Section 2.9 **Budget.** “Budget” means a written itemized estimate of the Common Expenses to be incurred by the Association in performing its functions under this Declaration and adopted by the Executive Board pursuant to Section 10.7 of this Declaration .

Section 2.10 **Building Envelope.** “Building Envelope” means that portion of each Lot which is depicted and designated as the Building Envelope on the Plat. All structural Improvements shall be located within the Building Envelope on a Lot, except that with prior Development Review Committee approval, driveways, walks, pathways, other similar features, fences, underground utilities, irrigation and drainage systems, and landscaping may be located outside the Building Envelope

Section 2.11 **. Bylaws.** “Bylaws” means the Bylaws of the Association which have been or will be adopted by the Executive Board of the Association, as the same may be amended from time to time.

Section 2.12 **Common Areas.** “Common Areas” means all real property interests (not just fee title and leasehold interests) within the Common Interest Community and the Improvements and amenities and personal property thereon or therein or associated therewith which may from time to time be owned, leased or maintained by the Association or otherwise held by the Association for the use, enjoyment and benefit of the Owners and Occupants. The Common Areas include, but are not limited to, (a) all portions of the Common Interest Community designated in this Declaration or on a Supplemental Declaration or on the Plat or on a Supplemental Plat, (b) all easements created or reserved on the Plat or in Supplemental Plat or in this Declaration or a Supplemental Declaration or in any separate agreement for the use and benefit of the Association, and (c) any water rights, ditch rights and/or water facilities (or interests therein) that may be owned or leased by the Association or which the Association may be entitled to use. With the exception of easements which are Common Areas, the Common Areas do not include the Lots, and are subject always to all Permitted Exceptions. Although they are maintained by the Association, the front yards and residence exteriors and roofs in Thompson Corner are not Common Areas.

Section 2.13 **Common Expenses.** “Common Expenses” means any expenditures made or liabilities incurred by or on behalf of the Association, together with any allocations to reserves, including, but not limited to the following:

- (a) The costs of maintenance, management, operation, repair and replacement of the Common Areas, including the open space contained in Block G as shown on the Plat, the postal kiosks in Block G, and all other parts of the Common Interest Community which are managed or maintained by the Association.
- (b) The costs of Improvements constructed from time to time by the Association upon or in connection with Common Areas, if such costs were included within a duly adopted Budget.
- (c) Unpaid Assessments;
- (d) The costs of management and administration of the Association, including, but not limited to, compensation paid by the Association to managers, accountants, attorneys and employees;
- (e) The costs of utilities and services (including, but not limited to, treated or untreated water, electricity, gas, sewer, trash pick-up and disposal and recycling), which are provided to the Association or the Common Interest Community and not individually metered or assessed to Lots, landscaping maintenance, and other services which generally benefit and enhance the value and desirability of the Common Interest Community and which are provided by or on behalf of the Association.
- (f) The costs of insurance maintained by the Association as required or permitted herein;
- (g) Reasonable reserves for contingencies, replacements and other proper purposes as deemed appropriate by the Executive Board to meet anticipated costs and expenses including, but not limited to, maintenance, repair and replacement of those Common Areas which must be maintained, repaired or replaced on a periodic basis.

(h) The costs of maintaining and irrigating the front yards in the Common Interest Community, and of repainting or residing the exteriors of the residences in the Common Interest Community and of repairing and replacing the roofs on such residences, and reasonable reserves for such repainting or residing and for such roof repair and replacement.

(i) The costs of bonding the members of the Executive Board, the officers of the Association, any professional managing agent or any other Person handling the funds of the Association;

(j) Taxes paid by the Association;

(k) Amounts paid by the Association for the discharge of any lien or encumbrance levied against the Common Areas or portions thereof;

(l) The costs incurred by the Development Review Committee, and by any other committees that may be established from time to time by the Executive Board;

(m) The costs of maintaining, operating and replacing recreational, cultural, health-related or similar facilities or enterprises available to or for the benefit of all or a portion of the Common Interest Community; and

(n) Other expenses incurred by the Association for any reason whatsoever in connection with the Common Areas, or the costs of any other item or service provided or performed by the Association pursuant to this Declaration, any Supplemental Declaration, the Articles, Bylaws, Rules and Regulations, or Development Standards, or in furtherance of the purposes of the Association or in the discharge of any duties or powers of the Association. In the event that any common services furnished to the Common Interest Community are part of services that are provided to or benefit property in addition to the Common Interest Community, Common Expenses shall only include the cost of such services reasonably allocated to the services provided to the Common Interest Community.

Section 2.14 **Common Interest Community.** “Common Interest Community” means Block G, River Valley Ranch (Phase I), according to the Final Plat thereof (as defined in Recital 1 above), as said Final Plat may be amended from time to time, and any additional real property which may from time to time be annexed to the Common Interest Community and made subject to this Declaration by Supplemental Declaration and Supplemental Plat, including all Lots and Common Areas, together with all improvements and other amenities now or hereafter located thereon, and together with all easements, rights, appurtenances and privileges belonging or in any way pertaining thereto.

Section 2.15 **County.** “County” means Garfield County, Colorado.

Section 2.16 **Declarant.** “Declarant” means Crystal River Limited Partnership, a Delaware limited partnership, its successors, assigns, and affiliates. A Person shall be deemed to be a “successor and assign” of Declarant if specifically designated in a duly Recorded instrument as a successor or assign of Declarant under this Declaration and shall be deemed a successor and assign of Declarant only as to the particular rights or interests of Declarant

under this Declaration which are specifically designated in that written instrument. The term “affiliate of Declarant” shall have the meaning set forth in Section 38-33.3-103(1) of the Act.

Section 2.17 **Declaration.** “Declaration” means this instrument.

Section 2.18 **Declaration of Master Deed Restriction.** “Declaration of Master Deed Restriction” means that certain Declaration of Master Deed Restriction and Agreement Concerning the Sale, Occupancy and Resale of Property Within the Common Interest Community Known as Thompson Corner recorded _____, 1998 in Book _____ at Page _____ in the Office of the Clerk and Recorder of Garfield County, Colorado. All Lots in the Common Interest Community are subject to said Declaration of Master Deed Restriction.

Section 2.19 **Deed of Trust.** “Deed of Trust” means a Mortgage.

Section 2.20 **Development Review Committee.** “Development Review Committee” means the Committee provided for in Article 4 of this Declaration .

Section 2.21 **Development Standards.** “Development Standards” means the rules, procedures, standards, guidelines and requirements promulgated from time to time by the Executive Board, and all amendments thereto, governing the review and approval or disapproval of proposed Improvements within the Common Interest Community and such other matters as the Development Review Committee considers necessary or appropriate.

Section 2.22 **Executive Board.** “Executive Board” or “Board” means the Executive Board of the Association.

Section 2.23 **Household Pets.** “Household Pets” means generally recognized household pets such as dogs, cats, fish, birds, rodents, and non-poisonous reptiles.

Section 2.24 **Improvements.** “Improvements” means any improvements, structural or otherwise, alterations, additions, repairs, excavation, grading, landscaping or other work which in any way alter any property within the Common Interest Community, or the improvements located thereon, from its natural or improved state existing on the date this Declaration was first recorded including, but not limited to, dwelling units, buildings, outbuildings, additions, swimming pools, patio covers, awnings, the painting or other change of any exterior surfaces of any visible structure, outdoor sculptures or artwork, sprinkler or irrigation systems, garages, carports, roads, driveways, parking areas, ditches, fences, screening walls, retaining walls, stairs, decks, flag poles, fixtures, landscaping (including the addition, alteration or removal of any tree, shrub or other vegetation), poles, signs, tanks, solar equipment, wind harnessing or other energy generating equipment, exterior air conditioning, water softener installations, utilities, antennae and satellite dishes or receivers. Once an Improvement has been constructed or accomplished on a property within the Common Interest Community, any subsequent alteration of or addition to or removal of that Improvement shall also constitute an “Improvement” hereunder.

Section 2.25 **Lease.** “Lease” means and refers to any agreement for the leasing, rental, use or occupancy of the residential dwelling located on a Lot within the Common Interest Community. The required terms and procedures for Leases are more particularly set forth in Section 3.34 below.

Section 2.26 **Lot.** “Lot” means any part of the Common Interest Community which is designated as a Lot upon the Plat, or any Supplemental Plat, together with all Improvements thereon and appurtenances thereto. The term “Lot” shall not include the Common Areas.

Section 2.27 **Member.** “Member” means each Lot Owner, including the Declarant. Membership in the Association shall be appurtenant to, and may not be separated from, ownership of a Lot.

Section 2.28 **Mortgage.** “Mortgage” means any mortgage, deed of trust or other security instrument, given voluntarily by the Owner of a Lot, creating a real property security interest in a Lot and Recorded in the records of the Clerk and Recorder of the County. “First Mortgage” means a mortgage which is the first and most senior of the Mortgages on the same Lot. The term “Mortgage” does not mean a statutory, tax or judicial lien. The term “Deed of Trust” when used herein shall be synonymous with the term “Mortgage.”

Section 2.29 **Mortgagee.** “Mortgagee” means a mortgagee under a Mortgage or a beneficiary under a Deed of Trust, as the case may be, and the assignees of such Mortgagee.

Section 2.30 **Mortgagor.** “Mortgagor” means the maker, obligor or grantor of a Mortgage. The term “Mortgagor” includes a trustor or grantor under a Deed of Trust.

Section 2.31 **Notice and Hearing.** “Notice and Hearing” means a written notice and public hearing before the Executive Board, or a panel appointed by the Executive Board, as set forth in the Bylaws.

Section 2.32 **Occupant.** “Occupant” means any Person who is a tenant in a residence on a Lot pursuant to a Lease with the Owner thereof. “Occupant” also means any Person who is present within the Common Interest Community as a family member, guest or invitee of an Owner, an Occupant, the Declarant, or the Association.

Section 2.33 **Owner.** “Owner” means the Person, including Declarant, or, if more than one, all Persons collectively, who hold fee simple title of record to a Lot, including sellers under executory contracts of sale and excluding buyers thereunder. The term “Owner” shall be analogous to the term “Unit Owner”, as that term is defined in the Act.

Section 2.34 **Permitted Exceptions.** “Permitted Exceptions” means all liens, encumbrances, reservations, restrictions, conditions, easements and other matters of record which encumber the title to all or any part of the Common Interest Community, as of the date this Declaration or a Supplemental Declaration is Recorded. This Declaration and any Supplemental Declaration shall be subject to such Permitted Exceptions.

Section 2.35 **Person.** “Person” means a natural person, a corporation, a partnership, an association, a trust, or any other entity or any combination thereof.

Section 2.36 **Plat.** “Plat” means the Final Plat of Phase I, River Valley Ranch, recorded September 27, 1996, at Reception No. 498928 in the Office of the Clerk and Recorder of Garfield County, Colorado, as amended by Amended Plats recorded January 30, 1998 at Reception No. 519809 (Lot 20) and Reception No. 519810 (Lots 27 and 28), as said Final Plat may be further amended from time to time. By this reference, said Final Plat is incorporated in

this Declaration. The term “Plat” also means each Supplemental Plat recorded by Declarant, and all amendments thereto.

Section 2.37 **P.U.D. for River Valley Ranch.** “P.U.D. for River Valley Ranch” means the Town of Carbondale Ordinance No. 20, Series of 1994 for River Valley Ranch recorded January 16, 1995 in Book 928 at Page 911 in the Office of the Clerk and Recorder of Garfield County, Colorado, as said P.U.D. for River Valley Ranch may be amended from time to time.

Section 2.38 **Record.** “Record” means an instrument of record in the office of the Clerk and Recorder of the County.

Section 2.39 **Regular Assessment.** “Regular Assessment” means a charge against an Owner and the Owner’s Lot for purposes of covering the annual costs of operating and administering the Association and all other Common Expenses. Regular Assessments are based on a Budget adopted by the Executive Board in accordance with Section 10.7 below, and are allocated to the Lots in accordance with the Allocated Interests, except that Common Expenses that benefit fewer than all of the Lots shall be allocated exclusively to the Lots benefitted.

Section 2.40 **Reimbursement Assessment.** “Reimbursement Assessment” means a charge against a particular Owner and the Owner’s Lot for purpose of reimbursing the Association for costs and expenses incurred by the Association in connection with the enforcement of any provision hereof or the remedying of any violation by the Owner or an Occupant of this Declaration or any amendment hereto or the Articles, Bylaws, Rules and Regulations, or Development Standards, or any approvals granted by the Development Review Committee, or for other purposes set forth in the Declaration , pursuant to Section 10.10 hereof, together with late charges and interest as provided for herein. Reimbursement Assessment shall include without limitation any Common Expense caused by the misconduct of any Lot Owner or of such Owner’s Occupants.

Section 2.41 **Rules and Regulations.** “Rules and Regulations” mean rules and regulations adopted from time to time by the Executive Board.

Section 2.42 **Special Assessment.** “Special Assessment” means a charge against an Owner and the Owner’s Lot for purposes of reimbursing the Association for costs and expenses incurred or to be incurred by the Association for the purpose of paying for the construction, reconstruction, repair or replacement of capital improvements to the Common Interest Community, the costs of which were not included in a Regular Assessment, or for excess reconstruction costs or other extraordinary expenses, or for funding any operating deficit of the Association, as authorized by the Executive Board from time to time as provided herein.

Section 2.43 **Supplemental Declaration.** “Supplemental Declaration” means an amendment to this Declaration which annexes real property to the Common Interest Community, subjects such real property to this Declaration, and sets forth such amendments to the Declaration and such additional covenants, conditions, uses and restrictions as may be applicable to the annexed property, executed by Declarant and recorded in the Office of the Clerk and Recorder of the County, and any recorded amendments thereto.

Section 2.44 **Supplemental Plat.** “Supplemental Plat” means any land survey plat which is recorded by Declarant for the purpose of annexing the real property described therein to the Common Interest Community, and any recorded amendments to such Supplemental Plat. A Supplemental Plat may include a Final Plat of a Phase of River Valley Ranch, if such Supplemental Plat includes all or part of the Annexable Property and such Annexable Property is made subject in this Declaration by Supplemental Declaration.

Section 2.45 **Town.** “Town” means the Town of Carbondale, Colorado.

ARTICLE 3.

GENERAL RESTRICTIONS APPLICABLE TO THE COMMON INTEREST COMMUNITY

It is the intention of Declarant to establish and impose a common and general plan for the improvement, development, use and occupancy of the Common Interest Community, all in order to enhance the value, desirability, and attractiveness of the Common Interest Community and to promote the marketing, development and enjoyment thereof. Accordingly, Declarant hereby declares that the entire Common Interest Community, including but not limited to all Lots, shall be owned, held, used, occupied, improved, altered, maintained, conveyed, leased, encumbered and enjoyed subject to the following covenants, conditions, restrictions, reservations, easements, rights and other provisions, and to the further requirements and restrictions set forth in the Development Standards.

Section 3.1 **Development Control.** No Improvements shall be made, done, permitted, located, altered or removed within the Common Interest Community without the prior written approval of the Development Review Committee, except as otherwise expressly provided in this Declaration. No residence, building, structure, fence, wall, landscaping or other Improvement shall be commenced, erected, improved, altered, made or removed without the prior written approval of the Development Review Committee. All subsequent additions to or changes or alterations in any residence, building, structure, fence, wall, landscaping or other Improvement, including exterior color scheme, and all changes in the grade of Lots, shall also be subject to the prior written approval of the Development Review Committee. No changes or deviations in or from the plans and specifications approved by the Development Review Committee shall be made without the prior written approval of the Development Review Committee. Notwithstanding the foregoing, in the event of an emergency or the sudden occurrence of unanticipated conditions which threaten the health, safety or physical well-being of Persons or property within the Common Interest Community, the Executive Board and/or the Development Review Committee shall have the authority (without the prior approvals described above), to take whatever remedial action may be necessary anywhere in the Common Interest Community to protect Persons and property until such time as applicable notice and/or approval procedures can reasonably be utilized.

Section 3.2 **Violation of Law, Insurance, Etc.** No Owner, Occupant or person shall do any act or cause or permit anything to be done or kept in or upon its Lot or the Common Areas which would result in the increase of, or cancellation of, insurance maintained by the Association or would be in violation of any federal, state, town or other law, ordinance, regulation or code of any governmental body having jurisdiction, or of any Rule or Regulation promulgated by the Association, or of any provision of this Declaration .

Section 3.3 General Maintenance of Common Interest Community.

(a) All property within the Common Interest Community, including without limitation all Lots (including unimproved Lots, and Lots on which Improvements are under construction), Common Areas, Improvements, and landscaping, shall be kept and maintained in a clean and attractive condition and in good order, condition and repair. Except as specifically set forth in this Section 3.3, maintenance, repair, and upkeep of each Lot and the Improvements thereon shall be the responsibility of the Owner of the Lot. This maintenance obligation extends to all lands within the Lot lines, excepting areas or elements to be maintained by the Association as set forth below. Maintenance, repair, and upkeep of Common Areas, including the open space contained in Block G as shown on the Plat, and the Improvements thereon, shall be the responsibility of the Association. The individual Lot Owners and the Executive Board shall each use a reasonable standard of care in providing for the repair, management and maintenance of the properties for which they are responsible so that the entire Common Interest Community will reflect a pride of ownership. If an Owner fails to perform any of such obligations within 10 days following receipt of a written notice from the Executive Board requesting the same, the Executive Board shall have the right to enter upon the Lot of the Owner to cure the violation or otherwise to cause compliance with this provision and to levy and collect a Reimbursement Assessment upon the Owner and its Lot for the costs and expenses incurred by the Association in connection therewith. The Executive Board shall have no right to enter into the interior of a residence without the consent of the Owner except in the case of serious emergency causing imminent danger to Persons or property.

(b) Notwithstanding the foregoing, the Association shall be responsible for (i) maintaining and irrigating the front yards of all Lots in the Common Interest Community, (ii) maintaining the postal kiosks, (iii) periodically repainting or residing the exterior of all residences constructed on such Lots, and (iv) repairing when necessary and periodically replacing the roofs on such residences. Separate bids shall be let by the Association for the performance of each of such responsibilities. The appropriate times for repainting or residing and for roof replacement shall be determined by the Association in the exercise of its reasonable discretion, and in each instance the work shall be performed in a good and workmanlike manner. By its acceptance of a deed therefor, each Owner of a Lot in the Common Interest Community shall be deemed to have granted the Association full right and authority to perform the above-described responsibilities, and a perpetual non-exclusive easement to enter upon the Owner's Lot and the residence thereon from time to time in order to accomplish the same. Said easement is hereby granted and reserved for the benefit of the Association.

Section 3.4 Residential Use and Occupancy. Each Lot shall be improved, occupied and used only for single-family residential purposes. Single family occupancy shall mean and shall be strictly limited to occupancy of the residence on a Lot by a family comprised of (a) no more than 2 principal adults, (b) the children of one or both of said principal adults, (c) no more than 2 additional family members (adults or children) who are related by blood to said principal adults, and occasional guests. For purposes hereof, "related by blood" shall mean the following relationships, but no others: Grandparents, parents, brothers and sisters, aunts and uncles, and nephews and nieces.

No structures whatsoever, other than those permitted by the P.U.D. for River Valley Ranch or by other applicable Town of Carbondale zoning regulations and approved in writing by the Development Review Committee, shall be erected, placed or permitted to remain on any Lot. No business, professional or other non-residential or commercial use shall be made of any Lot, or conducted in any residence constructed on a Lot, excepting in-home businesses or occupations which do not involve (i) more than one non-Owner, non-resident employee, (ii) the solicitation or invitation of the general public, or the servicing of customers, and which activities are conducted entirely within the residence, and (iii) do not cause any additional traffic or parking within the Common Interest Community or otherwise create a nuisance for neighboring Lots or the Common Interest Community. No equipment or materials incident to any business or occupation (whether conducted within the residence or elsewhere) shall be kept or stored on any Lot except within the residence, garage, or other outbuilding approved by the Development Review Committee.

Section 3.5 New Construction Required; No Temporary Buildings or Occupancy. All Improvements constructed within or placed upon the Common Interest Community shall be new except as provided herein. No used or temporary house, structure, or non-permanent out-building shall ever be placed, erected or allowed to remain within the Common Interest Community except temporary structures or construction trailers used for construction purposes during the construction of a residence, which temporary facilities shall be removed immediately following completion of construction and in any event no later than 18 months following commencement of construction or remodeling unless a written extension is granted by the Development Review Committee. No trailer, incomplete residence or other structure other than a residence completed in accordance with approved plans, shall ever be used or occupied at any time for residential purposes, either temporarily or permanently. No completed residence on a Lot shall be occupied in any manner until all provisions of this Declaration and of the Development Standards and all conditions of development approval have been complied with, and a Certificate of Compliance has been issued pursuant to Section 4.15 below. The work of constructing, altering or remodeling any residence on a Lot or any other Improvement within the Common Interest Community shall be prosecuted diligently from the commencement thereof until the completion thereof.

Notwithstanding the foregoing, used materials and/or structures may be permitted on a Lot if (a) the Owner makes a specific written request to the Development Review Committee for approval of such used materials and/or structures, and (b) the Development Review Committee determines that the criteria set forth in Section 4.9 hereof have been met and specifically approves such request in writing.

Section 3.6 Building Envelopes. See the above definition of this term for the general restrictions applicable to Building Envelopes.

Section 3.7 Development Standards. All construction and landscaping activities within the Common Interest Community shall be strictly governed by the procedures, standards, guidelines, restrictions and requirements set forth in the Development Standards. A violation of the Development Standards shall constitute a violation of this Declaration and may be enforced in accordance with the terms hereof.

Section 3.8 Annoying Light, Sound or Odor. All exterior lighting installed or maintained on any Improvement located on a Lot shall be placed so that the light source is screened or shielded from the residence on any other Lot and from the Common Areas. No

light shall be emitted from any part of the Common Interest Community (including any Lot) which is unreasonably bright or causes unreasonable glare. Without limiting the generality of the foregoing, no spotlights, floodlights or other high-intensity lights shall be permitted within the Common Interest Community without the prior written approval of the Development Review Committee. The Development Standards may contain standards for exterior lighting including, without limitation, standards for hue and intensity.

No sounds shall be emitted from any part of the Common Interest Community (including any Lot) which are unreasonably loud or annoying, and no odor shall be emitted from any part of the Common Interest Community (including any Lot) which is noxious or unreasonably offensive. Again without limiting the generality of the foregoing, no exterior speakers, horns, whistles, bells (excepting chimes), or other sound devices, other than security devices used exclusively for security purposes, shall be located or used within the Common Interest Community except with the prior written approval of the Development Review Committee.

The Executive Board, in its sole discretion, shall have the right and authority to determine the existence of any violation of this Section 3.8 including the reasonableness of any light, sound or odor.

Section 3.9 Noxious or Offensive Activities; Nuisances; Construction Activities; Pesticides. No noxious or offensive activity shall occur or be allowed at any time within the Common Interest Community, nor shall anything be done or placed therein which is or may become a nuisance or cause an unreasonable embarrassment, disturbance, or annoyance to Owners, Occupants, Declarant, the Association, or any other part of the P.U.D. for River Valley Ranch, or which interferes with the peaceful enjoyment or possession and proper use of the Common Interest Community, or any part thereof, by Owners or Occupants, or which interferes with the peaceful enjoyment or possession and proper use of any other part of the P.U.D. for River Valley Ranch by the Owners or Occupants thereof. As used herein, the term “nuisance” shall not apply to any activities of Declarant which are reasonably necessary or appropriate to the development, improvement, maintenance, marketing and/or sale of the Common Interest Community or any part thereof or any other part of the P.U.D. for River Valley Ranch. The Executive Board, in its sole discretion, shall have the right and authority to determine the existence of any nuisance or unreasonable annoyance under this Section 3.9.

Each Owner shall comply with the Rules and Regulations and the requirements of all health authorities and other governmental authorities having jurisdiction over the Common Interest Community. Normal construction activities and parking in connection with the building of Improvements on a Lot shall not be considered a nuisance or otherwise prohibited by this Declaration unless they are in violation of the Development Standards or other requirements of the Development Review Committee, but Lots and Common Areas shall be kept in a neat and tidy condition during construction periods, trash and debris shall not be permitted to accumulate, and supplies of brick, block, lumber and other building materials shall be piled only in such areas as may be approved by the Development Review Committee. In addition, construction equipment and building materials may only be stored or kept within the Common Interest Community during and in connection with the construction of Improvements thereon, and then may be kept only in areas approved by the Development Review Committee, which also may require screening of the storage areas. All such equipment and materials shall be removed immediately following completion of construction.

Construction activities in connection with the construction or alteration of Improvements on a Lot shall only be conducted between the hours of 7:00 a.m. and 7:00 p.m. on weekdays, between the hours of 8:00 a.m. and 6:00 p.m. on Saturdays and national holidays, and between the hours of 12:00 noon and 6:00 p.m. on Sundays.

Before the Association or any Lot Owner or Occupant broadcasts or sprays any non-prohibited pesticides or herbicides within the Common Interest Community, at least 48 hours advance notice thereof must be conspicuously posted on the property area to be treated and such notice shall remain posted 14 days after such spraying. A list of pesticides and herbicides that are permitted for residential use within the Common Interest Community will be maintained and posted by the Development Review Committee. The Development Review Committee shall from time to time revise the list periodically to ensure that the list is based on current information regarding pesticides and herbicides.

Section 3.10 No Hazardous or Unsafe Activities. No activity shall be conducted on, and no Improvement shall be constructed on, any property within the Common Interest Community which is or might be unsafe or hazardous to any Person or property. Without limiting the generality of the foregoing, and except as allowed below, no explosives, gasoline, or other volatile and/or incendiary materials or devices or any materials deemed hazardous substances under applicable environmental laws, rules, or regulations shall ever be kept, stored, permitted to remain or be released on any Lot or elsewhere within the Common Interest Community. Gasoline or fuel for an Owner's lawn mower, snowblower, and the like may be maintained on an incidental basis on a Lot in an amount not to exceed ten (10) gallons. Similarly, gasoline, fuel and other products necessary in connection with the maintenance of the Common Areas may be stored in enclosed structures on the Common Areas.

Section 3.11 Outside Burning; Fire Hazards. No exterior fires shall be lighted or permitted within the Common Interest Community except in a contained barbecue unit while attended and in use for cooking purposes. No Lot Owner shall cause or permit any condition on his Lot which creates a fire hazard or is in violation of fire prevention regulations, or which would increase insurance rates for the Common Areas or for other Lot Owners.

Section 3.12 No Firearms or Hunting. The discharge of firearms on any part of the Common Interest Community (including the Lots) is expressly prohibited. Hunting on any part of the Common Interest Community (including the Lots) is expressly prohibited.

Section 3.13 No Obstruction. There shall be no obstruction of any easements or drainage, irrigation or water feature systems located upon any Lot or the Common Areas, or any interference with the free use thereof, except such obstruction or interference as may be reasonably required in connection with the construction, maintenance or repair thereof. The Association shall promptly take such action as may be necessary to abate or enjoin any such obstruction or interference, and shall have the right to enter upon a Lot for purposes of removing the same, and any costs incurred by the Association in connection with such abatement, injunctive or corrective activities shall be assessed to the responsible Lot Owner or Owners in the form of a Reimbursement Assessment.

Section 3.14 No Unsightliness; Clothes Drying; Sporting Equipment; Children's Recreational Equipment. All unsightly structures, facilities, equipment, objects, and conditions, including sporting equipment (e.g., skis, snowboards, bikes, mountain bikes, kayaks, etc.), or snow removal, garden or maintenance equipment except when in actual use,

shall be kept in an enclosed structure or in a screened area approved by the Development Review Committee. No laundry or wash shall be dried or hung outside any residence, except on clotheslines that are effectively screened from view from other Lots and from all public areas and Common Areas including streets, bike trails, and parks.

Equipment intended for children's recreation use, such as swing sets and slides, must also be approved in advance by the Development Review Committee. Such equipment need not be screened if it is constructed of natural materials such as wood, stone, metal and natural hemp and if it is painted or stained in earthen tones (natural woods, greens, browns, black, etc.). If such equipment is constructed of non-natural materials such as plastic, or if the equipment is other than earthen tone in color, it must be effectively screened from view from other Lots and from all public areas and Common Areas including streets, bike paths, and parks. Playground equipment that is treated with hazardous preservatives, including without limitation arsenic, lead, copper, and chromium, shall be prohibited within the Common Interest Community.

Section 3.15 Garbage and Trash and Compost Containers. No refuse, garbage, trash, grass, shrub, or tree clippings, plant waste, scrap, rubbish, or debris of any kind shall be kept, stored, maintained or allowed to accumulate or remain on any Lot or on the Common Areas except temporarily within an enclosed structure within the Building Envelope approved by the Development Review Committee, except that any approved container containing such materials may be placed next to the street on the designated morning of garbage collection and must be returned to its enclosed structure that same day. No garbage containers, trash cans or receptacles shall be maintained in an unsanitary or unsightly condition, and except when placed for pickup they shall not be visible from another Lot or the Common Areas. All such refuse, garbage, trash, plant waste, scrap materials, rubbish and debris shall be promptly removed from the Common Interest Community and shall not be burned thereon. Compost structures and containers may be placed on a Lot or Common Areas in locations and in containers approved by the Development Review Committee, provided that no such structure or container shall be larger than 55 gallons. Garbage structures and containers and compost structures and containers shall also comply with such recommendations as may be made from time to time by the Colorado Division of Wildlife.

Section 3.16 Vehicle Parking, Storage, Operation and Repair.

(a) No motor vehicles of any kind and no boats, trailers, campers, motorcycles, snowmobiles, golf carts, or any other similar items shall be parked or stored on the public streets within the Common Interest Community.

(b) No boats, trailers, buses, motor homes, campers (excluding camper shells mounted on pickup trucks), motorcycles, snowmobiles, recreational vehicles, golf carts, trucks, industrial or commercial vehicles (both cabs or trailers), abandoned or inoperable vehicles (as defined below), or any other similar vehicles (excluding passenger automobiles and one ton or smaller pickup trucks) shall be parked or stored in or upon the Common Areas or upon a Lot. This restriction shall not prevent the non-commercial washing and polishing or minor routine maintenance of fully operational motor vehicles, together with activities normally incident thereto, provided such maintenance and repairs can be accomplished within one-half day or less. No more than 3 permitted vehicles (passenger automobiles and/or one ton or smaller pick-up

trucks) shall be parked at any time in the driveway of any Lot, except during special occasions and then only for the duration thereof.

(c) Notwithstanding the foregoing, vehicles may be temporarily parked on driveways on Lots and on public streets within the Common Interest Community for loading, delivery or emergency purposes, but only for the time required to accomplish such purpose, and as necessary for the construction or maintenance of Improvements within the Common Interest Community upon compliance with the Development Standards and any conditions imposed by the Development Review Committee.

(d) An “abandoned or inoperable vehicle” shall mean any motorized vehicle which does not display a current motor vehicle license or which has not been driven under its own propulsion for a period of two (2) weeks or longer (excepting otherwise permitted vehicles parked by Lot Owners or Occupants on their Lot driveways while on vacation or during a period of illness), or which does not have an operable propulsion system within the vehicle.

(e) In the event that the Executive Board or the Development Review Committee shall determine that a vehicle is abandoned or inoperable, or is otherwise in violation of the provisions of this Section 3.16, a written notice of violation describing said vehicle shall be personally delivered to the vehicle owner (if such owner can be reasonably ascertained) or shall be conspicuously placed upon the vehicle (if the owner cannot be reasonably ascertained), and if the offending vehicle is not removed within 72 hours thereafter, the Executive Board or Development Review Committee (as the case may be) shall have the right to remove and store the offending vehicle, or cause the vehicle to be removed and stored, at the sole expense of the Owner of the Lot on which the vehicle is located, and to enter upon an Owner’s Lot for such purpose, all without liability on the part of the Executive Board or the Development Review Committee.

(f) Snowmobiles, motorcycles, trail bikes, minibikes, dirt bikes, all-terrain vehicles, mopeds and similar vehicles shall not be used or operated (but may be transported on trailers) within the Common Interest Community, except that motorcycles properly licensed for operation on public roads may be used on public roads within the Common Interest Community.

Section 3.17 Animals. Except as specifically permitted below or by the Rules and Regulations, no animals, reptiles, primates, fish, fowl or insects of any kind shall be kept, raised, bred, maintained or boarded within or upon any part of the Common Interest Community.

Notwithstanding the foregoing, each Lot shall be entitled to a maximum of no more than two (2) dogs or cats (or one of each) and a reasonable number of other Household Pets, so long as such pets are not kept for any commercial purpose, are not kept in unreasonable numbers, do not cause an unreasonable amount of noise or odor, or do not otherwise become a nuisance to other Lot Owners or Occupants. Household Pets must be fenced or restrained at all times within the Owner’s or Occupant’s Lot, and shall not be permitted outside such Lot except when leashed and accompanied by the pet’s owner or the owner’s representative. All Household Pets shall be properly immunized and otherwise maintained and cared for as required by applicable laws.

The Owner of a Lot where a Household Pet is kept, as well as the legal owner of the pet (if not such Owner), shall be jointly and severally liable for any and all damage and destruction caused by the pet, and for any clean-up of streets, sidewalks, Common Areas or other Lots necessitated by such pet.

The Executive Board shall have, and is hereby given, the right and authority to determine in its sole discretion that Household Pets are being kept for commercial purposes, or are being kept in unreasonable numbers, or are causing an unreasonable amount of noise or odor, or are otherwise a nuisance to other Lot Owners or Occupants, or that a Lot Owner or Occupant is otherwise in violation of this Section 3.17, and to take such action or actions as it deems reasonably necessary to remedy the violation. Without limiting the generality of the foregoing, the Executive Board may require the owner or custodian of a dog that barks or howls excessively, or of a Household Pet with other offensive habits, to confine such animal indoors.

Section 3.18 Equipment, Tanks, Antennae, Satellite Dishes, Etc. With the exception of temporary window mounted air conditioning units, no heating, air conditioning (including swamp coolers), air movement, wind collection, or refrigeration equipment shall be placed, allowed, or maintained anywhere within the Common Interest Community other than on the ground, and then must be concealed from view and must receive the prior written approval of the Development Review Committee. Temporary window mounted air conditioning units must be placed in windows in the rear of the structure and must also receive the prior written approval of the Development Review Committee. Temporary window mounted air conditioning units shall only be used between June 1 and October 1 of each year and shall be removed from windows at the end of each such season. Window mounted air conditioning units shall be installed and maintained in such a manner so as to minimize the noise from such units on adjoining Lots. Solar power units meeting all governmental guidelines for residential uses may be incorporated into a residence if (a) the solar power unit meets the same architectural criteria as are applied to other Improvements within the Common Interest Community, and (b) the solar power unit is approved in advance by the Development Review Committee. No tanks of any kind, whether elevated or buried, shall be erected, placed or permitted to remain upon any Lot or Common Area except in compliance with applicable federal and state regulations, and then only with the prior written consent of the Development Review Committee. Any approved tank must be located underground or adequately concealed from view by fencing or screening approved by the Development Review Committee. No radio, television or other antennae of any kind or nature, and no device for the transmission or reception of audio, microwave, visual or other signals, including without limitation satellite dishes or receivers, shall be erected, placed or permitted to remain upon any Lot or Common Area except with the prior written approval of the Development Review Committee as to design and location, and then must be adequately fenced or screened in a manner approved by the Development Review Committee. The foregoing notwithstanding, satellite dishes which exceed one meter in diameter shall not be allowed within the Common Interest Community.

Section 3.19 No Mining or Drilling. No property within the Common Interest Community shall be used for the purpose of mining, quarrying, drilling, boring, or exploring for or removing water, geothermal resources, oil, gas, or other hydrocarbons, minerals, rocks, stones, gravel, or earth, except drilling, exploring for, removing or storing underground water by Declarant or the Association. Nothing contained herein shall be construed to limit the rights of the owners of mineral interests severed from the surface of any portion of the Common Interest Community prior to the recording of this Declaration.

Section 3.20 Excavations. No excavation or other earth disturbance shall be performed or permitted within the Common Interest Community except in connection with the construction of Improvements, and then only with the prior written approval of the Development Review Committee. Upon completion of construction, openings in the ground shall be backfilled and compacted and all disturbed ground shall be graded and landscaped in accordance with the Development Standards and the requirements of the Development Review Committee.

Section 3.21 No Interference with Waterways or Drainage or Irrigation Systems. No Lot Owner shall construct, install, maintain or permit any fence or other Improvement or obstruction or plant trees or take any other action which damages or interrupts or interferes in any way with (a) the normal flow of water through and along waterways within the Common Interest Community, (b) any irrigation ditch or lateral or other water collection, storage or distribution system within or serving the Common Interest Community, or (c) normal drainage patterns within the Common Interest Community, subject always to the rights of owners of ditches and other water rights and the requirements of the Development Review Committee.

Section 3.22 Fencing and Gates. Fencing and gates may be constructed within the Common Interest Community (including the Lots) in compliance with the provisions of the Development Standards, provided the prior written approval of the Development Review Committee has been obtained.

Section 3.23 Tree and Natural Shrub Preservation. All Improvements within the Common Interest Community shall be located, designed, and constructed so as to preserve and protect trees and natural shrubs. In order to conserve the natural beauty of the area, no existing trees or natural shrubs (e.g., pine, cedar, piñon, other evergreens) may be removed or trimmed except with the prior written approval of the Development Review Committee. This restriction shall not apply to essential clearing by a Lot Owner in connection with the construction of a residence (but not other Improvements) within the Building Envelope within a Lot, provided the prior written approval of the Development Review Committee has been obtained. Any violation of this Section shall subject the offending Lot Owner to such penalties, fines and/or other conditions as the Development Review Committee considers appropriate, including without limitation the withdrawal or modification of previously granted development approvals, or the requirement that replacement trees of equivalent or different size and type be planted and maintained by the Lot Owner.

Section 3.24 Easements; Utility Companies; Underground Utility Lines. All easements shown on the Plat have been created or reserved for the purposes indicated on such Plat and/or in Article 7 below. No Lot Owner may erect any structure of any type whatsoever in such easement areas, nor may an Owner or Occupant use the surface of such easement areas for any private use, other than landscaping which will not interfere with the use of said easement by the Persons or entities for whose benefit it has been created or reserved and which receives the prior written approval of the Development Review Committee.

With respect to easements created for utility purposes either by the terms of this Declaration or any other recorded agreement or on the Plat, any and all bona fide public and private utility service companies, special utility districts, and owners of interests in ditches shall have the right of access, ingress, egress, and use of such easement areas for the

installation, operation and maintenance of ditch facilities and utility facilities serving the Common Interest Community.

Except as to special street lighting or other above-ground facilities which may be expressly required by the Town, no above-ground utility lines or facilities of any type (except meters, risers, service pedestals and other surface installations necessary to maintain or operate appropriate underground facilities, and ditches and associated facilities) shall be erected or installed within the Common Interest Community, whether upon Lots, Common Areas, easements, streets, or rights-of-way of any type, either by a utility company, a Lot Owner, the Association, or any other person or entity (including but not limited to any person owning or acquiring any part of the Common Interest Community) and all utility lines and facilities (including but not limited to water, sewer, gas, electricity, telephone, and cable tv) shall be buried underground. Provided, that during the construction of a residence on a Lot the Declarant may install a temporary overhead utility line which shall be promptly removed upon completion of construction.

Section 3.25 Landscaping. No landscaping shall be performed on any Lot or on the Common Area unless a landscaping plan therefor has received the prior written approval of the Development Review Committee, and all landscaping shall comply with the Development Standards. A landscaping plan for each Lot must be approved by the Development Review Committee before construction is commenced on the residence on that Lot. In each instance, an approved landscaping plan shall be fully implemented and performed within the 9-month period immediately following (a) the issuance by the Development Review Committee of a Certificate of Compliance for a residence constructed on a Lot, or (b) the approval of the landscaping plan by the Development Review Committee in all instances not involving the construction of a residence on a Lot.

Notwithstanding the foregoing, no review or approval shall be required for the replacement or replanting of the same or similar kind of trees, or plants, or flowers, or other vegetation that has been previously approved by the Development Review Committee for the Lot in question, in the previously approved location therefor. Any substantial change in the type or location of approved landscaping vegetation shall require the further approval of the Development Review Committee.

Landscaping shall be primarily indigenous plant life from a plant list to be established by the Development Review Committee. Lawns shall be of an identical or very similar insect resistant blend of rough grasses naturally occurring in the area and such grasses shall be subject to guidelines promulgated by the Development Review Committee. As provided in Section 3.3 above, the Association shall be responsible for maintaining the front yard area (including lawn) of each Lot and the costs thereof shall be a Common Expense. Irrigation of landscaped areas shall be subject to guidelines promulgated by the Development Review Committee. Except for front yards, which shall be maintained by the Association, each Owner shall diligently maintain, trim, weed, cultivate, husband, protect, preserve and otherwise keep in a healthy and attractive condition the shrubs, trees, hedges, grass, planters, gardens and other landscaping upon the Owner's Lot, including, without limitation, the removal of dead and diseased branches and brush and the performance of other tasks necessary to remove or eliminate material which constitutes or creates a fire hazard or nuisance, and shall keep the Owner's Lot free of any plants listed on the prohibited plant list attached as an Appendix to the Development Standards. Each Owner shall cooperate with the Association in its brush clearing and fire protection husbandry program for reduction of fire hazard within the Common

Interest Community. Each Owner shall also maintain all paved, concrete and other synthetically surfaced areas within the Owner's Lot, including but not limited to, driveway and parking areas, in good condition and repair.

Section 3.26 Basketball Goals. Basketball goals or backboards may be permitted on Lots in the Common Interest Community, provided they comply with the Development Standards and receive the prior written approval of the Development Review Committee.

Section 3.27 Swimming Pools, Spas, and Related Equipment. Pools, spas or hot tubs may be erected, constructed or installed on Lots within the Common Interest Community, provided they comply with the Development Standards and with Town of Carbondale regulations (including any fencing regulations) and receive the prior written consent of the Development Review Committee. Pools, spas or hot tubs, and related service equipment, may only be located in the rear yards of a Lot, and must be adequately screened from neighboring Lots and streets and from the Common Areas, as approved by the Development Review Committee.

Section 3.28 Signs and Advertising. No sign, poster, billboard or advertising device of any kind (including, but not limited to, signs commonly used by contractors, architects and tradesmen and signs advertising an "Open House" for sale or rent) shall be allowed or displayed upon any Lot, Common Area or postal kiosk within the Common Interest Community except: (a) such signs as may be used by the Declarant in connection with the development, marketing and sale of Lots in the Common Interest Community; (b) such signs as may be required by legal proceedings, or the prohibition of which is precluded by law; (c) such signs as may be required for traffic control and regulation of Common Areas; (d) neighborhood monuments (e.g., entrance signs) which are compatible with the architecture of the area and which receive the prior written approval of the Development Review Committee, (e) one "For Sale" or "For Rent" sign on any Lot, which sign must meet the following standards:

- (i) No larger than 10" x 14" in size;
- (ii) Supported by a redwood pole no larger than 2" x 2" in size;
- (iii) Sign face colors being: foreground beige PMS #486c, and background rust PMS #1685c.
- (iv) One-sided and installed parallel to the frontage street (i.e., as a "parallel reader");
- (v) Height no greater than 46" from natural grade to the top of the sign;
- (vi) Located approximately half way between the closest improved public way (street, sidewalk or bike trail) and the first vertical plane of the residence, or in the absence of such vertical plane, then 25 feet from the closest improved public way; and
- (vii) Approved in all other respects by the Development Review Committee;

(f) and signs promoting candidates seeking public office with pertinent information and signs relating to ballot issues with pertinent information subject to the following limitations:

- (i) The maximum sign area shall be 24 inches by 36 inches;
- (ii) Shall be located a minimum of 8 feet from the nearest public street or Common Area;
- (iii) Shall be erected no sooner than 4 weeks prior to the election or other event, and shall be removed within 48 hours after such election or other event.

Section 3.29 Camping. No camping shall be allowed within the Common Areas except in areas, if any, that may be designated for such purpose by Declarant or the Association.

Section 3.30 No Individual Water Wells or Individual Sewage Disposal Systems. No individual water wells, and no cesspools, septic tanks or other individual sewage disposal systems, shall be drilled, constructed, maintained or permitted to remain within the Common Interest Community, except such water and/or septic systems as may be installed by Declarant or Declarant's successor, assign or agent or the Association to serve the Common Interest Community.

Section 3.31 Maintenance and Repair of Interior of Residence. The maintenance and repair of the interior of the residence and of other structural Improvements on a Lot shall be the responsibility of the Lot Owner.

Section 3.32 Irrigation Systems, Ditches, Laterals, Ponds, and Water Use Obligations. Declarant hereby discloses that certain irrigation systems, ditches and ditch laterals are currently located or may be constructed within ditch and irrigation easement areas located upon certain Lots and upon Common Areas (collectively referred to as the "Irrigation System"). Declarant further discloses that as of the date of this Declaration, the ownership of any and all water rights carried or to be carried in said Irrigation System is vested in the Town, in the Declarant, or in other owners, and Declarant and the Town have no obligation to transfer ownership of any of such water rights to any Lot Owner or the Association. The water rights owned by the Declarant have been or shall be conveyed to the Town. In no event shall the Association or any Lot Owner be entitled to the right of use of the Irrigation System, or any water flowing through said Irrigation System, except pursuant to a written agreement or license with Declarant, another owner thereof, or an assignee of Declarant pursuant to an operation and maintenance agreement between the Owner of the "Golf Land" (as defined in the Master Declaration of Protective Covenants for River Valley Ranch recorded on September 27, 1996 at Reception No. 498944), pursuant to the Agreement Relating to the Annexation of the Gray Ranch Property and Sopris Ranch Property to the Town of Carbondale, Colorado, recorded on January 16, 1995, in Book 928 at Page 865, both of the Garfield County, Colorado real property records, or as provided in this Declaration or in such other agreement authorized in the above-referenced documents. Furthermore, except as specifically provided below, in no event shall any Lot Owner be entitled to install irrigation facilities, to divert water from the Irrigation System or to make modifications to the Irrigation System for diversion purposes without the prior written approval of the Association. In addition, in no event shall any Lot Owner or the Association obstruct or impede the flow of water through the Irrigation System.

An untreated water Irrigation System shall be designed and built within the Common Interest Community by Declarant for irrigation of Common Interest Community irrigable lands,

including a system for the irrigation of the front yard of each Lot, and shall be transferred to and owned and maintained by the Association.

The Association shall be responsible for irrigating the Common Areas, the roadway shoulders, and the front yard of each Lot, and for maintaining the portion of the Irrigation System that is owned or operated by the Association. All such irrigation shall be accomplished with untreated water from the Irrigation System. Each Lot Owner shall be responsible for the purchase, installation, operation, maintenance, repair, and replacement of the individual irrigation system that serves the side and rear yards on the Owner's Lot, which system shall be owned by the Lot Owner. As part of its maintenance obligation, the Association shall operate and manage the irrigation of each front yard within the Common Interest Community, using the untreated water furnished to each Lot Owner.

Subject to the provisions hereof, the Association shall cause to be made available untreated water for the irrigation of 100% of those portions of each Lot that are not developed and built upon, and each Owner is obligated to irrigate the undeveloped portions of the Owner's Lot (excepting the front yard) with said untreated water. As stated above, the Association will utilize a portion of such water to irrigate the front yard of each Owner's Lot, and the Owner shall irrigate the remainder of the Lot. No outside watering or irrigation shall occur using treated water from the Carbondale municipal water system. The Association shall charge the individual Lot Owners for untreated water used on Lots (including the front yards), as indicated on the water meter for each Lot. Provided, the Association may bill each Lot Owner for a minimum amount of monthly untreated water use (whether or not in fact used) in order to encourage performance of the Owner's irrigation obligation.

The Association shall pay River Valley Ranch Master Association for water usage within the Common Interest Community (excepting the Annexable Property, if annexed to the Common Interest Community), as indicated on a master meter to be located where the Irrigation System enters Block G, such fee to be based on criteria set forth in that certain Water Rights Operating Agreement recorded September 27, 1996 in Book 994 at Page 01 in the Office of the Clerk and Recorder of Garfield County, Colorado.

There will be conservation and use restrictions imposed upon Lot Owners and the Association. Such conservation and use restrictions shall include, without limitation, the following: The hours of irrigation are restricted as follows:

6:00 A.M. to 2:00 P.M. - Open Spaces and odd addresses, and
2:00 P.M. to 10:00 P.M. - Open Spaces and even addresses.

During years of limited availability of untreated water for irrigation purposes, additional conservation measures may be imposed on all untreated water use if necessary.

All Owners hereby assume any risk involved with respect to the Irrigation System and hereby acknowledge that the Association, the Declarant, the Owner of the "Golf Land", and the Town shall not have any responsibility or liability of any kind to any Owner who incurs any loss, damage, cost or expense arising from or relating to said Irrigation System, including, but not limited to, any loss or damage caused by flooding or the failure to deliver water. In accordance with the foregoing, such Owners, on behalf of themselves and their Occupants, successors and assigns, by acceptance of a deed acknowledge their assent to the provisions

hereof, and hereby release Declarant, the Association, the Owner of the “Golf Land”, and the Town, and each of their officers, directors, partners, trustees, members, agents, employees, stockholders, and contractors, from and against any and all obligations, claims, demands, liabilities, costs, expenses, attorneys’ fees, or causes of action of any kind whatsoever, whether arising prior or subsequent to the date hereof, whether known or unknown, based upon, arising out of, or in any manner related to the Irrigation System.

Section 3.33 Restoration of Improvements in the Event of Damage or Destruction. In the event of damage to or destruction of any Improvement on any Lot, the Owner thereof shall cause the damaged or destroyed Improvement to be promptly restored or replaced to its original condition or such other condition as may be approved in writing by the Development Review Committee, or the Owner shall cause the damaged or destroyed Improvement to be promptly demolished and the Lot to be suitably landscaped, subject to the approval of the Development Review Committee, so as to present a pleasing and attractive appearance. Such Improvements shall be repaired, restored or otherwise demolished and suitably landscaped within such reasonable time frame as may be established by the Development Review Committee.

Section 3.34 Leases. All Leases of residences on Lots shall be in writing and shall contain the following terms and conditions:

(a) The Lease term shall not be less than 3 months, except for one shorter tenancy per calendar year which shall be permitted, and the Lease must cover the entire Lot (i.e. no Leases of bedrooms alone or otherwise covering less than all of the Lot shall be permitted).

(b) All Leases shall be subject to any rental rate restrictions established by the Executive Board of the Association.

(c) All Leases shall provide (i) that the terms of the Lease and the tenant’s (Occupant’s) use of the Lot shall be subject in all respects to the provisions of this Declaration, and the Articles, the Bylaws, and the Rules and Regulations, and the Development Standards, (ii) that the Occupant has received and reviewed copies of said documents, and (iii) that any failure by the Occupant to comply with any of the aforesaid documents, in any respect, shall be a default by Occupant under the Lease and a default by Occupant and Owner under said documents which may be enforced against Occupant and/or Owner by the Executive Board.

(d) Without limiting the generality of the foregoing, each Lease shall contain a summary of (i) the maximum number of persons that may occupy a residence, as set forth in Section 3.4 hereof, (ii) the rules regarding permitted animals, as set forth in Section 3.17 hereof, and (iii) the rules regarding storage of sporting equipment, as set forth in Section 3.14 hereof.

(e) Each Owner shall notify the Association immediately upon the leasing of his Lot, and shall provide the Association with a copy of the Lease and with the name and mailing address of the Occupant and the mailing address (if changed) of the Owner.

(f) Each Owner who leases a Lot shall be responsible for assuring compliance by the Occupant with all of the provisions of this Declaration, the Articles,

the Bylaws, the Rules and Regulations, and the Development Standards, and shall be jointly and severally responsible with the Occupant for any violations thereof by the Occupant.

(g) Each Lease shall expressly provide that the Association (via the Executive Board) shall have the right to give the Occupant written notice that the Occupant is in violation of one or more of the documents listed in subsection (f) above, which notice shall specify a period of time (at least 5 days) in which the Occupant may cure the violation.

Section 3.35 Right of Entry. During reasonable hours and upon reasonable written notice to the Owner or Occupant of a Lot any member of the Development Review Committee, any member of the Executive Board, and any authorized representative of either of them, shall have the right to enter upon and inspect any Lot and the Improvements thereon, except for the interior portions of any occupied residence, for the purpose of ascertaining whether or not the provisions of the Declaration and of the Development Standards have been or are being complied with and such individuals shall not be deemed guilty of trespass by reason of such entry.

Section 3.36 Damage by Owners During Construction. Each Owner is responsible for any damage caused to roads, streets, ditches, fences, trails, natural drainage courses, utilities, Common Areas, or to other Lots, Improvements thereon, during the construction or alteration of Improvements upon the Owner's Lot, including without limitation damage caused by any construction vehicles using the roads or streets within the Common Areas. Damage shall include any degradation in the appearance or condition of such Common Areas or other Lots or Improvements. The responsible Owner shall promptly repair and clean up any such damage, at its sole expense. Each Owner shall also be responsible for any damage caused by utility cuts in roads, washouts and runoff damage caused by failure to properly install culverts, and to promptly repair any such damage. If the Owner fails to repair any such damage within 10 days following receipt of a written notice from the Executive Board requesting the same, the Executive Board shall have the right to perform such repairs on behalf of the Owner, and to levy a Reimbursement Assessment upon the Owner and its Lot to recover the costs thereof.

Section 3.37 Restrictions on Resubdivision, Property Restrictions, and Rezoning. Except as expressly permitted in this Declaration, (i) no Lot shall ever be further subdivided by an Owner into smaller lots or parcels, (ii) no portion less than all of any such Lot, nor any easement or divided interest therein, shall be conveyed, transferred or encumbered by the Owner, and (iii) no Lot may be combined with any other Lot nor the boundary lines adjusted between any two Lots.

(a) Declarant reserves the right to subdivide a Lot, or to subdivide a duplex Lot, or to combine two (2) Lots owned by Declarant, or to adjust or remove boundary lines between Lots owned by Declarant, provided any necessary Town approvals are obtained, all Declaration and Plat amendments required by the Act and/or local land use laws are prepared, executed and Recorded, and the necessary reallocation of Allocated Interests of the Owners is accomplished. The specific requirements for subdividing a duplex Lot are set forth in subsection (b) below. In the case of the subdivision of a duplex Lot into two (2) Lots, each Lot created thereby shall constitute a Lot for purposes of reallocation of Common Expense liability and voting interests. In the case

of the combination of two (2) Lots, such interests shall be reallocated to reflect the fact that two (2) Lots have been eliminated and one (1) Lot created in its place. All costs relating to the foregoing activities shall be the sole responsibility and obligation of Declarant. Declarant's rights under this subsection (a) shall terminate upon the first to occur of (i) the date which is 30 years after the Recording of this Declaration, or (ii) Declarant's relinquishing of these rights by a Recorded instrument.

(b) Subdivision of a duplex Lot (the "Duplex") shall be accomplished by the recording of a Plat Amendment signed by the Town and the Declarant that subdivides the Lot into two Lots along the center of the common wall in the Duplex, and a Duplex Declaration signed by the Declarant (and approved by any lienholder of record) which (i) establishes the Lot designations for the two new Lots created by the Plat Amendment (*e.g.*, Lots 5A and 5B, Block G) and amends the Allocated Interests to reflect the creation of two Lots in place of one Lot, (ii) establishes the respective rights and obligations of the Lot Owners with respect to the insuring, use, maintenance, repair and replacement of common structural elements and utility systems of the Duplex and of exterior surfaces, yard areas and landscaping, (iii) provides for a reasonable allocation between the Lot Owners of the common costs and expenses associated with the Duplex, and (iv) establishes a procedure for billing and paying such common expenses and for collecting the same (including interest) from a delinquent Owner. Master Association Regular and Special Assessments shall, of course, be allocated in accordance with the Allocated Interests.

(c) The boundaries between adjoining Lots may be adjusted by the Owner(s) thereof other than Declarant, if (i) the written consent of the Executive Board is first obtained, in the sole discretion of the Executive Board, (ii) the written consent of the River Valley Ranch Master Association is obtained, (iii) all applicable regulations and codes are complied with and all necessary Town approvals are obtained, (iv) the proposed adjustment does not violate the terms of any document evidencing a security interest in the subject Lots, and (v) all Declaration and Plat amendments required by the Act and/or local land use laws are prepared, executed and recorded. All costs relating to such activity (including the attorneys' fees and costs incurred by the Executive Board in reviewing and acting upon the matter) shall be the sole responsibility and obligation of the Owner(s) applying for the same.

(d) No Owner of a Lot shall grant or convey any easement rights affecting any portion of the Lot without the prior written consent of the Executive Board.

(e) No further covenants, conditions, restrictions or easements shall be recorded by any Owner (except Declarant in the exercise of its reserved rights) or other Person against any Lot without the provisions thereof having been first approved in writing by the Executive Board for consistency with the Declaration and the general plan of development for the Common Interest Community. Any covenants, conditions, restrictions or easements recorded without such approvals being evidenced thereon shall be null and void. This provision does not apply to Mortgages.

(f) No application for rezoning of any Lot, and no application for any variance or special use permit for any Lot (except as may be required by a Plat note), shall be filed with any governmental authority by any Owner (except Declarant in the exercise of any reserved rights) unless the proposed use of the Lot has first been

approved in writing by the Executive Board and the proposed use otherwise complies with the Declaration.

Section 3.38 Health, Safety and Welfare. In the event any uses, activities, and facilities within the Common Interest Community are deemed by the Executive Board to be an unreasonable annoyance or nuisance, or to adversely affect the health, safety or welfare of Owners or Occupants, the Executive Board may amend the Rules and Regulations in order to appropriately restrict and regulate such uses, activities or facilities within the Common Interest Community. Such rules shall be consistent with the purposes and provisions of this Declaration.

Section 3.39 Municipal Water Service. Municipal water service is provided by the Town. Municipal water shall not be used for outdoor irrigation uses. Only untreated, non-potable water through the secondary Irrigation System shall be used for irrigation consistent with the provisions of Section 3.32. This provision shall not be subject to amendment by Declarant, its assigns, the Association, or the Owners without the prior written consent of the Town.

Section 3.40 Rules and Regulations; Variances. The Executive Board may implement the restrictions set forth in this Article 3, or otherwise restrict and regulate the use and occupancy of the Common Interest Community and the Lots by reasonable Rules and Regulations of general application adopted by the Executive Board from time to time. The Executive Board may, in its sole discretion and in extenuating circumstances, grant variances from any of the restrictions set forth in this Article 3 (excepting any such restrictions with respect to which the Development Review Committee has the authority to grant variances under Section 4.17 below), if the Executive Board determines, in its discretion, (a) either (i) that a particular restriction creates a substantial hardship or burden on an Owner or Occupant, which hardship or burden was not caused by said Owner or Occupant, or (ii) that a change of circumstances since the recordation of this Declaration has rendered such restriction obsolete, and (b) that the activity permitted under the variance, in the judgment of the Executive Board, will not have any material adverse effect on the Owners and Occupants of the Common Interest Community (including neighboring Lots) and of River Valley Ranch and is consistent with the high quality of living intended to be promoted hereby throughout the Common Interest Community.

When an Owner applies for a variance, the Board must give at least ten (10) days advance written notice of the variance hearing, and of the nature of the variance requested, postage prepaid, by certified mail, return receipt requested, to all Owners of Lots that are situated within a radius of two hundred (200) feet from the center of the Building Envelope for which the variance is sought, at the current address for such Owners reflected in the Master Association files. The applying Owner must provide the Committee with an accurate list of the Owners to be so notified. If the foregoing notice requirements are complied with, it is not necessary that the Owners actually receive the notice that is mailed to them. In addition, at least 10 days advance written notice of the variance hearing must also be given to the River Valley Ranch Master Association.

No variance shall conflict with ordinances or regulations of the Town. If a variance from Town laws or regulations is also required in connection with a matter for which a variance is desired hereunder, it shall be the Owner's responsibility to obtain such Town variance before submitting a variance application to the Executive Board.

Section 3.41 **Declarant Activities.** Nothing contained in this Declaration is intended or shall be construed to prevent or to restrict in any way Declarant’s right and ability to develop, improve, maintain, repair, market, sell, lease or dispose of the Lots within the Common Interest Community, including the right to construct Improvements and install signs thereon, all in the complete discretion of Declarant.

Section 3.42 **Limitation of Number of Bedrooms/Persons per Bedroom.** No residence constructed on any Lot shall have more than the maximum number of bedrooms designated for that specific Lot as set forth on the Bedroom Chart attached hereto as Exhibit C. No more than two persons shall regularly sleep in any one bedroom at any time, including adults, children and infants.

ARTICLE 4.

DEVELOPMENT REVIEW COMMITTEE

Section 4.1 **Establishment of Development Review Committee.** The Association shall have a Development Review Committee, which shall consist of a minimum of three (3) members, one of whom must at all times be an Owner of a Lot in the Common Interest Community. Each of the remaining members shall either be an Owner or Occupant of a Lot in the Common Interest Community, or a local architect, landscape architect or engineer, or a member of a local affordable housing advocacy organization. All members of the Development Review Committee shall be appointed and removed from time to time by the Executive Board in its discretion. A member may be removed by the Executive Board at any time upon written notice, without cause. Subject to the 3-member minimum, the Executive Board may increase or decrease the size of the Development Review Committee from time to time in its discretion. The Executive Board may hire or appoint a secretary for the Development Review Committee, and shall provide appropriate compensation for any such secretarial services.

Section 4.2 **Establishment of Subcommittees.** The Development Review Committee shall have the right but never the obligation to establish one or more subcommittees to perform one or more of the functions of the Development Review Committee. For purposes of this Declaration, all references to the Development Review Committee shall also refer to any subcommittee established by the Development Review Committee. The procedures for establishment of subcommittees, the rights and duties thereof, and the limitations thereon may be established and adopted by the Executive Board from time to time, in its discretion.

Section 4.3 **Meetings and Action of Committee.** The Development Review Committee shall meet from time to time as necessary to perform its duties hereunder. The Development Review Committee may from time to time, by resolution in writing adopted by a majority of the members, designate a Committee Representative (who may but need not be one of its members) to take any action or perform any duties for or on behalf of the Development Review Committee, except the granting of approval to any Improvements or Builders and the granting of variances. The action of such Committee Representative within the authority of such Committee Representative shall constitute the action of the Development Review Committee. A majority of the members of the Development Review Committee shall constitute a quorum of the Committee. Actions of the Committee may be taken (without a meeting) by the written consent of a majority of the members thereof, or at a meeting at which a quorum is

present in person or by proxy, by the vote of a majority of such members constituting the quorum, but in no event less than two (2) members.

Section 4.4 **Records of Actions.** The Development Review Committee shall report in writing to the Executive Board all final actions of the Development Review Committee, and the Executive Board shall keep a permanent record of such reported actions.

Section 4.5 **Development Standards.** The Executive Board has established an initial set of rules, procedures, standards, guidelines and requirements, including without limitation architectural, design and development standards and guidelines, which shall govern the review and approval or disapproval of proposed Improvements within the Common Interest Community and other matters provided for therein (the “ Development Standards”). The Executive Board, following consultation with the Development Review Committee, may make such amendments and additions to the Development Standards as the Executive Board deems necessary or appropriate from time to time to accomplish the purposes of (and as are not in conflict with) this Declaration and to ensure the orderly and attractive development of the Common Interest Community. The Development Standards are hereby incorporated herein and shall be deemed to be a part of this Declaration and shall be binding on the Common Interest Community, and on all Lot Owners, Occupants, Members or other Persons as if expressly set forth herein. A copy of the current Development Standards shall, at all times, be a part of the Association’s records. The Development Review Committee, in its sole discretion, shall have the right and authority to determine the existence of any violation of the Development Standards or of any approvals granted or other determinations made by, or other requirements of, the Development Review Committee.

The Development Standards shall contain the requirement that every residential structure within the Common Interest Community must achieve the minimum points necessary to be certified under the 1995 Colorado Green Certification program presently in effect, as administered by the National Home Builders Association. If this program ceases to exist, the Development Review Committee shall amend the Development Standards so as to incorporate and adopt a substitute program that is as similar as possible to said existing 1995 Colorado Green Certification program.

Section 4.6 **Design Review Fee.** The Executive Board, from time to time, shall establish an application fee for applications to the Development Review Committee for the original construction of a residential improvement, and shall further establish a separate application fee for each subsequent request for approval of an improvement on a Lot including remodels, renovations or other alterations of the original approval, except that no fee shall be charged for any proposed alteration or addition to an approved landscaping plan. The design review fee schedule shall be set forth in the Development Standards. The applicable fee must accompany each request for approval of any proposed Improvement. The Development Review Committee shall not take any action on a request for approval until all required fees are paid in connection therewith.

Section 4.7 **Pre-submission Conference.** Every Owner proposing to make Improvements to its Lot shall be obligated to schedule a pre-submission conference with the Development Review Committee to discuss the general nature and scope of the contemplated Improvements and the Committee’s requirements and procedures in connection therewith prior to the time the Owner has expended or committed to expend any money on architectural or

other design fees. The Development Review Committee shall give priority to the scheduling of such pre-submission conferences.

Section 4.8 **Submission of Plans, Specifications and Data.** Prior to commencement of work to accomplish any proposed Improvements, the Owner proposing to make such Improvements shall submit to the Development Review Committee such descriptions, surveys, plot plans, drainage plans, elevation drawings, construction plans, landscaping plans, specifications, and samples of materials and colors as the Development Review Committee shall reasonably request showing among other things the nature, kind, shape, height, width, color, materials, and location of the proposed Improvements. All submissions shall conform to and be in accordance with the Development Standards established pursuant to Section 4.5. The Owner shall be entitled to receive a receipt for the same from the Development Review Committee or its authorized agent. The Development Review Committee may require submission of additional plans, specifications, or other information prior to approving or disapproving the proposed Improvements. Until receipt by the Development Review Committee of all required information and materials in connection with the proposed Improvements, the Development Review Committee may postpone review of the application.

Section 4.9 **Criteria for Approval or Disapproval.** The Development Review Committee shall approve any proposed Improvements only if it determines in its reasonable discretion that the Development Standards have been complied with; that the proposed Improvements will not be detrimental to the value or enjoyment of the surrounding areas in the Common Interest Community or in the remainder of the P.U.D. for River Valley Ranch; that the siting, design and appearance of the proposed Improvements will be in harmony with the surrounding areas in the Common Interest Community; that the proposed Improvements will enhance the quality, wholesomeness, and attractiveness of the Common Interest Community and the remainder of the P.U.D. for River Valley Ranch, and the enjoyment of the Common Interest Community by Lot Owners; and that the upkeep and maintenance of the proposed Improvements will not become a burden on the Association. The Development Review Committee may condition its approval of any proposed Improvements upon the making of such changes therein as the Development Review Committee may deem appropriate, and may require that additional landscaping be performed on the subject Lot.

Furthermore, the approval by the Committee of any Improvement shall in no event imply or require that such approval will be granted again in the future for the same or a similar Improvement, and the Committee shall have reasonable discretion, consistent with the standards and criteria contained herein and in the Development Standards, to grant or deny such approval in each instance on the merits of the particular application or proposal and considering the circumstances surrounding the same.

Section 4.10 **Decision of Committee.** Any decision of the Development Review Committee shall be made within forty-five (45) days after receipt by the Development Review Committee of all materials and information required by the Development Review Committee, unless such time period is extended by mutual written agreement. The decision shall be in writing and if the decision is not to approve the proposed Improvements, the reasons therefor shall be stated. The decision of the Development Review Committee shall be promptly transmitted to the Owner at the address furnished by the Owner to the Development Review Committee.

Section 4.11 Failure of Committee to Act on Plans. Any written request for approval of proposed Improvements shall be deemed approved, unless written disapproval or a request for additional information or materials is transmitted to the Owner by the Development Review Committee within sixty (60) days after the date of receipt by the Development Review Committee of all required materials and information, unless such time period is extended by mutual written agreement.

Section 4.12 Damage and Performance Deposit by Owner. Before the Development Review Committee grants approval to an Owner for proposed Improvements to a Lot, the Owner may be required to deposit with the Committee a Damage and Performance Deposit, depending on the extent and nature of the improvements, in an amount to be determined by the Committee in its reasonable discretion based upon the nature and scope of the proposed Improvements, in order to guarantee (a) the completion of the proposed Improvements in accordance with the Committee's approval thereof and the Development Standards, and (b) the repair of any on-site or off-site damage caused by the Owner or its contractors or agents during the construction period. The Committee shall give the Owner written notice of (i) any violation of the approvals or the Development Standards, or (ii) any damage that needs to be repaired, and in the event the Owner fails to cure the violation or repair the damage within 30 days following the date such notice is given, the Committee shall have the right to perform such cure or repair on behalf of the Owner and to apply so much of the Damage and Performance Deposit as may be needed to pay for the cost thereof. In the event the Damage and Performance Deposit, if any, is inadequate to pay such costs, the Committee shall make written demand to the Owner for such costs. If not paid within 30 days following delivery of such written demand to the Owner, the Executive Board shall levy a Reimbursement Assessment against such Owner and the Owner's Lot. The Damage and Performance Deposit, or any balance remaining if the Committee has used all or a portion thereof as above permitted, shall be refunded to the Owner no later than 30 days following the issuance to the Owner by the Development Review Committee of a Certificate of Compliance in accordance with the provisions of Section 4.15 below.

Section 4.13 Prosecution and Completion of Work After Approval. Following the approval of any proposed Improvements by the Development Review Committee, the proposed Improvements shall be completed by the Lot Owner: (a) as promptly and diligently as possible but in no event in excess of the time periods set forth below; (b) in compliance with the Development Standards and with all applicable laws, regulations and codes, (c) in strict conformance with all plans and specifications and other materials presented to and approved by the Development Review Committee; and (d) in accordance with any and all conditions imposed by the Development Review Committee. All Improvements approved by the Development Review Committee shall be completed, including issuance of a Certificate of Compliance and the removal of all construction equipment, materials and debris (a) within 24 months from the date of approval of such Improvements by the Development Review Committee, or (b) within such other time period as the Development Review Committee may prescribe. Provided, however, that any and all landscaping and/or gardening approved by the Development Review Committee which is related to the initial construction of a residence on a Lot shall be completed no later than 9 months immediately following the issuance of the Certificate of Compliance for such residence. Failure to comply with the terms and conditions of this Section 4.13 shall constitute noncompliance with the terms and provisions of this Declaration and the Development Review Committee and/or the Executive Board shall have the right to invoke all rights and remedies provided to them hereunder, including but not limited to, the imposition of fines and penalties.

Section 4.14 Right to Inspect. Any member or authorized consultant of the Development Review Committee or of the Executive Board, or any authorized officer, employee or agent of the Association, may (but shall not be obligated to) at any reasonable time enter, without being deemed guilty of trespass, upon any Lot after reasonable notice to the Lot Owner, in order to inspect Improvements constructed or being constructed on such Lot, to ascertain whether such Improvements have been or are being built or changed in compliance with the Development Standards, the approvals granted by the Development Review Committee, and this Declaration.

Section 4.15 Certificate of Compliance; Inspection of Work; Correction of Defects.

(a) Upon the completion of any Improvements (except the related landscaping) for which plans and specifications have been approved by the Development Review Committee, the Owner shall submit to the Committee a written Application for a Certificate of Compliance, on a form to be provided by the Committee, which Application shall certify that the Improvements have been completed in accordance with the plans, specifications and conditions approved by the Committee and with the Development Standards. Until receipt of such Application, the Committee shall not be deemed to have any notice regarding completion of the Improvements.

(b) Within twenty-one (21) days following receipt of the Application, the Development Review Committee or its duly authorized representative shall inspect the Improvements. If the Committee finds that the Improvements have not been completed in accordance with the plans, specifications and conditions approved by the Committee and/or with the Development Standards, it shall notify the Lot Owner in writing of such noncompliance within said twenty-one (21) day period, specifying the particulars of noncompliance, and shall request the Owner to remedy the same.

(c) If upon the expiration of thirty (30) days from the date of such notification of non-compliance the Lot Owner shall have failed to remedy such non-compliance, the Development Review Committee shall notify the Executive Board in writing of such failure. Upon Notice and Hearing, as provided in the Bylaws, the Executive Board shall determine whether there is a noncompliance and, if so, the nature thereof and the estimated cost of correcting or removing the same. If a noncompliance exists, the Owner shall remedy or remove the same within a period of not more than thirty (30) days from the date of the announcement of the Executive Board ruling. If the Owner does not comply with the Executive Board ruling within such period, the Board, at its option, may either remove the noncomplying Improvement or remedy the noncompliance, and the Owner shall reimburse the Association, upon demand, for all expenses, including interest on monies expended and attorneys' fees, incurred in connection therewith. If such expenses are not repaid by the Owner to the Association within 30 days following delivery of a written demand therefor to the Owner, the Executive Board shall levy a Reimbursement Assessment against such Owner and the Owner's Lot.

(d) When the Development Review Committee is satisfied that the Improvements have been completed in accordance with the plans, specifications and conditions approved by the Committee and with the Development Standards, it shall issue to the Owner a Certificate of Compliance with respect to said Improvements. No

newly-constructed residence on a Lot shall be occupied until a Certificate of Compliance has been issued therefor and a Certificate of Occupancy as required by the Town of Carbondale has been issued therefor.

Section 4.16 Improvements Must Conform to Approvals. No building, fence, wall, structure, landscaping (except as provided in Section 3.25) or other Improvement of whatever type shall be commenced, constructed, erected, placed, installed, located, maintained or removed within the Common Interest Community, nor shall there be any additions or changes to the exterior of any residence or other structure or Improvement upon a Lot or the landscaping, grading or drainage thereof, including without limitation, the painting (other than painting with the same color and type of paint as previously existed) of exterior walls, patio covers and fences, except in compliance with plans and specifications therefor which have been submitted to and approved by the Development Review Committee in accordance with the Development Standards.

Section 4.17 Committee Power to Grant Variances. The Development Review Committee may grant variances from any of the restrictions set forth in this Declaration or the Development Standards pertaining to proposed Improvements and Builders and the criteria therefor, including restrictions upon height, size, floor area, setbacks, location or placement of structures, or similar restrictions, when (i) unique circumstances not created by the Lot Owner, such as topography, natural obstructions, or aesthetic or environmental considerations would otherwise result in extreme hardship or burden which is not suffered by other similarly-situated Lots, or (ii) when a change of circumstances since the recording of this Declaration has rendered such restriction obsolete, and (iii) in either case, when the Development Review Committee determines that the activity allowed by the variance will not have any material adverse effect on the Owners and Occupants of the Common Interest Community (including neighboring Lots) and of River Valley Ranch and is consistent with the high quality of living intended to be promoted hereby throughout the Common Interest Community. When an Owner applies for a variance, the Owner must give at least 10 days advance written notice of the variance hearing, and of the nature of the variance requested, postage prepaid, by certified mail, return receipt requested, to all Owners of Lots at the current addresses for such Owners reflected in the Association files, and must provide the Committee with a certificate of mailing which lists the names and addresses of such Owners. If the Owner complies with the foregoing notice requirements, it is not necessary that the Owners actually receive the notice that is mailed to them. In addition, at least 10 days advance written notice of the variance hearing must also be given to the River Valley Ranch Master Association.

All variances that are granted by the Development Review Committee must be evidenced in writing, must specify the Lot for which the variance is granted and the unique circumstances justifying the variance, and must be signed by at least a majority of the members of the Committee. If any such variance is granted, no violation of the covenants, conditions and restrictions contained in this Declaration or the Development Standards shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of such a variance shall not operate to waive any of the terms and provisions of this Declaration or the Development Standards for any purpose except as to the particular property and particular provision hereof covered by the variance. A copy of each variance request and approval, or denial, will be kept on file by the Association.

The granting of a variance in a particular instance shall in no event imply or require that such a variance will be granted again in the future in a similar situation, and the

Committee shall have reasonable discretion, consistent with the standards and criteria contained herein and in the Development Standards, to grant or deny a variance in each instance on the merits of the particular application and considering the circumstances surrounding the same.

If a variance from Town laws or regulations is also required in connection with a matter for which a variance is desired hereunder, it shall be the Owner's responsibility to obtain such Town variance before submitting a variance application to the Development Review Committee.

Section 4.18 Nonliability for Approval or Disapproval of Plans and Specifications or for Issuance of a Certificate of Compliance. The Development Review Committee shall approve plans and specifications only with regard to style, exterior design, appearance, location, and consistency with the Development Standards. The Development Review Committee shall not approve plans and specifications with respect to engineering design or for compliance with zoning, building ordinances, environmental laws, or any other applicable laws or regulations. By its approval of any such plans and specifications, neither the Development Review Committee, the members thereof, the Association, any Member, the Executive Board nor the Declarant assumes any liability or responsibility with respect to engineering design or for compliance with zoning, building ordinances, environmental laws, or any other applicable laws or regulations, or for any defect in any Improvement constructed from such plans and specifications. Neither the Development Review Committee, any member thereof, the Association, the Executive Board nor the Declarant shall be liable to any Lot Owner, Occupant or other Person for any damage, loss or prejudice suffered or claimed on account of (a) the approval or disapproval of any plans, drawings or specifications, whether or not defective, (b) the construction or performance of any work, whether or not pursuant to approved plans, drawings and specifications, (c) the issuance of a Certificate of Compliance for any Improvements, or (d) the development, or manner of development of any property within the Common Interest Community. The approval of plans and specifications by the Development Review Committee, and/or the issuance of a Certificate of Compliance by the Development Review Committee, shall not under any circumstances constitute or be deemed to be a representation or warranty that the plans, specifications or completed Improvements comply with applicable laws, ordinances or regulations, including but not limited to, zoning ordinances and building codes and environmental laws.

Section 4.19 Reconstruction of Common Areas. The reconstruction by the Association after destruction by casualty or otherwise of any Common Areas or Improvements thereon which is accomplished in substantial compliance with "as built" plans for such Common Areas or Improvements shall not require compliance with the provisions of this Article 4 or the Development Standards.

Section 4.20 Compensation of Committee Members. In the discretion of the Executive Board, and subject to the Association's approved budget, all or some members of the Development Review Committee may be entitled to reasonable compensation from the Association for services rendered, together with reimbursement for reasonable expenses incurred by them in the performance of their duties hereunder. Such compensation shall be set by the Executive Board from time to time.

Section 4.21 **Enforcement.** The requirements and provisions of this Article 4 and/or of the Development Standards shall be enforceable in accordance with the rights and procedures set forth in Section 13.4 of this Declaration.

ARTICLE 5

COMMON AREAS

Section 5.1 **Use and Enjoyment of Common Areas.** Except as otherwise provided in this Declaration, or in any Supplemental Declaration, each Owner shall have the non-exclusive right to use and enjoy the Common Areas in common with all other Owners (a) for all purposes for which such Common Areas were established, and (b) as required for purposes of access and ingress to and egress from (and use, occupancy and enjoyment of) any Lot owned by the Owner or Common Areas available for the Owner's use. This right to use and enjoy the Common Areas shall extend to each Owner, Occupant, and the family members, guests, invitees and licensees of each Owner, and shall be appurtenant to each Lot, subject at all times to the provisions of this Declaration (including Declarant's reserved rights hereunder), any applicable Supplemental Declaration, the Articles, Bylaws, and Rules and Regulations. No Owner or Occupant shall place any structure whatsoever upon the Common Areas, nor shall any Owner or Occupant engage in any activity which will temporarily or permanently impair free and unobstructed access to all parts of the Common Areas by all Owners.

Section 5.2 **Association May Regulate Use of Common Areas.** The Association, acting through the Executive Board, shall have the right and authority to regulate the use of the Common Areas by the promulgation, enforcement and interpretation from time to time of such Rules and Regulations relating thereto as the Association considers necessary or appropriate for the protection and preservation of the Common Areas and the enhancement of the use and enjoyment thereof by the Owners and Occupants.

Section 5.3 **Association to Maintain and Improve Common Areas.** The Association, its agents and employees, shall maintain, snowplow as necessary, and otherwise manage the Common Areas, including, but not limited to, any Improvements, landscaping, paths, trails, parking areas, drives, postal kiosks, and recreational and other facilities located thereon. The Association shall construct, alter and remove such Improvements and landscaping upon the Common Areas as the Association in its discretion considers necessary, desirable or appropriate from time to time, and shall do all such other and further acts which the Executive Board deems necessary or appropriate to preserve, protect and enhance the Common Areas and the beauty thereof in accordance with the general objectives for the Common Interest Community reflected in this Declaration .

Section 5.4 **No Partition of Common Areas.** No Owner or other Person shall have any right to partition or to seek the partition of the Common Areas or any part thereof.

Section 5.5 **Owner Liability for Owner or Occupant Damage to Common Areas.** Each Owner shall be liable to the Association for any damage to Common Areas or for any expense, loss or liability suffered or incurred by the Association in connection with the Common Areas arising from (a) the negligence or willful misconduct of such Owner or of any Occupant, agent, employee, family member, guest or invitee of such Owner, or (b) any violation by such Owner or any Occupant, agent, employee, family member, guest or invitee of

such Owner of any law, regulation, or code, including without limitation any environmental law, or of any provisions of this Declaration, or the Rules and Regulations relating to the Common Areas. Each Owner shall indemnify, defend and hold the Association harmless from any loss, damage, expense or liability arising from the circumstances described in subsections (a) or (b) immediately above. The Association shall have the power to levy and collect a Reimbursement Assessment against a Lot Owner to recover the costs, expenses, damages, losses or liabilities incurred by the Association as a consequence of any such negligence, willful misconduct or violations.

Section 5.6 **Damage or Destruction to Common Areas.** In the event of damage to or destruction of the Common Areas, including Improvements thereon, by fire or other casualty, the Association shall repair or replace the same in accordance with the provisions of Section 9.17 below. Repair, reconstruction, or replacement of Common Areas shall be accomplished under such contracting and bidding procedures as the Association shall determine are appropriate. If insurance proceeds available to the Association on account of damage or destruction exceed the cost of repair, reconstruction, and replacement, the Association may use the same for future maintenance, repair, improvement, and operation of Common Areas or for any other use deemed appropriate by the Executive Board.

Section 5.7 **Title to Common Areas Upon Dissolution of Association.** In the event of dissolution of the Association, the Common Areas shall, to the extent permitted by law and reasonably possible, be conveyed or transferred to an appropriate public, governmental or quasi-governmental agency or organization or to a nonprofit corporation, association, trust, or other organization, to be used, in any such event, for the Common benefit of Owners for the purposes for which the Common Areas were held by the Association. If the foregoing is not possible, the Common Areas shall be sold or disposed of and the proceeds from the sale or disposition shall be distributed to Owners in proportion to each Owner's Allocated Interest in the common Expenses of the Association.

Section 5.8 **Mechanic's Liens on Common Areas.** Declarant shall be responsible for the release of mechanics' liens filed with respect to Common Areas, or any part thereof, if such liens arise from labor performed or materials furnished at the instance of Declarant, its agents, contractors or subcontractors. Likewise, the Association shall be responsible for the release of mechanics' liens filed with respect to Common Areas, or any part thereof, if such liens arise from labor performed or materials furnished at the instance of the Association, its directors, officers, agents, contractors or subcontractors. No labor performed or materials furnished with respect to a Lot at the instance of the Lot Owner shall be the basis for filing a lien against the Common Areas. No labor performed or materials furnished with respect to a Common Area at the instance of the Executive Board shall be the basis for filing a lien against any Lot.

Section 5.9 **Use of Resident Village Area Recreational Amenities.** Lot Owners and Occupants in the Thompson Corner Common Interest Community shall be permitted to use the recreational amenities in the Resident Village Area as designated on the Plat upon payment to the River Valley Ranch Master Association of such fees as may be established from time to time by the Executive Board of the Master Association, which fees shall not exceed the amount of the total Regular Assessments being paid to the Master Association from time to time by Lot and Unit Owners in the River Valley Ranch Common Interest Community. Such user rights shall also be subject to such Rules and Regulations as may be promulgated from time to time by the Master Association Executive Board.

Section 5.10 Users of Resident Village Area: Assumption of Risk, Indemnification, Waiver and Release. Every user of the recreational amenities in the Resident Village Area shall be deemed to have assumed all risks associated with such use, including the risk of personal injury, death, and property damage, theft, or loss, and to have agreed to indemnify, defend and hold harmless the Declarant and the River Valley Ranch Master Association and their respective partners, directors, officers, employees, agents, successors and assigns from and against any and all liability or claims therefor for property damage, theft or loss, personal injury, wrongful death, and/or negligence arising from the use of the recreational amenities in the Resident Village Area, and to have waived and released any and all claims that such user may hereafter have in connection therewith. Furthermore, every user of said recreational amenities, as a condition to enjoying such user rights, shall be required to sign such indemnification, waiver and release of liability forms as may be provided from time to time by the Executive Board of the Master Association.

Section 5.11 Right to Convert Parks into Parking Areas. Notwithstanding any other provision to the contrary, pursuant to a Subdivision Improvements Agreement and Easement Deed between the Declarant and the Town recorded in Book 993 at Page 851 and in Book 994 at Page 118, respectively, of the Garfield County, Colorado records, the Town retains the right to require the Declarant and/or Thompson Corner Homeowners Association to convert one or more Common Area parks within the Thompson Corner Common Interest Community into additional parking for Owners and Occupants of Thompson Corner Common Interest Community. The costs of any such conversion shall be borne by Thompson Corner Homeowners Association.

ARTICLE 6

DECLARANT'S RESERVED RIGHTS

Declarant hereby expressly reserves to itself and its successors and assigns the following described rights, which include development rights and special Declarant rights, any one or more of which rights may be exercised, in the sole and absolute discretion of Declarant, at any time and from time to time during the period commencing upon the recording of this Declaration in the County and ending on the date of termination of such rights established under Section 6.12 below. It is expressly understood that Declarant shall not be obligated to exercise any of these reserved rights.

Except as limited by this Article 6, such reserved rights may be exercised upon or in connection with all or any portion of the Thompson Corner Common Interest Community, including the Annexable Property if and when it is annexed to the Common Interest Community. Such rights may be exercised with respect to different parcels of said real estate at different times, and in connection therewith Declarant hereby states that (i) no assurances are made regarding the boundaries of said different parcels or with respect to the order in which such parcels may be subjected to the exercise of these reserved rights, and (ii) if a particular reserved right is exercised in any portion of the real estate subject to that reserved right, that reserved right is not required to be exercised in all or any portion of the remainder of that real estate.

The reserved rights hereinafter set forth may not be amended, modified, terminated or otherwise altered in any way without the express prior written consent of Declarant. All conveyances of Lots and other portions of the Common Interest Community hereafter made,

whether by Declarant or otherwise, shall be deemed and construed to reserve to Declarant and/or to grant to Declarant all of the rights reserved by and to Declarant in this Article 6, even though no specific reference to such rights appears in the conveyancing instruments. Nothing in this Article 6 shall limit or impair any other rights granted or reserved to Declarant by other provisions of this Declaration or of any Supplemental Declaration.

The following rights are hereby reserved to Declarant and its successors and assigns:

Section 6.1 **Completion of Improvements.** The right throughout the Common Interest Community to complete Improvements indicated on the Plat and on any Supplemental Plat. Furthermore, the right to construct and complete Improvements required by the terms of the Subdivision Improvements Agreement recorded September 27, 1996 in Book 993 at Page 851 in the Office of the Clerk and Recorder of Garfield County, Colorado, and by the terms of any other Subdivision Improvements Agreements that may hereafter be executed by Declarant in connection with annexations to the Common Interest Community, as said Agreement or Agreements may be amended from time to time. Furthermore, the right to create, grant and/or use and enjoy additional non-exclusive easements, and to relocate existing platted easements, upon or across any portion of the Common Interest Community except Building Envelopes, as may be reasonably required for the completion by Declarant of the above-described Improvements or the effective exercise by Declarant of any of the other reserved rights described in this Article 6.

Section 6.2 **Sales, Marketing and Management.** The right to construct, locate or operate, and to maintain upon, and to remove from, the Common Areas and/or Lots owned by Declarant, in the discretion of Declarant, and in such number, size and location as may be reasonably required by Declarant in connection with the completion of Improvements, the management of this development, and/or the promotion, marketing, sale or rental of Lots, the following:

- (a) Sales offices, management offices, and/or construction offices, and structures containing or relating to the same. Such offices, to the extent they are not situated on a Lot, are hereby declared to be personal property and shall in any case be removable by Declarant or its successors or assigns promptly upon the Declarant or its successors or assigns ceasing to be a Lot Owner;
- (b) Signs identifying and advertising the Common Interest Community and the Lots therein, or relating to development or construction thereon;
- (c) Model residences constructed or to be constructed on Lots;
- (d) Parking areas and facilities, and lighting, necessary or desirable in the marketing of the Common Interest Community and the Lots to prospective Owners;
- (e) Employees in offices; equipment; vehicles; and marketing and construction materials.

Together with the right to attract, invite or bring prospective purchasers of Lots into the Common Interest Community at all times, and to permit them to use and enjoy the Common Areas.

Section 6.3 **Merger.** The right to merge or consolidate the Common Interest Community with another common interest community of the same form of ownership.

Section 6.4 **Declarant Control of Association.** The right to appoint or remove any Executive Board member or officer of the Association, as more specifically set forth in Section 8.5 below, but only for and during the “Period of Declarant Control of Association” as defined in said Section 8.5.

Section 6.5 **Annexation of Additional Properties.** The right to annex to the Common Interest Community all or any part of the Annexable Property described on attached Exhibit A. Each Owner of a Lot hereunder hereby grants to Declarant the right to annex all or any part of the Annexable Property to the Common Interest Community and to modify such Owner’s Allocated Interests accordingly. Alternatively, Declarant shall have the right and is authorized to develop portions of the Annexable Property and/or to convey portions of the Annexable Property to such third party or parties as Declarant may deem appropriate, prior to and instead of annexing them to the Common Interest Community, whether for purposes consistent with this Declaration or otherwise. Declarant makes no assurances that all or any portion of the Annexable Property will be added to the Common Interest Community and Declarant reserves the right to annex all or any portion of the Annexable Property to the Common Interest Community in any order it deems appropriate in its sole and absolute discretion.

Section 6.6 **Annexation Procedure.** The annexation of additional real property to the Common Interest Community shall be accomplished by the Recording by Declarant with the Clerk and Recorder of Garfield County of a Supplemental Declaration containing a legal description of the land area to be added to the Common Interest Community and amending this Declaration accordingly, together with a Supplemental Plat thereof. The Supplemental Declaration shall assign an identifying number to each new Lot created thereby, and shall reallocate the Allocated Interests of all Lot Owners in the Common Interest Community in accordance with the definition of Allocated Interests contained in this Declaration. In no event shall any annexation increase the number of Lots in the Common Interest Community beyond the 60 Lot maximum stated in the Recitals to this Declaration. The Supplemental Declaration shall also describe any Common Areas thereby created.

The annexation of the Annexable Property may be accomplished by successive Supplemental Declarations, in no particular or pre-established order, and may provide that property annexed thereby (the “Annexed Property”) is phased so that it is made subject to this Declaration at different times. Upon Recording of a Supplemental Declaration, the Annexed Property described therein shall be subject to all of the covenants, conditions, restrictions, limitations, reservations, exceptions, equitable servitudes, and other provisions set forth in this Declaration, except to the extent specifically stated in the Supplemental Declaration or as modified thereby. Any such Supplemental Declaration may impose on the Annexed Property described therein additional covenants, conditions, restrictions, limitations, reservations, exceptions, equitable servitudes, and other provisions than those set forth in this Declaration, taking into account the unique and particular aspects of the Annexed Property covered thereby and of the proposed development thereof. Furthermore, Declarant shall have the right to reserve in such Supplemental Declaration any development rights that Declarant considers necessary or appropriate, provided that such provisions shall not extend the termination date for the exercise of Declarant’s development rights as set forth in Section 6.12 below.

Section 6.7 **Withdrawal Rights and Procedures** The right at any time and from time to time to withdraw from the Common Interest Community (and any annexations thereto) any Declarant-owned Lot or Lots, or Common Areas. Withdrawal shall be accomplished by the recording by Declarant of an amendment to this Declaration or any Supplemental Declaration affected by the withdrawal and an amendment to the Plat or any Supplemental Plat affected by the withdrawal. Upon the recording of such amendments, the withdrawn Lots and/or Common Areas shall no longer be part of the Common Interest Community or subject to this Declaration or any applicable Supplemental Declaration in any way.

Each Declarant-owned Lot, and each Declarant-owned Common Area, is hereby described and declared to be a separate portion of real estate that is subject to this right of withdrawal, and Declarant expressly reserves the right to withdraw one or more Declarant-owned Lots and/or all or a portion of any Declarant-owned Common Area from the Common Interest Community. Once a Lot has been conveyed to a Lot Owner other than Declarant, that portion of the real estate is no longer subject to this right of withdrawal. Likewise, once a Common Area has been conveyed to the Association, that portion of the real estate is no longer subject to this right of withdrawal.

The withdrawn property shall be subject to whatever easements, if any, may be reasonably necessary for access or utility service to, or operation or management or use or enjoyment of, the Common Interest Community or any part thereof. Similarly, the owner(s) of the withdrawn property shall have whatever easements, if any, are reasonably necessary for access or utility service to or for use or enjoyment of the withdrawn property over and across the Common Areas within the Common Interest Community. At the time any withdrawal of real estate is accomplished, Declarant shall record whatever documents are necessary to establish such reciprocal easements in the Garfield County records.

Section 6.8 **Effect of Expansion or Contraction** In the event any real property is annexed to the Common Interest Community as provided herein, or if any real property is withdrawn from the Common Interest Community as provided herein, the definitions used in this Declaration shall be automatically expanded or contracted to refer to the Common Interest Community as expanded or contracted, e.g., “Common Interest Community” shall mean the real property described herein plus any additional real property annexed thereto and/or minus any real property withdrawn therefrom; similarly, “Common Areas” and “Lots” shall mean and include those areas as described herein as well as or less those so designated on any Supplemental Declaration or Supplemental Plat (or any amendment to the Declaration and Plat) relating to any real property which is annexed or withdrawn pursuant to this Article 6. Common Areas shall also mean and include all properties from time to time within the Annexed Property that fall within the definition of Common Area contained in this Declaration, less any Common Areas removed by withdrawal. References to this Declaration shall mean this Declaration as so supplemented by any supplemental Declaration and any Supplemental Plat, or as amended. Every Owner of a Lot in the area annexed to the Common Interest Community shall, by virtue of ownership of such Lot and upon recordation of the Supplemental Declaration, be a member of the Master Association and, except as may be otherwise provided in the Supplemental Declaration, shall be entitled to the same rights and privileges and subject to the same duties and obligations as any other Association Member. Regular Assessments for Lots within the Annexed Property shall commence as of the date of the Recording of the Supplemental Declaration and shall be prorated as of such date.

The recording of amendments to the Declaration and Plat, whether in the form of Supplemental Declarations and Supplemental Plats or otherwise, which reallocate the Allocated Interests in the Common Interest Community, shall automatically:

(a) Vest in each existing Lot Owner the reallocated Allocated Interests appurtenant to the Owner's Lot; and

(b) Vest in each existing Mortgagee a perfected security interest in the reallocated Allocated Interests appurtenant to the encumbered Lot.

Section 6.9 Subdivision of Lots, Conversion of Lots into Common Area

Declarant shall have and hereby reserves the right to subdivide any Declarant-owned Lot located within the Common Interest Community to create additional Lots, subject to the maximum number of Lots set forth in the Recitals to this Declaration; provided, however, that such subdivision is consistent with the P.U.D. for River Valley Ranch or that said P.U.D. is amended if necessary, and that the subdivision is accomplished in compliance with Town subdivision requirements. Declarant shall also have and hereby reserves the right to convert one or more Lots into Common Area. Upon the subdivision of any Lot or the conversion of any Lot(s) into Common Area in accordance with the terms and conditions contained herein, the Allocated Interests of all Owners shall be reallocated if necessary in accordance with the definition of Allocated Interests contained in this Declaration.

Section 6.10 Other Reserved Development Rights. The right with respect to all or any Declarant-owned portion of the Common Interest Community (including the Lots) to (a) create Common Areas; (b) create additional Lots, subject to the maximum set forth in the Recitals to this Declaration ; (c) subdivide Lots; (d) combine Lots; and (e) convert Lots into Common Areas.

Section 6.11 Transfer of Declarant's Reserved Rights. Any one or more rights created or reserved for the benefit of Declarant under this Article 6 or elsewhere in this Declaration or in a Supplemental Declaration may be transferred to any Person by an instrument describing the right or rights transferred and recorded in Garfield County. Such instrument shall be executed by the transferor Declarant and the transferee. The provisions of Section 38-33.3-304 of the Act shall apply to any transfer of special Declarant rights.

Section 6.12 Termination of Declarant's Reserved Rights. With the exception of Declarant's right to appoint or remove Executive Board members and officers of the Association, which is addressed in Section 8.5 below, the rights reserved to Declarant in this Article 6 shall automatically terminate and expire upon the first to occur of (a) the date which is 30 years after the recording of this Declaration , or (b) Declarant's relinquishment and surrender of such rights by recorded instrument. Declarant may from time to time relinquish and surrender one or more but less than all of the reserved rights, in which event the unrelinquished reserved rights shall remain fully valid and effective for the remainder of the term thereof. The Association may extend the time period for exercise of a development right, or reinstate a lapsed development right, subject to whatever terms, conditions and limitations the Association may impose on the subsequent exercise of the development right. The extension or renewal of a development right and any terms, conditions and limitations shall be included in an amendment executed by Declarant or the owner of the real estate subject to the development right and the Association.

ARTICLE 7

EASEMENTS

Section 7.1 **Easements for Incidental Encroachments**. To the extent that any Lot or Common Area encroaches on any other Lot or Common Area, a valid easement for such encroachment exists. If any portion of an Improvement approved by the Development Review Committee encroaches in its approved location upon a Common Area, including any future encroachments arising or resulting from the repair or reconstruction of an Improvement subsequent to its damage, destruction or condemnation, a valid easement on the surface and for subsurface support below such surface and for the maintenance of same, so long as it stands, shall and does exist for such incidental encroachment.

Section 7.2 **Blanket Association Utility and Drainage Easement Over Common Areas**. There is hereby created, granted and reserved to the Association, its agents, employees and assigns, a perpetual, non-exclusive blanket easement over, across, upon and under the Common Areas for the construction, installation, operation, maintenance, repair, removal and replacement of utilities and utility lines, irrigation lines and systems and water features, drainage systems, pipes, wires, circuits, conduits, meters, facilities and systems for the benefit of the Common Interest Community or any part thereof, including but not limited to drainage, domestic water, irrigation water, sewer, gas, telephone, electricity, cable TV and other master TV and communication systems, if any, together with an easement for access, ingress and egress to accomplish such purposes. The Association or other person or entity exercising such utility and drainage easement rights shall be obligated to restore, reseed, replant and/or re-landscape the surface of the disturbed area to as close to its original condition as possible, as promptly as possible following completion of any utility or drainage work.

Section 7.3 **Association Administrative Easement Over Common Areas**. There is hereby created, granted and reserved to the Association, its agents, employees and assigns, a perpetual, non-exclusive easement over, across, upon and under the Common Areas and a right to use the Common Areas for purposes of enabling the Association to perform the duties and functions which it is obligated or permitted to perform pursuant to this Declaration .

Section 7.4 **Declarant Easement Over Common Areas**. There is hereby created, granted and reserved to Declarant and its successors and assigns a non-exclusive easement over, across, upon and under all Common Areas (including without limitation all easements benefiting the Association), including a right of access, ingress and egress thereto, and a right to use such Common Areas, and each and every part thereof, for all purposes reasonably related to (a) Declarant's development, improvement, maintenance, management, marketing and sale of the Common Interest Community and all portions thereof, including any annexations thereto, and/or (b) Declarant's exercise and implementation of the rights reserved to Declarant under this Declaration, or any Supplemental Declaration, and/or (c) the discharge by Declarant of any of its obligations under this Declaration or any Supplemental Declaration or under the Subdivision Improvements Agreements referred to in Section 6.1 above, or any other Declarant obligations relating to the Common Interest Community. Declarant's rights with respect to this easement shall terminate upon the first to occur of (I) the date which is 30 years after the recording of this Declaration, or (ii) Declarant's relinquishment of all or a portion of this easement right by recorded instrument.

Section 7.5 **Ditch Easements.** There are hereby created, granted and reserved for the use and benefit of the Owners from time to time of the irrigation systems, ditches, ditch laterals or other water storage facilities that may exist from time to time within the Common Interest Community (and of the water rights therein) perpetual, non-exclusive easements within the Ditch Easements shown on the Plat, and if not shown on the Plat or any Supplemental Plat, then along the courses of said ditches and laterals and in the locations of said systems, and facilities, as they may be realigned or relocated from time to time, subject to the specific provisions set forth in easement grants for any such facilities and/or on the Plat.

Section 7.6 **Aesthetic Ditch Easements.** Except for the Rockford Ditch, Town of Carbondale Ditch and Weaver and Leonhardy Ditch, here are hereby created, granted and reserved for the benefit of the Association and all Lot Owners and Occupants, perpetual, non-exclusive aesthetic easements along the courses of the various irrigation ditches that traverse the Common Interest Community, in the present locations of said ditches or as they may be realigned, for purposes of visually enjoying said ditches as water features within the Common Interest Community. These easements shall be subject at all times to the legal rights of the owners of said ditches and of the water rights entitled to flow therein, and Declarant makes no representations or warranties that any of said ditches will continue to exist in their present location, or if they do exist, that any particular level of water will continue to flow therein. Furthermore, the beneficiaries of these aesthetic easements shall have no right to alter or interfere with said ditches in any way.

Section 7.7 **Utility, Drainage, and/or Irrigation Easements.** There are hereby created, granted and reserved to the Association, the golf course owner, the Town, and appropriate public utilities, perpetual, non-exclusive easements over, upon, across and under those portions of the Common Interest Community that are designated “Utility Easement”, “Irrigation Easement”, “Drainage and Irrigation Easement”, or “Utility, Drainage and Irrigation Easement”, on the Plat or any Supplemental Plat. Utility Easements may be used for the installation, operation, maintenance, repair, removal or replacement of underground utility lines (and related surface facilities). Drainage and Irrigation Easements may be used for the installation, operation, maintenance, repair, removal or replacement of drainage and irrigation systems and facilities. Except as may otherwise be provided in any Subdivision Improvements Agreement between Declarant and the Town or in any other separate agreement between Declarant and a utility supplier, the party causing the disturbance shall be obligated to restore, repair, reseed and/or relandscape any area disturbed by the exercise of these easement rights to as close to its original condition as possible, as promptly as possible following the completion of any work within a Utility, Drainage or Irrigation Easement.

Section 7.8 **Blanket Emergency Services Easement.** There is hereby created, granted and reserved for the use and benefit of all police, sheriff, fire protection, ambulance and other similar emergency agencies or persons, now or hereafter serving the Common Interest Community and its Owners and Occupants, a perpetual, non-exclusive blanket Emergency Services Easement over, upon, along and across all Common Areas and all other properties and areas within the Common Interest Community, for use in the lawful performance of their duties.

Section 7.9 **Easements Deemed Created.** All conveyances of Lots and Common Areas hereafter made, whether by Declarant or otherwise, shall be deemed and construed to grant and reserve all of the easements referred to in this Article 7 and elsewhere in this

Declaration and in any Supplemental Declaration, even though no specific reference to such easements appears in the conveyancing instruments.

Section 7.10 **Recorded Easement and Licenses.** In addition to the easements described in this Article 7 and elsewhere in this Declaration, the recorded easements and licenses appurtenant to or included in the Thompson Corner Common Interest Community are set forth on Exhibit D attached hereto and made a part hereof by this reference.

ARTICLE 8

THOMPSON CORNER HOMEOWNERS ASSOCIATION

Section 8.1 **Association.** The Thompson Corner Homeowners Association has been formed as a Colorado nonprofit corporation under the Colorado Nonprofit Corporation Act to manage the affairs of the Common Interest Community. The Association shall serve as the governing body for all of the Owners and Occupants for the protection, improvement, alteration, maintenance, repair, replacement, administration and operation of the Common Areas, the levying and collection of Assessments for Common Expenses and other expenses of the Association, and such other matters as may be provided in this Declaration, any Supplemental Declaration, the Articles, Bylaws, and Rules and Regulations. The Association shall not be deemed to be conducting a business of any kind, and all funds received by the Association shall be held and applied by it for the Owners in accordance with the provisions of this Declaration, the Articles and the Bylaws.

Section 8.2 **Association Executive Board.** The affairs of the Association shall be managed by an Executive Board. The number, term, and qualifications of the members of the Executive Board shall be fixed in the Articles of Incorporation or the Bylaws. A quorum shall be deemed present throughout any meeting of the Executive Board if persons entitled to cast at least 50 percent of the votes on the Executive Board are present at the beginning of the meeting. With the exception of matters that may be discussed in executive session, as set forth in Section 38-33.3-308(3-7) of the Act, all regular and special meetings of the Executive Board or any committee thereof shall be open to attendance by all Members of the Association or their representatives. Without limiting the generality of the foregoing, no Rule or Regulation may be validly adopted during an executive session.

The Executive Board shall have all of the powers, authority and duties granted or delegated to it by the Act, this Declaration, any Supplemental Declaration, the Articles or Bylaws. Except as provided in the Act, this Declaration, any Supplemental Declaration, the Articles or Bylaws, the Executive Board may act in all instances on behalf of the Association.

The Executive Board may not, however, act on behalf of the Association to amend this Declaration, to terminate the Common Interest Community, or to elect members of the Executive Board or determine the qualifications, powers and duties, or terms of office of Executive Board members, but the Executive Board may fill vacancies in its membership for the unexpired portion of any term.

The Executive Board may, by resolution, delegate portions of its authority to officers of the Association, but such delegation of authority shall not relieve the Executive Board of the ultimate responsibility for management of the affairs of the Association. If appointed by Declarant, in the performance of their duties, the members of the Executive Board and the

officers of the Association are required to exercise the care required of fiduciaries of the Lot Owners. If not appointed by Declarant, no member of the Executive Board and no officer shall be liable for actions taken or omissions made in the performance of such member's or officer's duties except for wanton and willful acts or omissions.

Section 8.3 **Membership in Association**. There shall be one Membership in the Association for each Lot within the Common Interest Community. The Person or Persons who constitute the Owner of a Lot shall automatically be the holder of the Membership appurtenant to that Lot, and shall collectively be the "Member" of the Association with respect to that Lot. The Membership appurtenant to that Lot shall automatically pass with fee simple title to the Lot. Declarant shall hold a Membership in the Association for each Lot owned by Declarant. Membership in the Association shall not be assignable separate and apart from fee simple title to a Lot, and may not otherwise be separated from ownership of a Lot.

Section 8.4 **Voting Rights of Members**. Each Lot in the Common Interest Community shall be entitled to one (1) vote in the Association, i.e., one (1) vote per Owner/Member. Occupants of Lots shall not have voting rights. If title to a Lot is owned by more than one (1) Person, such persons shall collectively vote their interest as a single vote. If only one of the multiple Owners of a Lot is present at a Association meeting, such Owner is entitled to cast the vote allocated to that Lot. If more than one of the multiple Owners is present, the vote allocated to that Lot may be cast only in accordance with the agreement of a majority in interest of the Owners. There is majority agreement if any of the multiple Owners casts the vote allocated to that Lot without protest being made promptly to the person presiding over the meeting by any of the other Owners of the Lot. In the event of a protest being made by one or more multiple Owners, and a majority of the multiple Owners of the Lot cannot agree on how to cast their vote, any vote cast for that Lot shall be null and void with regard to the issue being voted upon. Such multiple Owners and their Lot shall nevertheless be counted in determining the presence of a quorum with respect to the issue being voted upon.

In accordance with Section 38-33.3-309 of the Act, and except as may otherwise be provided in this Declaration and the By-Laws, a quorum is deemed present throughout any meeting of the Lot Owners if persons entitled to cast at least 20 percent of the votes in the Association are present, in person or by proxy, at the beginning of the meeting.

Provided a quorum of Members entitled to vote is present in person or by proxy, the affirmative vote of a majority of the Members so present shall constitute approval of any matter voted upon unless a different number is required on a particular matter by the Act, this Declaration, any Supplemental Declaration, the Articles, or the Bylaws.

The vote allocated to a Lot may be cast pursuant to a proxy duly executed by a Lot Owner. If a Lot is owned by more than one person, each Owner of the Lot may vote or register protest to the casting of a vote by the other Owners of the Lot through a duly executed proxy. A Lot Owner may not revoke a proxy given pursuant to this Section except by actual notice of revocation to the person presiding over a meeting of the Association. A proxy is void if it is not dated or purports to be revocable without notice. A proxy shall terminate eleven (11) months after its date, unless a different termination date is otherwise set forth on its face.

No votes allocated to a Lot owned by the Association may be cast.

The Lot Owners, by a vote of 67 percent of all Members present and entitled to vote at any meeting of the Lot Owners at which a quorum is present, may remove any member of the Executive Board with or without cause, other than a member appointed by Declarant.

Section 8.5 **Period of Declarant Control of Association.** Notwithstanding any other provisions hereof, Declarant shall have and hereby reserves the power to appoint and remove, in its sole discretion, the members of the Executive Board and the officers of the Association during the period commencing upon the recording of this Declaration and terminating no later than the earlier of (a) 60 days after conveyance of 75 percent of the Lots that may be created to Lot Owners other than Declarant; or (b) 2 years after the last conveyance of a Lot by the Declarant in the ordinary course of business, or 2 years after any right to add new Lots was last exercised by Declarant.

During said Period of Declarant Control of the Association:

- (i) Not later than 60 days after conveyance of 25 percent of the Lots that may be created to Lot Owners other than Declarant, at least one member and not less than 25 percent of the members of the Executive Board must be elected by Lot Owners other than Declarant.
- (ii) Not later than 60 days after conveyance of 50 percent of the Lots that may be created to Lot Owners other than Declarant, not less than 33-1/3 percent of the members of the Executive Board must be elected by Lot Owners other than Declarant.

At any time prior to the termination of the Period of Declarant Control of the Association, the Declarant may voluntarily surrender and relinquish the right to appoint and remove officers and members of the Executive Board, but in such event Declarant may require, for the duration of the Period of Declarant Control of the Association, that specified actions of the Association or the Executive Board, as described in a recorded instrument executed by Declarant, be approved by Declarant before they become effective. As to such actions, Declarant may give its approval or disapproval in its sole discretion and option, and its disapproval shall invalidate any such action by the Executive Board or the Association. Not later than the termination of the Period of Declarant Control of the Association, the Lot Owners (including Declarant) shall elect an Executive Board of at least three members, at least a majority of whom must be Lot Owners other than Declarant or designated representatives of Lot Owners other than Declarant, and the Executive Board shall elect the officers, with such Executive Board members and officers to take office upon election. Within 60 days after Lot Owners other than Declarant elect a majority of the members of the Executive Board, Declarant shall deliver to the Association all property of the Lot Owners and of the Association held or controlled by Declarant, including without limitation the following items:

- (a) The original or a certified copy of the recorded Declaration, as amended, the Association's Articles of Incorporation, Bylaws, minute books, other books and records, and any rules and regulations which may have been promulgated;
- (b) An accounting for the Association funds and financial statements from the date the Association received funds and ending on the date the Period of Declarant Control ends. The financial statements shall be audited by an independent certified public accountant and shall be accompanied by the accountant's letter, expressing

either the opinion that the financial statements present fairly the financial position of the Association in conformity with generally accepted accounting principles or a disclaimer of the accountant's ability to attest to the fairness of the presentation of the financial information in conformity with generally accepted accounting principles and the reasons therefor. The expense of the audit shall not be paid for or charged to the Association;

(c) The Association funds or control thereof;

(d) All of Declarant's tangible personal property that has been represented by the Declarant to be the property of the Association or all of Declarant's tangible personal property that is necessary for, and has been used exclusively in, the operation and enjoyment of the Common Areas, and inventories of these properties;

(e) A copy, for the nonexclusive use by the Association, of any plans and specifications used in the construction of the improvements in the Thompson Corner Common Interest Community;

(f) All insurance policies then in force, in which the Lot Owners, the Association, or its directors and officers are named as insured persons;

(g) Copies of any certificates of occupancy that may have been issued with respect to any improvements comprising the Common Interest Community;

(h) Any other permits issued by governmental bodies applicable to the Common Interest Community and which are currently in force or which were issued within one year prior to the date on which Lot Owners other than Declarant took control of the Association.

(i) Written warranties of the contractor, subcontractors, suppliers, and manufacturers that are still effective;

(j) A roster of Lot Owners and Occupants and Mortgagees and their addresses and telephone numbers, if known, as shown on the Declarant's records;

(k) Employment contracts in which the Association is a contracting party;
and

(l) Any service contract in which the Association is a contracting party or in which the Association or the Lot Owners have any obligation to pay a fee to the persons performing the services.

Section 8.6 **Termination of Contracts and Leases of Declarant**. The following contracts and leases, if entered into before the Executive Board elected by the Lot Owners pursuant to Section 38-33.3-303(7) takes office, may be terminated without penalty by the Association at any time after the Executive Board elected by the Lot Owners pursuant to said Section 38-33.3-303(7) takes office, upon not less than 90 days notice to the other party: (a) Any management contract, employment contract or lease of recreational or parking areas or facilities; (b) Any other contract or lease between the Association and Declarant or an affiliate

of Declarant; or (c) Any contract or lease that is not bona fide or was unconscionable to the Lot Owners at the time entered into under the circumstances then prevailing.

ARTICLE 9

POWERS AND DUTIES OF ASSOCIATION

Section 9.1 **General Powers and Duties of Association.** The Association shall have and may exercise all of the powers and rights and duties of a Colorado corporation formed under the Colorado Nonprofit Corporation Act, and all of the powers and duties provided for in the Act including those enumerated in § 38-33.3-302 of the Act, as such laws may be amended from time to time, subject only to the limitations upon such powers as are contained in this Declaration . More specifically, and without limiting the generality of the foregoing, the Association shall have all of the powers and duties necessary (a) for the administration, management, governance and operation of the Common Interest Community and the Association, (b) to own, operate, improve, maintain, repair, manage, lease, encumber, and otherwise deal with the Common Areas, and (c) to do any and all lawful things that may be authorized, required or permitted to be done by the Association under the Act and under the provisions of this Declaration and of any Supplemental Declaration.

Section 9.2 **Power to Grant Easements.** The Association shall have the power to grant access, utility, drainage, irrigation, and such other easements upon, over, across or under the Common Areas as it deems necessary or desirable for the benefit of the Common Interest Community or parts thereof, or for the benefit of all or less than all of the Lot Owners, or for the benefit of lands situated outside the Common Interest Community. The Association shall also have the power to vacate such easements if no longer necessary, desirable or beneficial to the Common Interest Community.

Section 9.3 **Power to Convey or Encumber Common Areas.** The Association shall have the power to convey, or subject to a security interest, portions of the Common Areas if Owners entitled to cast at least 80 percent of the votes in the Association, including 80 percent of the votes allocated to Lots not owned by Declarant, agree to that action. Proceeds of the sale are an asset of the Association.

An agreement to convey, or subject to a security interest, Common Areas must be evidenced by the execution of an agreement, or ratifications thereof, in the same manner as a deed, by the requisite number of Lot Owners. The agreement must specify a date after which the agreement will be void unless recorded before that date. The agreement and all ratifications thereof must be recorded in the County, and is effective only upon recordation. The Association, on behalf of the Lot Owners, may contract to convey an interest in a Common Area, but the contract is not enforceable against the Association until approved, executed and ratified pursuant to this Section 9.3. Thereafter, the Association shall have all the powers necessary and appropriate to effect the conveyance or encumbrance, including the power to execute deeds or other instruments. Unless in compliance with this Section 9.3, any purported conveyance, encumbrance, judicial sale, or other transfer of Common Areas is void. A conveyance or encumbrance of Common Areas pursuant to this Section 9.3 shall not deprive any Lot of its rights of (a) access, ingress and egress to the Lot, and (b) support of the Lot. A conveyance or encumbrance of Common Areas pursuant to this Section 9.3 shall not affect the priority or validity of preexisting encumbrances.

Section 9.4 **General Power to Provide Services and Facilities to Owners.** The Association shall have the power, but not the obligation, to acquire, construct, operate, manage, maintain, repair and administer services and facilities for the benefit of the Owners, or some of them, including, without limitation, security, animal control, vegetation control, insect and pest control, television service, parking facilities, transportation facilities, snow removal, signage, including entry monuments, lighting, including seasonal lighting, interior and perimeter fencing, landscape walls, landscaping services and facilities, drainage facilities, including retention and detention ponds, irrigation facilities, water features, trash and solid waste disposal services, including recycling programs, utility services, recreational facilities and services, and such other services, functions and facilities as are deemed appropriate by the Executive Board. The foregoing list shall not be deemed to be a representation by Declarant of services or facilities that will in fact be available for use by the Owners. The Association may enter into such agreements and arrangements as it may deem appropriate with any provider of utilities or services to the Common Interest Community or any portion thereof, including any special districts that provide such services, and may form or join any districts created to provide such services.

Section 9.5 **Power to Provide Special Services to Owners.** The Association shall have the power to provide services to an Owner or group of Owners. Any service or services to an Owner or group of Owners shall be provided pursuant to an agreement in writing, which shall provide for payment to the Association by such Owner or group of Owners of the costs and expenses of the Association in providing such services, including a fair share of the overhead expenses of the Association, and shall contain reasonable provisions assuring that the obligation to pay for such services shall be binding upon any heirs, personal representatives, successors and assigns of the Owner or group of Owners and that the payment for such services shall be secured by a lien on the Lot(s) of the Owner or group of Owners.

Section 9.6 **Power to Charge for Special Common Area Use and Special Association Services.** The Association shall have the power to establish reasonable admission or other fees or charges for any special or extraordinary Common Areas uses or Association services such as special parking privileges, special recreation facilities, instruction, or similar uses beyond the ordinary use of Common Areas and ordinary Association services. Such charges or fees shall be set forth in schedules of charges and fees adopted from time to time by the Executive Board.

Section 9.7 **Power to Acquire Property and Construct Improvements.** The Association may acquire, hold, encumber and/or convey any right, title or interest in or to real or personal property, including Improvements. The Association may construct Improvements on Common Areas and may demolish existing Improvements thereon.

Section 9.8 **Power to Adopt Rules and Regulations.** The Association may adopt, amend, repeal, and enforce such Rules and Regulations as the Executive Board may consider necessary, desirable or appropriate from time to time with respect to the interpretation and implementation of this Declaration, the operation of the Association, the use and enjoyment of Common Areas, and the use of any other property within the Common Interest Community, including Lots. Any such Rules and Regulations shall be effective only upon adoption by resolution at an open meeting of the Executive Board. Notice of the adoption, amendment, or repeal of any Rule or Regulation shall be given in writing to each Owner, and copies of the currently effective Rules and Regulations shall be made available to each Owner and Occupant upon request and payment of the reasonable expense of copying the same. Each Owner and

Occupant shall comply with such Rules and Regulations, and each Owner shall see that Occupants claiming through such Owner comply with such Rules and Regulations. Such Rules and Regulations shall have the same force and effect as if they were set forth in and were part of this Declaration. In the event of conflict between the Rules and Regulations and the provisions of this Declaration, the provisions of this Declaration shall govern. Such Rules and Regulations may establish penalties (including the levying and collection of fines) for the violation of such Rules and Regulations or of any provision of this Declaration, the Articles, or the Bylaws.

Section 9.9 Power to Employ Employees, Agents, Consultants and Managers.

The Association shall have the power to employ and discharge employees, agents, independent contractors and consultants, including lawyers and accountants. The Association shall also have the power to retain and pay for the services of a manager or managers, to undertake any of the administrative or managerial responsibilities for which the Association may have responsibility under this Declaration, to the extent deemed advisable by the Association, and may delegate any of its duties, powers, or functions to any such manager. Such manager may be an affiliate or employee of Declarant. Notwithstanding any delegation to a manager of any duties, powers, or functions of the Association, the Association and its Executive Board shall remain ultimately responsible for the performance and exercise of such duties, powers, and functions.

Section 9.10 Power to Assign Future Income. The Association shall have the power to assign its right to future income, including the right to receive Regular Assessments, but only following the affirmative vote of the Owners of Lots to which at least 51 percent of the votes in the Association are allocated, at a duly-called meeting of the Members of the Association.

Section 9.11 Duty to Accept Property and Facilities Transferred by Declarant.

The Association shall accept title to any real property, or interests in real property, including any Improvements and personal property thereon, water rights and related facilities, transferred to the Association by Declarant, or Declarant's successors or assigns in accordance with the following. Property interests transferred to the Association by Declarant or its successors or assigns may include fee simple title, undivided interests, easements, leasehold interests, and licenses to use. Except as may otherwise be approved by the Executive Board, any property or interest in property transferred to the Association by Declarant or its successors or assigns shall be within the boundaries of the Common Interest Community; provided, however, that Declarant shall be entitled to transfer and convey the beneficial use of an easement, subject to any obligations thereunder, located outside of the Common Interest Community but which benefits the Association and the Owners.

Any property or interest in property transferred to the Association by Declarant shall, except to the extent otherwise specifically approved by resolution of the Executive Board, be transferred to the Association free and clear of all monetary obligations, liens and encumbrances (other than the lien of property taxes and assessments not then due and payable), but shall be subject to the terms of this Declaration, and easements, covenants, conditions, restrictions, and equitable servitudes or other encumbrances of record or otherwise in existence. Except as otherwise specifically approved by resolution of the Executive Board, no property or interest in property transferred to the Association by Declarant shall impose upon the Association any obligation to make monetary payments to Declarant or any affiliate of Declarant, including, but not limited to, any purchase price, rent, charge, or fee.

Section 9.12 **Duty to Manage and Care for Common Areas.** The Association shall manage, operate, care for, maintain, repair and replace all Common Areas and keep the same in a clean and attractive condition for the benefit and enjoyment of the Owners.

Section 9.13 **Duty to Pay Taxes.** The Association shall pay any taxes and assessments levied upon the Common Areas and any other taxes and assessments payable by the Association before they become delinquent. The Association shall have the right to contest any such taxes or assessments by appropriate legal proceedings provided no sale or foreclosure of any lien for such tax or assessment occurs and provided further that the Association shall keep and hold sufficient funds to pay and discharge the taxes and assessments, together with any interest and penalties which may accrue with respect thereto, if the contest of such taxes is unsuccessful.

Section 9.14 **Duty to Keep Association Records.** The Association shall keep financial records in sufficient detail to enable the Association to carry out its responsibilities under this Declaration and to comply with the requirements of the Act, including, but not limited to, current records of paid and unpaid Assessments for each Lot. All financial and other records of the Association shall be made reasonably available for examination by the Owners and the authorized agents of the Owners.

Section 9.15 **Duty to Support Development Review Committee.** The Association shall take such actions, provide such funds, and do such other things as may be necessary or appropriate from time to time to support and assist the Development Review Committee in the performance of its responsibilities under this Declaration, and shall cooperate with said Committee to the fullest extent possible in such matters.

Section 9.16 **Insurance.** Commencing not later than the time of the first conveyance of a Lot to a Person other than Declarant, the Association shall maintain and keep in effect at all times the following types of insurance, and the cost of said coverage shall be paid by the Association as a Common Expense:

(a) **Casualty Insurance.** To the extent reasonably available, property insurance on all Common Areas, including but not limited to Improvements and personalty, owned or leased by the Association, and on all property that must become Common Areas. Such insurance shall be for broad form covered causes of loss, including casualty, fire, and extended coverage insurance including, if available at reasonable cost, coverage for vandalism and malicious mischief and, if available and if deemed appropriate, coverage for flood, earthquake, and war risk. Such insurance shall, to the extent reasonably obtainable, be for the full insurable replacement cost of the insured property, less applicable deductibles at the time the insurance is purchased and at each renewal date, exclusive of land, excavation, foundations and other items normally excluded from property policies.

(b) **Liability Insurance.** Comprehensive general liability insurance against claims and liabilities arising in connection with the ownership, existence, use, maintenance or management of the Common Areas, and ditches, and covering public liability or claims of liability for injury to persons and/or property, and death of any person or persons, and, if the Association owns or operates motor vehicles, public liability or claims of liability for bodily injury (including death) and property damage arising as a result of the ownership and operation of motor vehicles. Such liability

insurance for other than motor vehicle liability shall, to the extent reasonably obtainable, (a) have limits of not less than Five Million Dollars (\$5,000,000.00) per person and Five Million Dollars (\$5,000,000.00) per occurrence; (b) insure the Executive Board, the Development Review Committee, the Association and its officers, the manager, if any, and their respective employees, agents and all Persons acting as agents; (c) include the Declarant as an additional insured as its interests may appear; (d) include the Owners as additional insureds, but only for claims and liabilities arising in connection with the ownership, existence, use, maintenance or management of Common Areas; (e) cover claims of one or more insured parties against other insured parties; (f) be written on an occurrence basis; and (g) shall name as additional insureds such other parties as may be required by specific agreements.

(c) Contractual Liability Insurance. To the extent reasonably available, contractual liability insurance covering such contractual obligations and liabilities, indemnifications, hold harmless agreements, and agreements to defend, as the Association may have or be a party to from time to time, with coverage of at least Two Million Dollars (\$2,000,000.00) or such greater amount as the Executive Board shall determine to be appropriate from time to time.

(d) Fidelity Bonds. To the extent reasonably available, fidelity bond coverage against dishonest acts on the part of directors, officers, managers, trustees, agents, employees or volunteers responsible for handling funds belonging to or administered by the Association. If funds of the Association are handled by a management agent, then fidelity bond coverage may also be obtained for the officers, employees, or agents thereof handling or responsible for Association funds. The fidelity bond or insurance must name the Association as the named insured and shall be written to provide protection in an amount no less than the lesser of (a) one-half times the Association's estimated annual operating expenses and reserves, (b) a sum equal to three months aggregate Regular Assessments, plus reserves, as calculated from the current Budget of the Association; or (c) the estimated maximum amount of funds, including reserves, in the custody of the Association (and its management agent) at any one time. In connection with such coverage, an appropriate endorsement to the policy to cover any person who serves without compensation shall be added if the policy would not otherwise cover volunteers.

(e) Worker's Compensation. A Worker's Compensation policy, if necessary, to meet the requirements of law.

(f) Directors and Officers Liability Insurance. Directors and officers liability insurance with coverage of at least Two Million Dollars (\$2,000,000.00) or such greater amount as the Executive Board shall approve for all Association, Executive Board and Development Review Committee directors, officers, members and managers, for any and all errors and/or omissions and other covered actions that occur during their tenure in office or employment. This insurance coverage shall be mandatory.

(g) Other Insurance. Such other insurance in such amounts as the Executive Board shall determine, from time to time, to be appropriate to protect the Association or the Lot Owners, or as may be required by the Act.

(h) General Provisions Respecting Insurance. Insurance obtained by the Association may contain such deductible provisions as good business practice may dictate. If the insurance described is not reasonably available, or if any policy of such insurance is canceled or not renewed without a replacement policy therefor having been obtained by it, the Association shall promptly cause notice of that fact to be delivered or sent prepaid by U.S. Mail to all Owners.

Insurance policies carried pursuant to Sections 9.16(a) and 9.16(b) above shall provide that (i) each Owner is an insured Person under the policy with respect to liability arising out of such Owner's interest in the Common Areas or membership in the Association; (ii) the insurer waives its rights of subrogation under the policy against the Association, each Owner, and any Person claiming by, through, or under such Owner or any other director, agent, or employee of the foregoing; (c) no act or omission by any Owner, unless acting within the scope of such Owner's authority on behalf of the Association, will void the policy or be a condition to recovery under the policy; and (d) if at the time of a loss under the policy, there is other insurance in the name of an Owner covering the same risk covered by the policy, the Association's policy shall be the primary insurance. An insurer that has issued an insurance policy for the insurance described in Sections 9.16(a) and 9.16(b) above shall issue certificates or memoranda of insurance to the Association and, upon request, to any Lot Owner or holder of a security interest. Unless otherwise provided by statute, the insurer issuing the policy may not cancel or refuse to renew it until 30 days after notice of the proposed cancellation or nonrenewal has been mailed to the Association, and each Lot Owner and each holder of a security interest to whom a certificate or memorandum of insurance has been issued, at their respective last-known addresses.

Any loss covered by the property insurance policy described in Section 9.16(a) above must be adjusted with the Association, but the insurance proceeds for that loss shall be payable to any insurance trustee designated for that purpose, or otherwise to the Association, and not to any holder of a security interest. The insurance trustee or the Association shall hold any insurance proceeds in trust for the Association Lot Owners and lienholders as their interests may appear. Subject to the provisions of Section 38.33.3-313(9) of the Act, the proceeds must be disbursed first for the repair or restoration of the damaged property, and the Association, Lot Owners, and lienholders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the property has been completely repaired or restored or the Common Interest Community is terminated.

The Association may adopt and establish written nondiscriminatory policies and procedures relating to the submittal of claims, responsibility for deductibles, and any other matters of claims adjustment. To the extent the Association settles claims for damages to real property, it shall have the authority to assess negligent Owners causing such loss or benefiting from such repair or restoration for all deductibles paid by the Association. In the event more than one Lot is damaged by a loss, the Association in its reasonable discretion may assess each Lot Owner a pro rata share of any deductible paid by the Association. Insurance obtained by the Association shall, to the extent reasonably possible, and provided Declarant reimburses the Association for any additional premium payable on account thereof, name Declarant as an additional insured and shall contain a waiver of rights of subrogation as against Declarant.

Insurance policies and insurance coverage shall be reviewed at least annually by the Executive Board to ascertain whether coverage under the policies is sufficient in light of the current values of the Common Areas and in light of the possible or potential liabilities of the Association and other insured parties. The aforementioned insurance may be provided under blanket policies covering the Common Areas and property of Declarant.

In no event shall insurance coverage obtained or maintained by the Association obviate the need for Owners and Occupants to obtain insurance for their own benefit.

Furthermore, to the extent reasonably available, insurance policies obtained by the Association shall contain the following provisions:

- (i) The coverage afforded by such policies shall not be brought into contribution or proration with any insurance which may be purchased by a Lot Owner, Occupant or Mortgagee.
- (ii) The conduct of any one or more Lot Owners or Occupants shall not constitute grounds for avoiding liability on any such policies.
- (iii) Each policy must contain a waiver of any defenses based on co-insurance or on invalidity arising from the acts of the insured.
- (iv) A “severability of interest” endorsement shall be obtained which shall preclude the insurer from denying the claim of a Lot Owner or Occupant because of the conduct or negligent acts of the Association and its agents or other Lot Owners or Occupants.
- (v) Any “no other insurance” clause shall exclude insurance purchased by Lot Owners, Occupants or Mortgagees.
- (vi) Coverage must not be prejudiced by (i) any act or neglect of Lot Owners or Occupants when such act or neglect is not within the control of the Association, or (ii) any failure of the Association to comply with any warranty or condition regarding any portion of the Common Interest Community over which the Association has no control.
- (vii) Coverage may not be canceled or substantially modified without at least 30 days (or such lesser period as the Association may reasonably deem appropriate) prior written notice to the Association.
- (viii) Any policy of property insurance which gives the carrier the right to elect to restore damage in lieu of a cash settlement must provide that such election is not exercisable without the prior written approval of the Association, or when in conflict with the insurance trust provisions contained herein, or any requirement of law.
- (ix) A recognition of any insurance trust agreement entered into by the Association.

(x) Each hazard insurance policy shall be written by a hazard insurance carrier which has a financial rating as designated in *Best's Key Rating Guide* of Class VI or better, or if such rating service be discontinued, an equivalent rating by a successor thereto or a similar such rating service. Each insurance carrier must be specifically licensed or authorized by law to transact business within the State of Colorado.

(i) Nonliability of Association or Executive Board. Notwithstanding the duty of the Association to obtain insurance coverage, as stated herein, neither the Association nor any Executive Board member, nor the Declarant, shall be liable to any Lot Owner, Occupant, Mortgagee or other Person, if any risks or hazards are not covered by insurance, or if the appropriate insurance is not obtained because such insurance coverage is not reasonably obtainable on the Association's behalf, or if the amount of insurance is not adequate, and it shall be the responsibility of each Lot Owner and Occupant to ascertain the coverage and protection afforded by the Association's insurance and to procure and pay for such additional insurance coverage and protection as the Lot Owner or Occupant may desire.

(j) Premiums. Premiums for insurance policies purchased by the Association and other expenses connected with acquiring such insurance shall be paid by the Association as a Common Expense, except that the amount of increase over any annual or other premium occasioned by the use, misuse, occupancy or abandonment of a Lot or its appurtenances, or the Common Areas, by a Lot Owner or Occupant, may at the Executive Board's election, be assessed against that particular Lot Owner and his Lot as a Reimbursement Assessment.

(k) Insurance Claims. The Association is hereby irrevocably appointed and authorized, subject to the provisions contained herein, to adjust all claims arising under insurance policies purchased by the Association and to execute and deliver releases upon the payment of claims, and to do all other acts reasonably necessary to accomplish any of the foregoing. The Executive Board has full and complete power to act for the Association in this regard, and may, in its discretion, appoint an authorized representative, or enter into an insurance trust agreement, wherein the trustee shall have the authority to negotiate losses under any policy purchased by the Association.

(l) Benefit. Except as otherwise provided herein, all insurance policies purchased by the Association shall be for the benefit of, and any proceeds of insurance received by the Association or any insurance trustee shall be held or disposed of in trust for the Association, the Lot Owners, or the Occupants, as their interests may appear.

(m) Other Insurance to be Carried by Lot Owners. Insurance coverage on the furnishings and other items of personal property belonging to a Lot Owner or Occupant, public liability insurance coverage upon each Lot, and hazard insurance coverage on the Improvements constructed on Lots, shall be the responsibility of the Owner or Occupant of the Lot. No Lot Owner or Occupant shall maintain any insurance, whether on its Lot or otherwise, which would limit or reduce the insurance proceeds payable under the casualty insurance maintained by the Association in the event of damage to the Improvements or fixtures on the Common Areas.

Section 9.17 **Damage to Common Interest Community.** Any portion of the Common Interest Community for which insurance is required under Section 38-33.3-313 of the Act which is damaged or destroyed must be repaired or replaced promptly by the Association unless: (a) the Common Interest Community is terminated; (b) repair or replacement would be illegal under any state or local statute or ordinance governing health or safety; (c) 80 percent of the Lot Owners, including Owners of every Lot that will not be rebuilt, vote not to rebuild; or (d) prior to the conveyance of any Lot to a person other than Declarant, a Mortgagee on the damaged portion of the Common Interest Community rightfully demands all or a substantial part of the insurance proceeds.

The cost of repair or replacement in excess of insurance proceeds and reserves is a Common Expense. If the entire Common Interest Community is not repaired or replaced, the insurance proceeds attributable to the damaged Common Areas must be used to restore the damaged area to a condition compatible with the remainder of the Common Interest Community, and, except to the extent that other Persons will be distributees, the insurance proceeds attributable to Lots that are not rebuilt must be distributed to the Owners of those Lots, or to lienholders, as their interests may appear, and the remainder of the proceeds must be distributed to all Lot Owners or lienholders as their interests may appear in proportion to the Common Expense liabilities of all the Lots.

In the event of damage to or destruction of all or a portion of the Common Areas due to fire or other adversity or disaster, the insurance proceeds, if sufficient to reconstruct or repair the damage, shall be applied by the Association to such reconstruction and repair. If the insurance proceeds with respect to such Common Area damage or destruction are insufficient to repair and reconstruct the damage or destruction, the Association may levy a Special Assessment in the aggregate amount of such deficiency, or if any Owner or group of Owners is liable for such damage, may levy a Reimbursement Assessment against the Owner or group of Owners responsible therefor, and shall proceed to make such repairs or reconstruction. Such Assessment shall be due and payable as provided by resolution of the Executive Board, but not sooner than 60 days after written notice thereof. The Assessment provided for herein shall be a debt of each Lot Owner assessed and a lien on his Lot, and may be enforced and collected in the same manner as any Assessment Lien provided for in this Declaration. If the entire damaged Common Area is not repaired or replaced, the insurance proceeds attributable to the damaged Common Area must be used to restore the damaged area to a condition compatible with the remainder of the Common Interest Community. No distributions of insurance proceeds by the Association shall be made unless made jointly payable to the Lot Owners and first Mortgagees of their respective Lots, if any.

Section 9.18 **Limited Liability.** Neither the Association nor its past, present or future officers or directors, nor any other employee, agent or committee member of the Association shall be liable to any Owner or Occupant or to any other Person for actions taken or omissions made except for wanton and willful acts or omissions. Without limiting the generality of the foregoing, the Association, the Executive Board and the Development Review Committee shall not be liable to any Owner or Occupant or other Person for any action or for any failure to act with respect to any matter if the action taken or failure to act was in good faith and without malice. Acts taken upon the advice of legal counsel, certified public accountants, registered or licensed engineers, architects or surveyors shall conclusively be deemed to be in good faith and without malice. To the extent insurance carried by the Association for such purposes shall not be adequate, the Owners severally agree to indemnify and to defend the Association, the Executive Board and the Development Review Committee

against claims, damages or other liabilities resulting from such good faith action or failure to act.

Section 9.19 Duty to Determine the Maximum Resale Price of Lots and the Qualifications of Purchasers of Lots. The Executive Board of the Association, or its designee, shall consult with any Owner that desires to sell its Lot in order to review the requirements of the Declaration of Master Deed Restriction, as applicable to the sale of Lots within the Common Interest Community. Within 30 days following such consultation, the Executive Board, or its designee, shall recommend to the Town of Carbondale Housing Authority the Maximum Resale Price for such Owner's Lot in accordance with the requirements of the Declaration of Master Deed Restriction.

Prior to an Owner entering into a sales contract for the sale of its Lot to a prospective purchaser, such purchaser shall be qualified in accordance with the requirements of the Declaration of Master Deed Restriction. Such potential buyer shall initially be qualified by the Executive Board of the Association, or its designee, in accordance with the requirements of the Declaration of Master Deed Restriction and subject to final approval by the Town of Carbondale Housing Authority.

ARTICLE 10

ASSESSMENTS

Section 10.1 Assessment Obligation and Lien. Declarant, for each Lot, shall be deemed to covenant and agree, and each Lot Owner, by acceptance of a deed therefor (including a public trustee's or sheriff's deed), whether or not it shall be so expressed in any such deed or other instrument of conveyance, shall be deemed to covenant and agree, to pay to the Association: (a) Regular Assessments or charges, (b) Special Assessments, and (c) Reimbursement Assessments, such assessments to be established and collected as hereinafter provided (collectively the "Assessments"). The Assessments, together with interest, late charges, costs, and reasonable attorneys' fees, shall be a continuing lien and security interest upon the Lot against which each such Assessment is charged. The obligation for such payments by each Lot Owner to the Association is an independent covenant, with all amounts due from time to time payable in full without notice (except as otherwise expressly provided in this Declaration) or demand, and without set-off or deduction of any kind or nature. Each Lot Owner is liable for Assessments made against such Owner's Lot during his period of ownership of the Lot. Each Assessment, together with interest, late charges, costs and reasonable attorneys' fees, shall also be the joint, several and personal obligation of each Person who was an Owner of such Lot at the time when the Assessment became due. Upon the transfer of title to a Lot, the transferor and the transferee shall be jointly, severally and personally liable for all unpaid Assessments and other charges due to the Association prior to the date of transfer, and the transferee shall be personally liable for all such Assessments and charges becoming due thereafter.

Section 10.2 Statutory Lien. The Association has a statutory lien pursuant to § 38-33.3-316 of the Act on the Lot of an Owner for all Assessments levied against such Lot or fines imposed against such Lot's Owner from the time the Assessment or fine becomes due (the "Assessment Lien"). Fees, charges, late charges, attorneys' fees, fines and interest charged by the Association pursuant to the Act or this Declaration or any Supplemental Declaration are enforceable as Assessments. The amount of the lien shall include all such items from the time

such items become due. If an Assessment is payable in installments, the Association has an Assessment Lien for each installment from the time it becomes due, including the due date set by the Executive Board's acceleration of installment obligations. An Assessment Lien is extinguished unless proceedings to enforce the lien are instituted within 6 years after the full amount of Assessments becomes due.

Section 10.3 **Lien Superior to Homestead and Other Exemptions.** An Assessment Lien shall be superior to any homestead exemption now or hereafter provided by the laws of the State of Colorado or any exemption now or hereafter provided by the laws of the United States. The acceptance of a deed subject to this Declaration shall constitute a waiver of the homestead and any other exemption as against said Assessment Lien.

Section 10.4 **Priority of Lien.** An Assessment Lien is prior to all other liens and encumbrances on a Lot except as follows:

- (a) Liens and encumbrances recorded before the recordation of this Declaration;
- (b) A security interest on the Lot which has priority over all other security interests on the Lot and which was recorded before the date on which the Assessment sought to be enforced became delinquent. An Assessment Lien is prior to the security interest described in the preceding sentence to the extent of an amount equal to the Regular Assessments (based on a Budget adopted by the Association pursuant to Section 10.7 below) which would have become due, in the absence of any acceleration, during the 6 months immediately preceding institution by the Association or any party holding a lien senior to any part of the Association lien created under this Article 10 of an action or a nonjudicial foreclosure either to enforce or to extinguish the lien;
- (c) Liens for real estate taxes and other governmental assessments or charges against the Lot; and
- (d) As may otherwise be set forth in the Act. The priority of mechanics' and materialmen's liens is not affected by the Act.

This Article 10 does not prohibit an action or suit to recover sums for which this Article 10 creates a lien or prohibit the Association from taking a deed in lieu of foreclosure. Sale or transfer of any Lot shall not affect the lien for an Assessment.

Section 10.5 **Perfection of Lien.** The recording of this Declaration and of any Supplemental Declaration constitutes record notice and perfection of the statutory lien. No further recordation of any claim of lien for Assessments is required; however, a claim may be recorded at the Association's option, in which event costs and attorneys' fees incurred in connection with the preparation and filing of such claim shall be assessed against the Lot as a Reimbursement Assessment.

Section 10.6 **Regular Assessments.**

- (a) A Regular Assessment shall be made annually against each Lot, based upon an annual Budget prepared by the Executive Board, for purposes of paying (i) the annual costs of operating and administering the Association and all other Common

Expenses, (ii) reasonable reserves for contingencies, replacements, and other proper purposes, (iii) the costs of maintaining the front yards, repainting or residing residences, and repairing and replacing roofs in the Common Interest Community, together with reasonable reserves (to be kept in separate escrow accounts) for such repainting or residing and roof repair/replacement, (iv) the costs of services rendered or expenditures incurred by the Association to or for less than all Lots, which shall be assessed only to the Lots benefitted and then equally among them, and (v) such other matters as may be reasonably determined by the Executive Board to be the subject of a Regular Assessment;

(b) Regular Assessments shall be allocated in accordance with the Allocated Interests of each Lot in the Common Interest Community, except that (i) any Common Expense or portion thereof benefiting fewer than all of the Lots shall be assessed exclusively against the Lots benefitted, and (ii) the costs of insurance shall be assessed in proportion to risk, and the costs of utilities shall be assessed in proportion to usage. If Common Expense liabilities are reallocated, Common Expense Assessments and any installment thereof not yet due shall be reallocated in accordance with the reallocated Common Expense liabilities.

(c) Regular Assessments shall be levied on a calendar year basis, except that the initial Regular Assessment period shall commence on the first day of the calendar month or quarter in which the first Lot is conveyed by Declarant to a Person other than Declarant. Regular Assessments shall be paid in installments on a monthly, quarterly or semi-annual basis, as the Executive Board may determine from time to time, and shall be due either on the first day of each calendar month or on the first day of each calendar year quarter (January 1, April 1, July 1 and October 1), or on the first day of a semi-annual period (e.g. January 1, July 1) as appropriate. Unless and until changed to a monthly or semi-annual system by the Executive Board, Regular Assessments shall be due and payable on the first day of each calendar quarter. Any Lot Owner acquiring a Lot between installment due dates shall pay a pro rata share of the immediately preceding installment.

(d) The Executive Board shall fix the amount of the Regular Assessment, using the Budget procedure described below, at least 30 days before the end of each calendar year. Written notice of the Regular Assessment shall be sent to each Owner. Failure of the Executive Board timely to fix and levy the Regular Assessments for any year or to send a notice thereof to any Owner shall not relieve or release any Owner from liability for payment of Regular Assessments or any installments thereof for that or subsequent years as soon as the Executive Board levies the Regular Assessment and provides notice thereof.

(e) The Executive Board shall also mail to each Owner at least 10 days prior to the due date thereof a written notice of the amount of the next quarterly (or monthly or semi annual, as the case may be) installment of Regular Assessment that is due from such Owner, and the date on which such installment is due pursuant to subparagraph (c) above. Failure of the Executive Board to send timely notice to any Owner of an installment of Regular Assessment due shall not relieve or release any Owner from liability for payment of that installment as soon as the Executive Board in fact provides such notice.

(f) In accordance with §§ 38-33.3-314 of the Act, any surplus funds remaining after payment of or provision for Association expenses and any prepayment of or provision for reserves shall be credited to the Owners to reduce their future Regular Assessments.

Section 10.7 Association Budget. Commencing in 1998, and during the last 6 months of each year thereafter, the Executive Board shall prepare or cause to be prepared an operating budget (the “Budget”) for the next calendar year. The Budget shall provide for the allocation of any surplus funds remaining from any previous Budget period. Within thirty (30) days after adoption of any proposed Budget for the Association, the Executive Board shall mail, by ordinary first-class mail, or otherwise deliver, a summary of the Budget to all the Lot Owners and shall set a date for a meeting of the Lot Owners to consider ratification of the Budget not less than 14 nor more than 50 days after the mailing or other delivery of the summary. Such meeting may, but need not be, concurrent with the annual meeting of the Members as provided in the Bylaws. Unless at that meeting 67 percent of all Lot Owners reject the Budget, the Budget shall be ratified, whether or not a quorum of Owners is present. In the event that the proposed Budget is rejected, the Budget last ratified by the Lot Owners shall be continued until such time as the Lot Owners ratify a subsequent Budget proposed by the Executive Board.

Section 10.8 Initial Lot Owner Deposit to Reserve Fund. The first individual purchaser of each Lot shall deposit with the Association at the closing of the purchase the sum of \$100.00, which sum shall be non-refundable and shall be deposited by the Board in the Association’s Reserve Fund. This initial deposit shall be in addition to all Assessment obligations, and upon the transfer of a Lot the seller of the Lot shall be entitled to be repaid by the Lot purchaser for the amount of said initial deposit. The Reserve Fund may be used from time to time for any Association purpose deemed appropriate by the Executive Board, and the Reserve Fund may be replenished from time to time by the Executive Board in its discretion, by inclusion in the Budget and the Regular Assessments based thereon.

Section 10.9 Special Assessments. In addition to the Regular Assessments and Reimbursement Assessments authorized in this Article 10, the Executive Board may levy, in any assessment year, a Special Assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair, or replacement of capital improvements (including related fixtures and personal property and further including without limitation irrigation systems, ditches and ditch systems) to or upon the Common Interest Community, or for excess reconstruction costs or other extraordinary expenses, or for funding any operating deficit of the Association. Any Special Assessment for an improvement or other expenditure which is not for the general benefit of the Common Interest Community and which will in fact benefit fewer than all of the Lots shall only be levied against the Lots benefited. Except in the event of an emergency, where no membership vote shall be required, the Executive Board shall not levy a Special Assessment without the approval of the Owners of the Lots that will be subject to the Special Assessment as provided below.

Written notice of any meeting called for the purpose of levying a Special Assessment shall be sent to all Owners of Lots that will be subject to the Special Assessment no less than 30 or more than 50 days before the meeting. At the meeting, the presence of Owners in person or by proxy of at least 60 percent of the Lots that will be subject to the Special Assessment shall constitute a quorum. If the required quorum is not present, another meeting may be called

pursuant to the same notice requirements, and the required quorum at this second meeting shall be only 30 percent of such Lots. No such second meeting shall be held more than 60 days following the date of the first meeting.

Provided a quorum of Owners entitled to vote is present in person or by proxy, in accordance with the quorum requirements set forth in the preceding paragraph, then the affirmative vote of a majority of the Owners so present shall constitute approval of the proposed Special Assessment.

For purposes of this Section 10.9, the term “emergency” shall mean any circumstances or set of circumstances which pose an imminent threat of loss, damage or injury, actual or threatened, to persons or property. Special Assessments shall be allocated in the same manner as Regular Assessments, that is, in accordance with the Allocated Interests of each Lot in the Common Interest Community, and shall be due and payable to the Association on the due date fixed by the Executive Board in the notice given to the Owners of such Special Assessment, which due date shall be no earlier than 30 days after the giving of such notice. If fewer than all of the Lots will be subject to the Special Assessment, then such Special Assessment shall be allocated equally amongst those Lots.

Section 10.10 Reimbursement Assessments. In addition to the Regular and Special Assessments authorized hereunder, the Executive Board may levy against any Owner or Owners, at any time and from time to time, a Reimbursement Assessment for purposes of reimbursing the Association for all costs and expenses incurred by it in enforcing any provision of or in remedying any violation of this Declaration, any Supplemental Declaration, the Articles, Bylaws, Rules and Regulations or Development Standards, or any approvals granted by the Development Review Committee, by such Owner or Owners, their Occupant(s), or their agents, employees or contractors. Reimbursement Assessments may also be made by the Executive Board for any other purposes for which this Declaration provides for the levying of a Reimbursement Assessment. Finally, and in addition to the foregoing, a Reimbursement Assessment may also be levied in the form of a reasonable fine against an Owner for a violation of this Declaration, a Supplemental Declaration, the Articles, Bylaws, or the Rules and Regulations, but only after the Owner(s) to be so fined have been provided with Notice and Hearing. Reimbursement Assessments shall be due and payable to the Association on the due date fixed by the Executive Board in the notice given to the Owner(s) of such Reimbursement Assessment, which date shall be no earlier than 30 days after the giving of such notice.

Section 10.11 Effect of Nonpayment of Assessments; Remedies of the Association. Any Assessment or portion or installment thereof which is not paid when due (or for which a bad check is issued) shall be deemed delinquent and shall bear interest from and after the due date at the rate of interest set by the Executive Board from time to time, which shall not be less than 12 percent nor more than 21 percent per year, and the Executive Board may also assess a late charge (and/or a bad check charge) thereon. The Executive Board may also elect to accelerate the installment obligations of any Regular Assessment for which an installment is delinquent. The Executive Board may also suspend the delinquent Owner’s use of the Common Areas and Association services or benefits, as provided in Section 13.4. The delinquent Owner shall also be liable for all costs, including attorneys’ fees, which may be incurred by the Association in collecting a delinquent Assessment, which collection costs shall be added to the delinquent Assessment. The Executive Board may but shall not be required to record a Notice of Delinquent Assessment or charge against any Lot as to which an Assessment or charge is delinquent. The Notice shall be executed by an officer of the Executive Board, and

shall set forth the amount of the unpaid Assessment or charge, the name of the delinquent Owner and a description of the Lot.

The Assessment Lien may be foreclosed by the Association in the same manner as a mortgage on real property. The Association shall be entitled to purchase the Lot at foreclosure. The Association may also bring an action at law against the Owner personally obligated to pay the delinquent Assessment and/or foreclose the lien against said Owner's Lot in the discretion of the Association. No Owner may exempt himself or otherwise avoid liability for the Assessments provided for herein by waiver of the use or enjoyment of any of the Common Areas or by abandonment of the Lot against which the Assessments are made. Where Assessments that are due from any Owner are more than 90 days delinquent, the Executive Board may temporarily cut off any or all Association services or benefits to the delinquent Owner and his Lot, including the right to use Common Areas, until all delinquent Assessments are fully paid.

In any action by the Association to collect Assessments or to foreclose a lien for unpaid Assessments, the court may appoint a receiver to collect all sums alleged to be due from the Lot Owner prior to or during the pending of the action. The court may order the receiver to pay any sums held by the receiver to the Association during the pending of the action to the extent of the Association's Regular Assessments.

Section 10.12 Statement of Unpaid Assessments. The Association shall furnish to an Owner or such Owner's designee or to a holder of a security interest or its designee upon written request, delivered personally or by facsimile transmittal or by certified mail, first class postage prepaid, return receipt requested, to the Association, a written statement setting forth the amount of unpaid Assessments currently levied against such Owner's Lot, whether delinquent or not. The statement shall be furnished within 14 days after receipt of the request and is binding on the Association, the Executive Board, and every Owner. If no statement is furnished either delivered personally or by facsimile transmission or by certified mail, first-class postage prepaid, return receipt requested, to the inquiring party, then the Association shall have no right to assert a lien upon the Lot for unpaid Assessments which were due as of the date of the request.

Section 10.13 Assessments for Tort Liability. In the event of any tort liability against the Association which is not covered completely by insurance, each Owner shall contribute for the payment of such liability as a Special Assessment. The Association may, however, require a larger contribution from fewer than all Owners under any legal or equitable principles regarding liability for negligent or willful acts or omissions.

ARTICLE 11

EMINENT DOMAIN

Section 11.1 Definition of Taking. The term "taking", as used in this Article 11, shall mean condemnation by eminent domain or sale under threat of condemnation.

Section 11.2 Representation in Condemnation Proceedings of Common Areas. In the event of a threatened taking of all or any portion of the Common Areas, the Lot Owners hereby appoint the Association through such persons as the Executive Board may designate to represent the Association and all of the Lot Owners in connection therewith. The Association

shall act in its sole discretion with respect to any awards being made in connection with the taking and shall be entitled to make a voluntary sale to the condemnor in lieu of engaging in a condemnation action. Service of process on the Association shall constitute sufficient notice to all Lot Owners, and service of process on each individual Lot Owner shall not be necessary.

Section 11.3 **Award for Common Area.** Any awards received by the Association on account of the taking of Common Area shall be paid to the Association. The Association may, in its sole discretion, retain any award in the general funds of the Association or distribute all or any portion thereof to the Lot Owners as their interests may appear. The rights of a Lot Owner and the Mortgagee of a Lot as to any such distribution shall be governed by the provisions of the Mortgage encumbering the Lot.

Section 11.4 **Taking of Lots.** If a Lot is acquired by eminent domain or part of a Lot is acquired by eminent domain leaving the Lot Owner with a remnant which may not practically or lawfully be used for any purpose permitted by this Declaration, the award must include compensation to the Lot Owner for that Lot and its Allocated Interests whether or not any Common Area was acquired. Upon acquisition, unless the decree otherwise provides, that Lot's Allocated Interests are automatically reallocated to the remaining Lots (as appropriate) in proportion to the respective Allocated Interests of those Lots before the taking. Any remnant of a Lot remaining after part of a Lot is taken is thereafter Common Area. Otherwise, if part of a Lot is acquired by eminent domain, the award must compensate the Lot Owner for the reduction in value of the Lot and its interest in the Common Areas whether or not any Common Area was acquired. Upon acquisition, unless the decree otherwise provides:

(a) That Lot's Allocated Interests are reduced in proportion to the reduction in the size of the Lot; and

(b) The portion of Allocated Interests divested from the partially acquired Lot is automatically reallocated to that Lot and to the remaining Lots (as appropriate) in proportion to the respective interests of those Lots before the taking, with the partially acquired Lot participating in the reallocation on the basis of its reduced Allocated Interests.

Section 11.5 **Miscellaneous.** The court decree shall be recorded in Garfield County. The reallocations of Allocated Interests pursuant to this Article shall be confirmed by an amendment to the Declaration prepared, executed, and recorded by the Association.

ARTICLE 12

SPECIAL PROVISIONS

Section 12.1 **Conservation Overlay Zones.** As required by and in accordance with the P.U.D. for River Valley Ranch, there are two Conservation Overlay Zone Districts in the areas shown on the Plat. One District is designated as the Conservation Overlay District/Riparian ("COD/R"), and the other District is designated as the Conservation District/Uplands ("COD/U"). The COD/R includes all of the Crystal River throughout the P.U.D., the area included in the 100 year flood plain, and areas identified as jurisdictional wetlands. The COD/U includes the upland areas designated on the Plat. Certain restrictions on the uses and permitted activities within the COD/R and COD/U are contained in the P.U.D., and the Association and all Lot Owners and Occupants are obligated to comply with such restrictions.

Section 12.2 Bald Eagle Closure Area and Other Eagle-Related Mitigation Measures. In accordance with the recommendations of the Colorado Division of Wildlife, a Bald Eagle Closure Area (“BECA”) has been established in the area shown on the Plat or any Supplemental Plat in order to protect the bald eagle habitat that exists in the area. The BECA shall be closed to public or private use from December 1 through March 15 of each year, by the use of locked gates and appropriate signage, and all human activity (including cross country skiing, fishing access, hiking and dog walking, is expressly prohibited in the BECA during such closure period. The Association, all Lot Owners and Occupants, and all other authorized users of the BECA, are obligated to comply with such closure restrictions.

Section 12.3 Air Quality Restrictions. In order to protect against the degradation which occurs to air quality as a result of the utilization of solid fuel burning devices, the following restrictions are imposed:

(a) No solid fuel burning fireplaces, stoves, appliances or other devices except charcoal cooking grills will be allowed anywhere within the Common Interest Community.

(b) All dwelling units within the Common Interest Community will be allowed an unrestricted number of natural gas burning fireplaces or appliances.

Section 12.4 Duration and Enforceability. The restrictions set forth in this Article 12 shall constitute covenants running with the title to the Common Interest Community and shall be binding upon Declarant and the Owners and all other persons and parties claiming through the Declarant or Owners and shall be for the benefit of and limitations upon all future Owners of the Common Interest Community and the Lots therein. Notwithstanding any other provision of this Declaration, all use restrictions set forth in this Article 12 shall be enforceable in perpetuity and shall not be amended or terminated by action of the Owners or Declarant nor by any provision for termination of this Declaration. The restrictions of these special environmental use restrictions shall be enforceable in any and all manners provided in this Declaration by any Owners, by Declarant, by the Association, or by any Town, State or Federal agency charged with preservation of the affected areas. Any such enforcement action may involve a claim for injunctive relief, for damages, or both, and the enforcing party shall be entitled to an award of its reasonable attorney fees and costs of enforcement, including but not limited to, court costs, expert witness fees, and cost of depositions and exhibits.

Section 12.5 Protection of Agricultural Land. Declarant acknowledges and agrees that it is the declared policy of the State of Colorado to conserve, protect and encourage the development and improvement of its agricultural land for the production of food and other agricultural products. In furtherance of that policy, Declarant hereby puts owners of all Lots within the Common Interest Community on notice that certain portions of the Common Interest Community are contiguous to agricultural lands upon which agricultural operations have been continuing for more than one (1) year prior to the date hereof. In accordance with applicable Colorado law, no such agricultural operation shall be deemed a private or public nuisance by reason of development of the Common Interest Community or any other changed condition in or about the vicinity of the agricultural operation, except in the case of (a) the negligent operation of the agricultural use, (b) a change in the agricultural operation which would result in a private or public nuisance, or (3) upon a substantial increase in the size of the agricultural operation.

ARTICLE 13

GENERAL PROVISIONS

Section 13.1 **Duration of Declaration.** The term of this Declaration shall be perpetual.

Section 13.2 **Termination of Common Interest Community.** The Common Interest Community may be terminated only by the agreement of (a) Lot Owners to which at least 80 percent of the votes in the Association are allocated, and (b) the holders of all First Mortgages on Lots. In the event of such termination, the provisions of Section 38-33.3-218 of the Act shall apply.

Section 13.3 **Amendment of Declaration and Plat.** This Declaration and the Plat may be amended pursuant to Section 38-33.3-217 of the Act. Under the Act, the Declaration may be amended by Declarant in certain defined circumstances, including when the Declarant is exercising reserved rights under Article 6 hereof. The Act also provides that the Declaration may be amended by the Association in certain defined circumstances. Otherwise, and subject always to any provisions of this Declaration requiring the consent of Declarant to certain actions, this Declaration and any Supplemental Declarations (including the Plat and any Supplemental Plats) may be amended only by the vote or agreement of Lot Owners to which at least 67 percent of the votes in the Association are allocated. Furthermore, Section 38-33.3-217(4) of the Act provides that except to the extent expressly permitted or required by other provisions of the Act (e.g., permitted Declarant or Association amendments), the unanimous consent of Lot Owners is required for any amendment that (a) creates or increases special Declarant rights, (b) increases the number of Lots, or (c) changes the boundaries of any Lot, the Allocated Interests of a Lot or the uses to which any Lot is restricted. Notwithstanding the foregoing, no amendment shall be made to the provisions of Section 3.39 (Municipal Water Service,) Section 7.5 (Ditch Easements), Section 7.6 (Aesthetic Ditch Easements), Section 7.7 (Utility, Drainage, and/or Irrigation Easements), Section 7.8 (Blanket Emergency Services Easement), Section 12.1 (Conservation Overlay Zone), or Section 12.2 (Bald Eagle Closure Area) without the prior written consent of the Town. Furthermore, for a period of 10 years following the date of recording of this Declaration, no amendment shall be made to any provision in this Declaration relating to the Association's responsibility for maintaining the front yards, repainting or residing the residences, and repairing and replacing the roofs in the Common Interest Community, without the prior written consent of the Executive Board of the River Valley Ranch Master Association.

With the exception of amendments accomplished by Supplemental Declaration (when lands are annexed to the Common Interest Community), an amendment to this Declaration shall be in the form of a "First (or Second, etc.) Amendment to Declaration of Protective Covenants for Thompson Corner." With the exception of Declarant amendments, amendments to this Declaration shall be duly executed by the President and Secretary of the Association and recorded in the Office of the Clerk and Recorder of Garfield County. All amendments to this Declaration shall be indexed in the Grantee's index in the names of the Common Interest Community and the Association, and in the Grantor's index in the name of each Person executing the amendment.

Section 13.4 **Compliance; Enforcement.** Every Owner and Occupant of a Lot in the Common Interest Community shall fully and faithfully observe, abide by, comply with and

perform all of the covenants, conditions and restrictions set forth in this Declaration, Bylaws, Rules and Regulations, the Development Standards and all approvals granted by the Development Review Committee, as the same or any of them may be amended from time to time. In addition to any other rights or remedies that may be provided to any Person under the terms and provisions of this Declaration or of any Supplemental Declaration, Declarant, for so long as it holds any of the rights set forth in Article 6 hereof, the Association through its Executive Board, the Development Review Committee as to matters arising under Article 4 hereof, and every Lot Owner (except an Owner that is delinquent in the payment of Assessments hereunder) shall have the right, acting alone or together with others having such right, to enforce, by any proceeding at law or in equity, any or all of the covenants, conditions, restrictions, assessments, charges, liens, servitudes, easements and other provisions now or hereafter imposed by this Declaration, any Supplemental Declaration, the Articles, Bylaws, Rules and Regulations, the Development Standards, and approvals granted by the Development Review Committee. In addition, in the event the Town or the River Valley Ranch Master Association has reasonable cause to believe that a violation of such covenants, conditions, restrictions, assessments, charges, liens, servitudes, easements or other provisions is occurring, the Town or the River Valley Ranch Master Association may give written notice to the Association of such violation. In the event the Association fails to act to cure such violation within 30 days following receipt of such written notice, the entity serving such notice shall also have the right to enforce, by any proceeding at law or in equity, any or all of such covenants, conditions, restrictions, assessments, charges liens, servitudes, easements or other provisions now or hereafter imposed by this Declaration, any Supplemental Declaration, the Articles, Bylaws, Rules and Regulations, the Development Standards and approvals granted by the Development Review Committee. Finally, the Town shall have the right to enforce any matters arising under Sections 3.39, 7.5, 7.6, 7.7, 7.8, 12.1, or 12.2 hereof.

Such enforcement rights shall include without limitation the right to bring an injunctive action for any form of injunctive relief available under Colorado law (including specific performance), or an action for damages, or both. Injunctive relief may include, without limitation, orders to stop work, orders to remove Improvements constructed in violation hereof, orders to compel performance, and any other orders appropriate under the circumstances.

The Executive Board shall have the further right (a) to levy and collect, after Notice and Hearing, reasonable fines for the violation of any of the foregoing matters, (b) to levy and collect a Reimbursement Assessment against any Owner, (c) to enter upon any Lot within the Common Interest Community, after giving the Lot Owner or Occupant at least 5 days written notice of the nature of the violation, (unless an emergency endangering Persons or property exists, in which case without notice), without liability to the Owner or Occupant thereof, to enforce or cause compliance with such matters, at the cost and expense of the Owner or Occupant in violation, and/or (d) where the violation has continued for more than 90 days after the Executive Board has given the Lot Owner or Occupant written notice of the violation, the Executive Board may temporarily cut off any or all Association services or benefits to the subject Owner or Occupant and his Lot, including the right to use Common Areas (except access roads), until the violation is cured.

In any action brought under this Section 13.4, the prevailing party shall be entitled to an award of its reasonable attorneys' fees and costs incurred in connection therewith, provided, however that the Town of Carbondale shall be responsible for payment of attorney's fees if it brings on a defense which is determined to be frivolous pursuant to C.R.S. 13-17-101 et. seq. Failure by any party entitled to do so to exercise in a particular instance any of the rights

available to it under this Section 13.4 shall in no event be deemed a waiver of the right to do so in any other instance.

Provided always, that no Owner shall have the right to bring an enforcement action against another Owner or Occupant for a breach by that Owner or Occupant of any of such matters, or against the Association for a breach by the Association of any of such matters or for a failure by the Association to enforce compliance with such matters by others, until the aggrieved Owner has given the offending Owner or Occupant and the Association at least 30 days prior written notice of the aggrieved Owner's complaint and the opportunity to resolve the problem during that 30 day period.

And further provided, that notwithstanding any law to the contrary, no action shall be commenced or maintained to enforce the terms of any building restriction contained in the provisions of this Declaration, any Supplemental Declaration, the Bylaws, the Articles of Incorporation, or the Rules and Regulations, or to compel the removal of any building or Improvement because of the violation of the terms of any such building restriction, unless the action is commenced within one year from the date from which the person commencing the action knew or in the exercise of reasonable diligence should have known of the violation for which the action is sought to be brought or maintained.

Section 13.5 **Rights of First Mortgagees.** Upon the filing of a written request therefor with the Association, the holder of a First Mortgage on any Lot in the Common Interest Community shall be entitled to:

- (a) Written notice from the Association that the Owner of the subject Lot is delinquent in the payment of Assessments thereon;
- (b) Inspect the books and records of the Association during normal business hours;
- (c) Receive copies of annual Association financial statements;
- (d) Receive written notice of meetings of the Association where matters will be considered that, if approved, will require the consent of First Mortgagees or some of them;
- (e) Receive written notice of condemnation proceedings affecting any Common Areas; and
- (f) Receive written notice of the lapse of any insurance that the Association is required to maintain under this Declaration .

In addition, any First Mortgagee shall be entitled to pay any taxes or other charges which are in default and which may or have become a lien against the Common Areas and may pay any overdue premiums on hazard or general liability insurance policies covering the Common Areas, and shall be entitled to immediate reimbursement therefor from the Association, unless the Association is contesting any unpaid taxes or other charges and has set aside sufficient funds to pay the contested amounts if necessary.

Section 13.6 **Association Right to Mortgage Information.** Each Owner hereby authorizes and instructs any holder of a Mortgage on the Owner's Lot to furnish to the Association, upon receipt of a written request therefor from the Association, all information in the Mortgagee's possession regarding the status of the Mortgage and of the loan secured thereby.

Section 13.7 **Notice.** Each Lot Owner, and each First Mortgagee if it so elects, shall register its mailing address from time to time with the Association. Except as otherwise specifically provided in this Declaration, any notice permitted or required to be given hereunder shall be in writing and may be delivered either personally, or by facsimile transmission, or by mail. Notices delivered personally or sent by facsimile transmission shall be deemed given on the date so delivered or sent. If delivery is made by mail, it shall be deemed to have been delivered two (2) business days after a copy of the same has been posted in the first-class U.S. Mail with adequate postage affixed, addressed to the receiving party at the address last registered by such party with the Association, or in the case of a Lot Owner that has not provided such an address, to the Lot of that Owner. Notices to the Association shall be sent to such address as it may from time to time designate in writing to each Owner.

Section 13.8 **No Dedication to Public Use.** Except for the streets conveyed to the Town for public use by separate instrument, and except as otherwise expressly provided herein to the contrary, nothing contained in this Declaration or in any Supplemental Declaration shall be deemed to be or to constitute a dedication of all or any part of the Common Interest Community to the public or to any public use.

Section 13.9 **Interpretation of Declaration.** The provisions of this Declaration and of any Supplemental Declaration shall be liberally construed to effectuate its purposes of creating a common and general plan for the development, improvement, enhancement, protection and enjoyment of the Common Interest Community, and to the extent possible, shall be construed so as to be consistent with the Act. In the event that any of the terms and conditions of this Declaration or any Supplemental Declaration are determined to be inconsistent with the Act, the Act shall control.

Section 13.10 **Conflict With Plats.** In the event of any conflict or inconsistency between the provisions of this Declaration and the Plat, or any Supplemental Plat including the Plat notes thereon, the provisions of said Plat or Supplemental Plat or Plat notes, as the case may be, shall govern and control and this Declaration shall automatically be amended, but only to the extent necessary to conform the conflicting provisions hereof with the provisions of said Plat, Supplemental Plat or Plat notes.

Section 13.11 **No Express or Implied Covenants on Lands Not Annexed** Nothing in this Declaration shall create, or be deemed to create, any express or implied covenants upon or with respect to any real property or interest therein not actually annexed to the Common Interest Community in the manner provided herein, including without limitation the property described in attached Exhibit A.

Section 13.12 **Violations Constitute a Nuisance.** Any violation of any provision, covenant, condition, restriction or equitable servitude contained in this Declaration, or in any Supplemental Declaration, whether by act or omission, is hereby declared to be a nuisance and may be enjoined or abated, whether or not the relief sought is for negative or affirmative action, by any Person entitled to enforce the provisions of this Declaration or any

Supplemental Declaration. This provision does not limit the remedies that may be available under this Declaration or at law or in equity. Failure of the Association to bring enforcement action to correct any violation of this Declaration shall not constitute a waiver of or estop the Association from bringing a future or subsequent enforcement action to correct such violation or any other similar violation.

Section 13.13 Declarant's Disclaimer of Representations and Warranties. No representations or warranties of any kind, express or implied, have been given or made or shall be deemed to have been given or made by Declarant or its agents or employees in connection with the Common Interest Community or any portion thereof or any Improvements thereon, its or their physical condition, zoning, compliance with applicable laws, fitness for intended use or operation, adequacy or availability of utilities, or in connection with the subdivision, sale, improvement, operation, maintenance, cost of maintenance, taxes or regulation thereof, unless and except as shall be specifically set forth in writing herein, in any registration statement or purchase and sale agreement executed by Declarant, or in any closing document related thereto. Furthermore, no such representations or warranties have been given or made or shall be deemed to have been given or made by Declarant or its agents or employees that the plans presently envisioned for the complete development of the Common Interest Community and/or the P.U.D. for River Valley Ranch can or will be carried out, or that the property described on Exhibit A will be subjected to this Declaration or that any land now owned or hereafter acquired by Declarant (whether or not it is subjected to this Declaration) is or will be committed to or developed for a particular (or any) use, or that if such land is once used for a particular use, such use will continue in effect, unless and except as shall be specifically set forth in writing herein, in any registration statement or purchase and sale agreement executed by Declarant, or in any closing document related thereto.

Section 13.14 Captions. Captions given to various Articles and Sections herein are for convenience only and are not intended to modify or affect the meaning of any of the substantive provisions hereof and shall not be considered in interpreting any of the provisions hereof.

Section 13.15 Singular Includes Plural. Unless the context requires a contrary construction, as employed in this Declaration the singular shall include the plural and the plural the singular; and the masculine, feminine or neuter shall each include the masculine, feminine and neuter.

Section 13.16 Remedies Cumulative. Each remedy provided under this Declaration is cumulative and not exclusive.

Section 13.17 Costs and Attorneys' Fees. In any action or proceeding involving the interpretation or enforcement of any provision of this Declaration or any Supplemental Declaration, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs incurred in connection therewith.

Section 13.18 Governing Law; Jurisdiction. The laws of the State of Colorado shall govern the interpretation, validity, performance, and enforcement of this Declaration and any Supplemental Declaration. Any legal action brought in connection with this Declaration or any Supplemental Declaration shall be commenced in the District Court for Garfield County, Colorado, and by acceptance of a deed to a Lot each Lot Owner voluntarily submits to the jurisdiction of such court.

Section 13.19 **Severability**. Any determination by any court of competent jurisdiction that any provision of this Declaration or of any Supplemental Declaration is invalid or unenforceable shall not affect the validity or enforceability of any of the other provisions hereof. Where any provision of this Declaration or any Supplemental Declaration is alleged to be or declared by a court of competent jurisdiction to be unconscionable, Declarant or the Association shall have the right by amendment to this Declaration or Supplemental Declaration to replace such provision with a new provision, as similar thereto as practicable but which in Declarant's or the Association's reasonable opinion would be considered not to be unconscionable.

Section 13.20 **Disclaimer Regarding Safety**. **DECLARANT, ON BEHALF OF ITSELF AND THE ASSOCIATION, HEREBY DISCLAIMS ANY OBLIGATION REGARDING THE SECURITY OF ANY PERSONS OR PROPERTY WITHIN THE COMMON INTEREST COMMUNITY. ANY OWNER OF PROPERTY WITHIN THE COMMON INTEREST COMMUNITY ACKNOWLEDGES THAT DECLARANT AND THE ASSOCIATION ARE ONLY OBLIGATED TO DO THOSE ACTS SPECIFICALLY ENUMERATED HEREIN, OR IN THE ARTICLES OF INCORPORATION AND BYLAWS, AND NOT OBLIGATED TO DO ANY OTHER ACTS WITH RESPECT TO THE SAFETY OR PROTECTION OF PERSONS OR PROPERTY WITHIN THE COMMON INTEREST COMMUNITY.**

IN WITNESS WHEREOF, Declarant has executed this Amended and Restated Declaration as of the day and year first above written.

DECLARANT:

CRYSTAL RIVER LIMITED PARTNERSHIP, a Delaware Limited Partnership

By: Hines Colorado Corporation., a Texas corporation, General Partner

By: _____

Its: _____

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing Amended and Restated Declaration was acknowledged before me this ____ day of _____, 1998, by _____ as _____ of Hines Colorado Corporation, a Texas corporation, General Partner of CRYSTAL RIVER LIMITED PARTNERSHIP, a Delaware limited partnership, Declarant.

WITNESS MY HAND AND OFFICIAL SEAL.

My commission expires:

(SEAL)

Notary Public

EXHIBIT A

LEGAL DESCRIPTION OF ANNEXABLE PROPERTY

A tract of land situate in Section 3, Township 8 South, Range 88 West of the 6th Principal Meridian being more particularly described as follows:

Beginning at a point whence the SW corner of said Section 3 bears S 16°30'16" W 4441.12 feet; thence S 43°51'52" W 75.21 feet along the northerly line of Triangle Park, River Valley Ranch, Phase I, Town of Carbondale, County of Garfield, State of Colorado to the northerly right-of-way line of North Bridge Drive as platted and dedicated by plat of River Valley Ranch, Phase III, Town of Carbondale, County of Garfield, State of Colorado, Thence N 66°40'24" W 178.07 feet along said northerly right-of-way line to the easterly right-of-way line of Holland Drive; thence 119.00 feet along the arc of a non-tangent curve to the left, having a radius of 180.00 feet, a central angle of 37°52'45", and subtending a chord bearing N 14°55'52" W 116.85 feet along said easterly right-of-way line; thence N 33°52'14" W 124.11 feet along said easterly right-of-way line; thence N 87°56'01" E 131.89 feet; thence S 2°23'32" E 18.07 feet; thence N 88°10'32" E 4.10 feet; thence S 28°48'43" E 176.06 feet along a fence line on the west boundary of a tract of land described in Book 494 at Page 822 of the records of the Clerk and Recorder of Garfield County, Colorado; thence S 55°14'39" E 113.67 feet along said west line to the point of beginning, containing 0.829 acres more or less.

County of Garfield, State of Colorado

EXHIBIT B

Allocated Interests
Thompson Corner Common Interest Community

<u>Lots</u>	<u>Common Expense Liability</u>	<u>Vote</u>
Block G, Lots 1-48, inclusive	Each Lot: 1/48	Each Lot: 1 Vote
Total Lots: 48	Total Common Expenses Liabilities = 48/48	Total Votes: 48

Upon the subdivision of each of the 12 duplex Lots into separate Lots, this Exhibit B will be amended to include the 12 additional Lots created thereby.

EXHIBIT D

Recorded Easements and Licenses

1. All easements shown on the Final Plat of River Valley Ranch (Phase I), as recorded at Reception No. 498928.
2. Easements and rights of way created or reserved in United States Patent recorded in Book 12 at Page 334.
3. Permanent easement granted to Department of Highways, State of Colorado, in instrument recorded in Book 317 at Page 101.
4. Ditch Agreement recorded in Book 928 at Page 983.
5. Easements set forth in instrument recorded in Book 928 at Page 994.
6. Water Rights Operating Agreement recorded in Book 994 at Page 001.
7. Deed of Easement between Declarant and the Town of Carbondale recorded in Book 994 at Page 118.
8. Ditch Easement Agreement for the Town of Carbondale Ditch recorded in Book 993 at Page 985.
9. Ditch Relocation Agreement for the Town of Carbondale Ditch recorded in Book 993 at Page 922.
10. Ditch Relocation Agreement for the Rockford Ditch recorded in Book 993 at Page 957.

All recordings are in the Office of the Clerk and Recorder of Garfield County, Colorado.

ASPEN:0017995.06

AMENDED AND RESTATED
DECLARATION
OF
PROTECTIVE COVENANTS
FOR
THOMPSON CORNER

February ____, 1998