

**DECLARATION OF COVENANTS, CONDITIONS,
EASEMENTS AND RESTRICTIONS FOR
THOMPSON PARK SUBDIVISION**

This Declaration of Covenants, Conditions, Easements and Restrictions for Thompson Park Subdivision (this "Declaration") is made this 15th day of November, 2019, by Thompson Park, LLC, a Colorado limited liability company ("Declarant").

RECITALS

- A. Capitalized terms used in this Declaration are defined in Section 1.1.
- B. Declarant owns the Property, which is real property located in the Town of Carbondale, County of Garfield, State of Colorado.
- C. By recording this Declaration, Declarant By the filing of this Declaration, Declarant serves notice that upon the further filing of one or more notices of applicability pursuant to the requirements of Section 16.02 hereof, Portions of the Property identified in such notice or notices will be subjected to the terms and provisions of this Declaration. Once such notices of applicability have been recorded, the portions of the Property described therein will constitute the Development (as defined below) and will be governed by and fully subject to this Declaration.
- D. The law which governs the type of association described herein is the Colorado Common Interest Ownership Act, C.R.S. §§ 38-33.3-101, *et seq.*, as the same may be amended from time to time (the "Act"). The development contemplated herein is a "common interest community" (as such term is defined in the Act). The type of common interest community is a "planned community" (as such term is defined in the Act) because portions of the real estate are designated for ownership by an owners' association. In the event of any conflict or inconsistency between the provisions of the Act and this Declaration, the provisions of the Act shall govern.

DECLARATION

NOW, THEREFORE, it is hereby declared that those portions of the Property, as and when subjected to this Declaration pursuant to Section 7.4, below, shall be owned, held, conveyed, encumbered, leased, improved, used, occupied, and enjoyed subject to the following covenants, conditions, easements, and restrictions and the Act, as may be amended from time to time. With respect to each portion of the Property subjected hereto as provided herein, this Declaration shall: (i) run with the subjected portion(s) of the Property at law; (ii) bind all Persons having or acquiring interest in the subjected portion(s) of the Property or any part thereof; (iii) inure to the benefit of and be binding upon every part of the subjected portion(s)

of the Property and every interest therein; and (iv) inure to the benefit of, be binding upon, and be enforceable by each Owner and his or her heirs, successors in interest and assigns; and the Association and its successor in interest.

Article 1: Definitions and Exhibits

Section 1.1 **Definitions.** The following initially capitalized terms when used in this Declaration shall have the meanings specified below:

“**Act**” means the Colorado Common Interest Ownership Act codified at Colorado Revised Statutes §§ 38-33.3-101, *et seq.*, as amended from time to time. In the event the Act is repealed, the terms of the Act, on the effective date of this Declaration, shall remain applicable to this Declaration.

“**Allocation Percentage**” means the share of any Assessments to be allocated to each Lot or Unit, as amended from time to time. The formula for determining the Allocation Percentage is set forth in Section 6.9.

“**Declaration**” means this Declaration of Covenants, Conditions, Easements and Restrictions for Thompson Park Subdivision as it is amended from time to time.

“**Annual Budget**” is defined in Section 6.1.

“**Articles**” means the Articles of Incorporation of the Association that have been filed in the office of the Secretary of State of Colorado, as amended from time to time.

“**Assessments**” mean Common Assessments, Special Assessments, and Specific Assessments.

“**Association**” means Thompson Park Homeowners Association, Inc., a Colorado nonprofit corporation, presently formed.

“**Board or Board of Directors**” means the board of directors of the Association.

“**Bylaws**” means the duly adopted Bylaws of the Association, as amended from time to time.

“**Common Assessments**” is defined in Section 6.3.

“**Common Elements**” means any real property or easement interest in real property, together with all Improvements thereon, and any personal property owned or held by the Association for the primary benefit of all or some of the Owners and the Property as a whole or a portion thereof, and this term includes both General Common Elements and Limited Common Elements.

“**Common Expenses**” means, except for those costs and expenses expressly excluded below, all costs and expenses and financial liabilities incurred by the Association pursuant to this Declaration or the Bylaws including, without limitation: all costs of insuring, operating, managing, administering, securing, protecting, cleaning, maintaining, repairing, renewing, replacing or restoring (to the extent not covered by insurance or condemnation proceeds) the Common Elements and public rights-of-way and open ditch channels within the Property; taxes on any property owned by the Association, if payable by the Association; and funding of working capital and reasonable reserves for such costs and expenses. This definition shall not be amended to exclude expenses related to the public rights-of-way and open ditch channels without prior approval from the Town of Carbondale.

“**Declarant**” means Thompson Park, LLC, and its successors and assigns. No party other than Thompson Park, LLC shall exercise the rights and privileges reserved herein to Declarant unless such party shall receive and record in the Office of the Clerk and Recorder of Garfield County, Colorado, a written assignment from Thompson Park, LLC of all or a portion thereof.

“**Declarant Control Period**” means that period of time during which Declarant controls the operation and management of the Association, including the right to appoint and remove all members of the Board and the officers of the Association. The duration of the Declarant Control Period is from the date this Declaration is recorded until the earlier to occur of: (i) two (2) years after the last conveyance of a Lot by the Declarant in the ordinary course of business; (ii) two (2) years after any right to add portions of the Property was last exercised Declarant; or (iii) one-hundred and twenty (120) days after the conveyance of seventy-five percent (75%) of all Lots that may be created out of the Property have been conveyed to Owners other than the Declarant.

“**Delinquency Costs**” is defined in Section 6.10.

“**Deed Restriction Agreement**” means the Declaration of Deed Restriction and Agreement Concerning the Sale, Occupancy, and Resale of Certain Lots within the Thompson Park Subdivision, Town Of Carbondale, Garfield County, Colorado (“**Deed Restriction Agreement**”). Deed Restriction Agreements will be recorded against Units as phases of the Property are platted and the same are added to the Development as provided in Section 7.4.

“**Deed Restricted Unit**” means those Units within the Development that are subject to a Deed Restriction Agreement. Units within the Development may become Deed Restricted Units as additional phases are platted.

“**Design Guidelines**” means the detailed design guidelines required by Section 10 of the Development Plan and recorded on even date herewith, as may be amended from time to time.

“Development” means the portion of the Property described in Exhibit A that has been made subject to this Declaration through the filing of a Notice of Applicability.

“Development Plan” means the Thompson Park Development Plan approved by the Town of Carbondale and attached as Exhibit A to the Seventh Amendment to the Annexation and Development Agreement Relating to the Thompson Park Property, Town of Carbondale, dated June 22, 2016, recorded as Reception No. 880318, and rerecorded at Reception No. 881125, as may be amended with approval of the Town of Carbondale.

“Director” means a member of the Board.

“ Dwelling” means a Unit or other Improvement or portion thereof containing sleeping, bath, and kitchen facilities that is designed and used for occupancy as a dwelling on a Lot. A Dwelling may be either a detached single-family dwelling or an individual residential unit within a multi-family building, which building may span several Lots and include Party Walls. A Dwelling includes any attached garage.

“First Mortgage” means the legal holder of a Mortgage with first priority over other Mortgages.

“Fiscal Year” means the fiscal year of the Association set from time to time by the Board pursuant to the Bylaws.

“Free Market Lot” means any Lot that is not a Deed Restricted Unit.

“Future Development Parcels” means Parcels 3 and 4 as shown on the Master Plat and any other parcel shown on any Plat and designated thereon as “RESERVED FOR FUTURE DEVELOPMENT.”

“General Common Element” means a Common Element owned, held, or maintained by the Association pursuant to Section 5.7(a) hereof for the benefit of all of the Owners and the Property as a whole. Such General Common Elements include, but are not necessarily limited to, all Open Space Easements, access easements (including the Improvements therein such as curb, gutter, and paved street surfaces), trail easements, sidewalks, landscape areas maintained by the Association in public rights-of-way, central irrigation systems, and any other General Common Element designated herein or on any Plat. This definition shall not be amended to exclude access easements (including the Improvements therein such as curb, gutter, and paved street surfaces), sidewalks, landscape areas maintained by the Association in public rights-of-way, and central irrigation systems without the prior approval of the Town of Carbondale.

“Guest” means any Person rightfully present on or in rightful possession of any portion of the Property, including, without limitation, (a) a tenant of an Owner or of the Association

or (b) an agent, employee, contractor, licensee, invitee, family member, shareholder, partner, Owner or guest of an Owner, the Association, or a tenant of either of them.

“Improvement(s)” means all structures, facilities, installations, improvements to property, changes in property, and appurtenances thereto, of every type, kind or nature, including, without limitation, buildings, roads, driveways, walkways, fences, walls, patios, decks, gardens, landscaping, re-vegetation, and removal of vegetation, changes in grade, excavations, berms, ditches, culverts, poles, outdoor lighting, antennas and signs.

“Law” means all laws, statutes, ordinances, resolutions, orders, codes, rules, regulations, judgments, decrees and other requirements (including requirements under permits, licenses, consents and approvals) of any federal, state, county, city, town or other governmental authority having jurisdiction over the Property or any activity on the Property.

“Lessee” means any Person or Persons who is the lessee of a Lot under a lease.

“Limited Common Element” means a Common Element owned or maintained by the Association pursuant to Section 5.7(a) hereof for the benefit of one or more Lots but fewer than all of the Lots, including but not limited to the yards, driveways, patios, and decks located on any Lot and any other Limited Common Element designated herein or on a Plat. Each Plat shall identify the Lot or Lots benefited by each Limited Common Element.

“Livestock” means animals, other than cats or dogs, customarily raised or kept on ranches or farms for profit including, without limitation, horses.

“Lot” means each of the lots or parcels shown on any Plat of the Property. All of the Lots, Units, and Future Development Parcels together with the Common Elements comprise the **“Property.”**

“Master Plat” means the Thompson Park Subdivision Master Plat recorded in the Office of the Garfield County Clerk and Recorder on May 19, 2015, as Reception No. 862909.

“Member” means a member of the Association, and **“Membership”** means the rights and obligations associated with being a Member.

“Mortgage” means any mortgage or deed of trust or other such instrument, given voluntarily by the Owner of a Lot, encumbering the Lot to secure an evidence of debt or the performance of an obligation which is required to be released upon the payment of such debt or the performance of such obligation.

“Notice of Applicability” means the notice recorded in the Records subjecting a portion of the Property to this Declaration in accordance with Section 7.4 hereof.

“Notice to Comply” is defined in Section 7.12.

“**Owner**” means a Person or Persons who is the owner of fee simple title of Record to a Lot or Unit from time to time, but excluding the Association. The term “Owner” shall not include (a) a contract purchaser except a contract vendee under an installment land sales contract; (b) the vendor under an installment sales contract; or (c) a Person holding an interest in a Lot or Unit merely as security for the performance of an obligation, unless and until such a security holder becomes an owner in fee simple of such Lot or Unit.

“**Party Wall**” means any common wall adjoining two or more Dwellings along the boundary between Lots or Units and shall be deemed to include the roofing underlying the portion of the roof over, and the utility lines within, a common wall.

“**Permitted**” means allowed pursuant to or not inconsistent with the provisions of this Declaration, the Bylaws, the Rules (if any) and in compliance with Law.

“**Person**” means any individual, corporation, partnership (general or limited, with or without limited liability), limited liability company, estate, trust, business trust, association or any other legal entity.

“**Plat**” means a subdivision plat or condominium map or plat that is recorded in the Records in order to subdivide the Property into Lots and/or Units. Up to five subdivision Plats, not including the Master Plat, may be recorded, and each such Plat may be amended or supplemented from time to time as necessary.

“**Property**” means the real property legally described on Exhibit A along with any and all Improvements now in place or hereafter constructed thereon. Such real property or portions thereof may be made subject to this Declaration, from time to time, by the filing of one or more Notices of Applicability.

“**Record(s)**” means the real property records of Garfield County, Colorado.

“**Reserve Fund**” is defined in Section 6.1.

“**Restrictions**” or “**Governing Documents**” means (i) this Declaration, as amended from time to time, (ii) the Articles and Bylaws in effect from time to time, (iii) the Rules (if any) in effect from time to time; (iv) any Policies and Procedures; (v) the Development Plan; and (vi) the Design Guidelines in effect from time to time.

“**RETA**” means the real estate transfer assessment due upon sale of the Lots or Units pursuant to the document recorded in the Records on July 10, 2019 as Reception No. 922724 (the “**RETA Covenant**”) or as the RETA Covenant may be amended in the future if authorized by the Town of Carbondale.

“**Rules**” or “**Rule**” means the rules and regulations adopted by the Board pursuant to Section 5.6 as such rules and regulations are adopted and amended from time to time.

“Special Assessments” is defined in Section 6.4.

“Specific Assessments” is defined in Section 6.5.

“Thompson Park” means the planned community located on the Property that may be subject to this Declaration upon the recordation of a Notice of Applicability.

“Unit” means a condominium unit within an Improvement constructed on a Lot that is deemed a separate estate in an individual air space unit, the horizontal and vertical boundaries of which are created and defined by a Plat.

Section 1.2 Exhibits. The Exhibits listed below are attached to and incorporated in this Declaration.

- Exhibit A - Legal Description of the Property
- Exhibit B - Schedule of Percentages upon development and annexation of entire Property

Article 2: The Community.

Section 2.1 Purposes. These covenants and restrictions are made for the purposes of creating and keeping the Property insofar as possible, desirable, attractive, beneficial and suitable in architectural design, materials and appearance; guarding against fires and unnecessary interference with the natural beauty of the Property, all in accordance with the Act.

Section 2.2 Name. The name of the Association is Thompson Park Homeowners Association, Inc.

Section 2.3 Election of CCIOA. The Declarant and the Association have elected to subject Thompson Park to the entire Act and hereby subject the Property to all of the provisions contained in the Act notwithstanding the number of Lots created by the initial Plat.

Section 2.4 Legal Description. Any contact of sale, deed lease, deed of trust, mortgage, will or other instrument affecting a Lot shall legally describe it substantially as follows:

“Lot ____, [Unit __ if applicable], THOMPSON PARK SUBDIVISION, PHASE ____, according to the _____ Plat recorded _____, 20__ at Reception No. _____, in the real estate records of Garfield County, State of Colorado and according to the Declaration of Covenants, Conditions, Easements and Restrictions for Thompson Park Subdivision recorded _____, 2019, at Reception No. _____ of the real estate records of Garfield County, State of Colorado.”

Section 2.5 No Partition or Subdivision. Common Elements shall be owned by the Association as herein provided and shall remain undivided, and no Owner or other Person shall bring any action for partition or division of the Common Elements. Similarly no action shall be brought for the subdivision or physical partition of a Unit or Dwelling between or among the Owners thereof.

Article 3: Easements.

Section 3.1 Easements Described on Plat and in Declaration. All of the Property is subject to the easements shown, created, served, or granted on the Master Plat, any Plat, and in this Declaration.

Section 3.2 Utility Easements. There is hereby reserved to the Association the following rights: (i) grant of nonexclusive easements for underground utilities, including, without limitation, for the installation, relocation, operation, maintenance, repair and replacement of lines, pumps, pipes, transformers, tanks, wires, conduits, culverts, pedestals and other facilities or systems and for ingress and egress to and from the same over and across the Property, and (ii) without extinguishing the aforementioned general easement, from time to time to substitute one or more specific easements for the use by utility companies or others by recording an instrument in the real estate records of Garfield County. Where necessary, the Board shall have the right, without obtaining consent of any Owner or Lienholder, to amend the Plat to reflect any relocations of existing easements on the Plat or the granting of new easements for any of the purposes permitted hereunder.

Section 3.3 No Public Dedication. Nothing contained in this Declaration shall be deemed to be a gift or dedication of any portion of any easement area or any other portion of the Property to or for the general public for any public purpose whatsoever, excepting only those easements identified herein or on a Plat as being available for public use.

Section 3.4 Easements for Encroachments. If any portion of the Common Elements encroaches upon any Lot or Unit, or if any Lot or Unit encroaches upon any other Lot or Unit or upon any portion of the Common Elements, as a result of the construction of any Improvement or otherwise, or if any such encroachment shall occur hereinafter as a result of settling or shifting of any Improvement, a valid easement shall exist for the encroachment and for the maintenance of the same so long as such Improvement stands. In the event any Improvement, Lot, Unit, adjoining Lot or Unit, or adjoining Common Element shall be partially or totally destroyed as a result of fire or other casualty or as a result of condemnation or eminent domain proceedings, and then rebuilt, encroachments of parts of the Common Elements upon any Lot or Unit, or of any Lot or Unit upon any other Lot, Unit, or portion of the Common Elements, due to such rebuilding, shall be permitted, and valid easements for such encroachments and the maintenance thereof shall exist so long as such Improvement shall stand. Such encroachments and easements shall not be considered or determined to be encumbrances either on the Common Elements or upon title to the Lots or Units so as to impair merchantability of title. Any such easement shall

burden the Lot, Unit, or Common Elements encroached upon and benefit the Lot, Unit, or Common Elements on which the encroaching Improvement is located or which is benefited by the encroaching Improvement. Notwithstanding the foregoing, in no event shall an easement for any such encroachment be deemed established or granted if such encroachment is materially detrimental to or interferes with the reasonable use and enjoyment of the Common Elements or Lot(s) or Unit(s) burdened by such encroachment or if such encroachment occurred due to willful and knowing misconduct on the part of the Owner claiming the benefit of such easement.

Section 3.5 Rules. The Board may adopt and enforce Rules pursuant to this Declaration governing the use of all easements created under this Declaration for the benefit of the Owners and their Guests.

Section 3.6 Association Easements Over the Lots. There is hereby created and established for the benefit of the Association easements over, across, within and through the Lots and Units as may be necessary for the Association to perform the duties and functions it is obligated or permitted to perform under this Declaration, including, but not limited to, its maintenance obligations.

Section 3.7 Roadways and Trails. The Plat(s) may include easements for private roadways, alleys, paths, or trails as General Common Elements to be owned, maintained, and insured by the Association; provided however, that those trials that have been dedicated to the Town of Carbondale will be owned, maintained, and insured by the Town. Each Owner shall have a right of ingress and egress over and across any such roadways, alleys, paths, or trails; provided, however, that such roadways, alleys, paths, or trails may be designated on a Plat as being publicly accessible. If any roadways, alleys, paths, or trails are designated on a Plat as Limited Common Elements, then easement rights of Owners shall be limited to those Owners of Lots or Units specifically benefited by such Limited Common Elements.

Section 3.8 Party Walls.

3.8.1 The cost of reasonable repair and maintenance of a Party Wall shall be a joint expense of the Owners of the Dwellings sharing such Party Wall, and each such Owner shall have a perpetual easement in and to that part of the Property on which the Party Wall is located, regardless of the precise location of the Lot or Unit boundary with respect to such Party Wall, for Party Wall purposes, including maintenance, repair, and inspection. No Owner shall alter or change the Party Wall in any manner, interior decoration excepted, and the Party Wall shall always remain in the same location as when initially constructed.

3.8.2 In the event of damage or destruction of a Party Wall from any cause, other than the negligence or willful misconduct of an Owner, then the Owners of the Dwellings sharing such Party Wall shall bear equally the expense to repair or rebuild said wall to its previous condition, which specifically includes the previous sound transmission coefficient, and such Owners, their successors and assigns shall the right to the full use of said wall so repaired

and rebuilt. If an Owner's negligence or willful misconduct shall cause damage to or destruction of said wall, such responsible party shall bear the cost of repair and reconstruction to the extent such Owner's negligence or misconduct caused such damage.

3.8.3 The Association and each of the Owners sharing a Party Wall shall have the right to break through the Party Wall for the purpose of repairing or restoring sewage, water, utilities, and structural components, subject to the obligation to restore said wall to its previous structural condition, which specifically includes the previous sound transmission coefficient, and the payment to the adjoining Owner of any damage caused thereby. Adjoining Owners shall have the right to make use of the Party Wall provided such use shall not impair the structural support or the sound transmission coefficient of the Party Wall.

3.8.4 Declarant hereby grants to the Association and its representatives and agents a nonexclusive easement to enter upon and use the Property on which a Party Wall is located as may be necessary or appropriate to perform the duties and functions that the Association may be obligated or permitted to perform under this Declaration.

3.8.5 Nothing in this Section 3.9 shall be construed as a waiver of any applicable insurance coverage for damage to any Party Wall.

Section 3.9 Open Space Easements. The Open Space Easements identified on any Plat shall be considered General Common Elements to be owned, maintained, and insured by the Association for the benefit of all Owners. Each Owner shall be entitled to enter upon and use such Open Space Easements, and the Association shall have the right to adopt Rules regarding use of the Open Space Easements. Open Space Easements may also be used for snow storage by the Association as shown on the Plat(s); provided, however, that no snow storage shall occur within 10 feet of any building.

Section 3.10 Emergency Access. There is hereby created, granted and reserved to the Association, its agents, employees and assigns, a perpetual, non-exclusive easement and right to enter upon and in all Lots and Units as necessary for the making of emergency repairs or reconstruction to the Improvements within the Property. In case of emergency, where there is an imminent threat of damage or injury to person or property, entry shall be made at any time provided that a reasonable effort is made, under the circumstances, to give notice of such intended entry to an Owner or Guest. The Association and its agents are hereby granted the authority to use such reasonable force as may be necessary under the circumstances to gain entry into a Dwelling in case of an emergency, if no other reasonable means of entry is available. The Association shall be responsible for the cost and expense of repairing all damages to property occurring as a result of such forcible entry, which costs shall be considered Common Expenses, unless the emergency and damage results from the willful act or negligence of an Owner or Guest, in which event such Owner shall be solely responsible for the costs of repairing/restoring

such damage. These costs may be levied, assessed, and collected by the Board of Directors as a Specific Assessment pursuant to the provisions of this Declaration.

Section 3.11 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 Property and its Owners and Guests, a perpetual, non-exclusive Emergency Services Easement over, upon, along, and across all Lots, Units, Dwellings, and areas within the Property, for use in the lawful performance of their duties.

Article 4: Covenants, Conditions and Restrictions.

Section 4.1 Generally. Except as otherwise expressly provided in this Declaration, each Lot and Unit shall be owned, used, and conveyed subject to the covenants, conditions and restrictions of this Article 4. This Section 4.1 is not intended and shall not be construed to limit the effect of any provision contained in any other Article of this Declaration.

Section 4.2 Compliance with Law. Nothing shall be done or kept on any Lot in violation of Law, and each Lot shall be used, kept and maintained in compliance with Law.

Section 4.3 Permitted Use of the Lots and Units Generally. Except to the extent expressly permitted by this Declaration, the Lots shall be improved with and used solely for Dwellings. No commercial activities other than home occupations shall be permitted on the Lots or within Units. Rental of a Dwelling for any period shall not be considered a commercial use. Lot and Unit Owners shall be entitled to the quiet use and enjoyment of their Lot and Unit and shall not interfere with the right of other Owners to the same.

Section 4.4 Design Review. Every Improvement on any Lot shall comply with the Design Guidelines to the extent applicable to such Lot. In the event of any conflict between this Declaration and the Design Guidelines, the Design Guidelines shall control. The Architectural Control Committee ("Committee" or "ACC") required by Section 10 of the Development Plan shall administer and implement the Design Guidelines. Prior to construction of any Improvement, except for landscaping or non-structural Improvements located entirely within a structure or within any private courtyard on a Lot, an Owner shall apply to the Committee for approval. The Committee, upon prior approval from the Board, shall have the authority to adopt Rules concerning the submittal and review process which may include (among other things) fees, a requirement for plans stamped by a licensed architect or engineer, and a requirement for the applicant to reimburse the Association for the costs of any architect or other professional consultant retained by the Committee to review an application. The Town of Carbondale shall also have the right, but not the obligation, to enforce the Design Guidelines if the Declarant or Committee fails to do so. The design review process shall not apply to construction or landscaping by Declarant. The initial Design Guidelines are recorded on even date herewith and incorporated into this Declaration by reference.

Section 4.4.1 Architectural Control Committee. The Committee shall consist of three members. The Declarant shall appoint the members of the initial Committee and control appointments to the Committee until such time as all seven single-family dwellings approved for Parcel 4 of the Property have been constructed. Thereafter, the Board shall appoint additional and replacement members of the Committee. Committee members may but need not be Members of the Association. At least one member of the Committee shall be an architect, engineer, or contractor or have experience in one of those fields. Each Committee member shall serve for a two-year term, except that one member of the first Committee appointed by the Declarant shall serve a one-year term then two-year terms thereafter. The Committee may adopt additional rules and regulations regarding the number and terms of Committee members and meeting and application procedures, provided that such additional rules are ratified by the Board.

Section 4.4.2 Amendments. The Design Guidelines may be amended by the Committee from time to time. An amendment to the Design Guidelines shall not constitute an amendment to this Declaration; such amendment is therefore not subject to Section 9.2 of this Declaration.

Section 4.4.3 Non-Liability for Design Review. The Committee will use reasonable judgment in accepting or disapproving all plans and specifications submitted to it. Neither the Committee, Board, Association, Declarant, nor any individual member thereof will be liable to any person for any official act of the Committee in connection with submitted plans and specifications, except to the extent that the Committee, Board, Association, Declarant, or any individual member thereof acted with malice or performed any intentional wrongful acts. Approval by the Committee does not necessarily assure approval by the appropriate governmental body or the Town of Carbondale. Notwithstanding that the Committee has approved plans and specifications, neither the Committee, Board, Association, Declarant, nor any of members thereof, will be responsible or liable to any Owner, developer, or contractor with respect to any loss, liability, claim, or expense which may arise by reason of such approval of, or the construction of, any Improvement(s). Neither the Committee, Board, Association, Declarant, nor any member, agent, employee, or consultant thereof, will be responsible in any way for any defects in any plans or specifications submitted, revised, or approved in accordance with the provisions of this Declaration, the Design Guidelines, the Development Plan, or the Rules, nor for any structural or other defects in any work done according to such plans and specifications. In all events the Association will defend and indemnify the Committee, Board, Declarant, and individual members thereof in any suit or proceeding which may arise by reason of the Committee's decisions; provided, however, that the Association will not be obligated to indemnify the Committee, Board, Declarant, or members of either to the extent that any such person is adjudged to be liable for malice or intentional wrongful acts in the performance of his or her design

review duties, unless and then only to the extent that the court in which such action or suit may be brought determines upon application that, despite the adjudication of liability but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnification for such expense as such court shall deem proper.

Section 4.5 Domestic Pets. Owners are allowed to have and keep household pets, such as dogs and cats, and the same are allowed on the Property. All pets must be under the Owner's physical control at all times, including the use of leashes when on Common Elements. Owners shall be responsible for immediately cleaning up after their pets. Livestock is not permitted on the Property. The Association may adopt additional Rules regarding pets, including, but not limited to, limiting the number of pets per Dwelling.

Section 4.7 Utility Facilities. Only utility facilities for utility services approved by the Board and of the type necessary and customary for the uses permitted on the Lots shall be constructed or installed on any Lot or Unit. All utility facilities on each Lot shall be placed underground, except such utility facilities as are required by their function, by the providers of the Utilities Services or by Law to be above ground. To the extent not underground, utility facilities shall be shielded from view with natural materials and made as unobtrusive as is reasonably possible. Utility facilities should be installed in a manner that minimizes disturbance of the natural environment.

Section 4.8 Fences. Except for any Limited Common Elements specifically designated as fenced areas on the Plat, fences are not permitted to be constructed on the Lots or Common Elements without prior written approval by the Architectural Control Committee and in accordance with the Design Guidelines, which approval may be withheld in the Committee's sole discretion. All approved fences shall be constructed in compliance with the architectural site plans recorded with the Plat(s). Chain link fences are not allowed under any circumstances.

Section 4.9 Temporary Buildings. No boat, mobile home, tent, trailer or modular building or other temporary building shall be permitted on any Lot, except for any builder's construction trailer or similar structure approved pursuant to Section 4.12, below, which shall be removed promptly upon completion of the subject Improvement on the Lot.

Section 4.10 Repair of Improvements. No Improvement on any Lot that has been damaged or partially or totally destroyed by fire, earthquake, or other cause shall be allowed to remain in such state for more than six months following the date of damage or destruction, unless such damage is non-structural and not visible from the exterior of a building. Upon the occurrence of any such damage or destruction, to the extent it may be the responsibility of the Owner of the Lot or Unit to remedy the damage or destruction, the Owner shall promptly and with reasonable diligence, after acquiring any approvals from the Board or Committee required by this Declaration, either rebuild the Improvement or raze the Improvement and restore the land

on which the Improvement was located to the condition the land was in prior to the damage or destruction.

Section 4.11 No Mining or Drilling. No portion of the Property shall be used for the purpose of mining, quarrying, drilling, boring or exploring for or removing oil, gas or other hydrocarbons, minerals of any kind, rocks, stones, sand, gravel, aggregate or earth; provided, nothing herein shall prohibit exporting and hauling of gravel, aggregate or earth that may be excavated or generated in connection with standard practices incidental to the construction of Improvements.

Section 4.12 Exception for Construction. During the course of construction of any Improvements that is permitted on a Lot, the Board shall have the authority to grant temporary waivers to any of the restrictions of this Article 4 to the extent reasonably necessary to permit such work to be undertaken in a reasonable manner, provided that nothing is done in the course of such work that shall result in the violation of any restriction in this Article 4 upon the completion of the Improvement.

Section 4.13 Exemption for Association. The Association shall not be subject to the provisions of this Article 4.

Section 4.14 Transfer Assessment. All sales, transfers, or conveyances of any Lot or Unit shall be subject to payment of the RETA pursuant to the terms of the RETA Covenant and subject to the exceptions stated therein, which are incorporated in this Declaration by reference.

Section 4.15 Deed Restricted Housing. The Deed Restricted Units have been designated for deed-restricted affordable housing and shall be subject to additional restrictions to be included in the recorded deeds for such Units and the applicable Deed Restriction Agreement.

Section 4.16 Fireplaces. Solid fuel burning fireplaces, stoves, appliances, and other devices are prohibited. Gas-burning fireplaces, grills, and similar devices are permitted, as are charcoal-burning grills.

Section 4.17 Irrigation. ALL LAWN AND GARDEN, COMMON SPACE, OPEN SPACE AND PARKLAND IRRIGATION USES WITHIN THOMPSON PARK SHALL BE FROM A SEPARATE RAW WATER IRRIGATION SYSTEM OR SYSTEMS THAT SHALL NOT BE CONNECTED TO THE DOMESTIC IN-HOUSE SUPPLY FOR ANY BUILDING UNIT OR DWELLING OR TO THE NON-POTABLE IRRIGATION SYSTEM THAT SERVES THE HISTORIC HOUSE PARCEL (AS SHOWN ON THE MASTER PLAT). TOTAL IRRIGATED AREAS WITHIN THOMPSON PARK, INCLUDING IRRIGATION OF THE HISTORIC HOUSE PARCEL, SHALL NOT EXCEED 4.71 ACRES, AND TOTAL RESIDENTIAL LAWN AND GARDEN IRRIGATION SHALL NOT EXCEED 2.3 ACRES. EACH LOT OR UNIT LOCATED WITHIN AREAS A, B OR C (AS SHOWN ON THE MASTER PLAT) SHALL HAVE NO MORE THAN 2500 SQUARE FEET OF IRRIGATED LAWN AND GARDEN AREA; EACH LOT OR UNIT LOCATED WITHIN AREAS D OR E SHALL HAVE NO MORE THAN 3500 SQUARE FEET OF IRRIGATED LAWN AND

GARDEN AREA; AND EACH LOT OR UNIT WITHIN AREAS F AND G SHALL HAVE NO MORE THAN 5000 SQUARE FEET OF IRRIGATED LAWN AND GARDEN AREA. The raw water irrigation system and all parts and components thereof, including any and all pump stations, shall be owned and operated by the Association and shall be considered a General Common Element. This Section 4.17 shall not be amended without the prior written consent of the Town of Carbondale.

Section 4.18 Off-Street Parking. The Owner of a Lot or Unit containing an enclosed garage or carport or surface parking space shall be required to park the Owner's vehicle(s) in the parking spaces provided therein, and Owner shall not park the Owner's vehicle(s) on the street in front of the Lot or Unit. The Board shall have the authority to adopt additional Rules regarding parking and the enforcement thereof.

Section 4.19 Solar Devices and Design. All Dwellings located within the Property shall be designed and constructed to accommodate solar energy devices as provided for in the Design Guidelines. All provisions in this Declaration and the Design Guidelines regarding solar energy devices shall comply with applicable state statutes regarding the same, including, but not necessarily limited to, C.R.S. § 38-30-168. Any Owner desiring a solar energy device on his or her Dwelling shall be responsible for repairing any leaks or other damage caused by the solar energy device. Free-standing solar energy devices are not permitted. This Section 4.19 shall not be removed from this Declaration without approval from the Town of Carbondale.

Section 4.20 Marijuana Use. It is prohibited to smoke, sell, grow, or manufacture marijuana, cannabis, and/or products derived therefrom for the purposes of medicinal or recreational use on the Property; provided, however, that the same may be possessed, smoked, or consumed within a Dwelling.

Section 4.21 Rentals. The Owner of a Free Market Lot shall have the right to rent or lease the same upon such terms and conditions as the Owner may deem advisable unless provided otherwise in the Rules. The leasing of Deed Restricted Units shall be subject to and comply with the Town of Carbondale Community Housing Guidelines in effect from time to time. All leases of any Dwelling in the Development shall (i) be in writing; (ii) provide that the lease is subject to the terms of this Declaration; (iii) only allow the uses authorized in this Declaration; and (iv) state that failure of a lessee to comply with the terms of the Governing Documents shall be a default under the lease and be enforceable by the Association.

Section 4.22 Nuisances. No nuisances shall be allowed on the Property, nor any use or practice which is improper, offensive, unlawful, or the source of annoyance to residents or which interferes with the peaceful enjoyment of possession and proper use of the Property by its residents. All parts of the Property shall be kept in a clean and sanitary condition, and no rubbish, refuse, or garbage shall be allowed to accumulate nor any fire hazard to exist.

Section 4.23 Owner Maintenance. Each Owner shall be responsible for maintaining, repairing, and improving as necessary all interior elements and features of the Owner's Dwelling

including interior non-supporting walls, ceilings, floors, improvements, fixtures, equipment, appliances and appurtenances, and for repairing and replacing all windows within the Dwelling. Each Owner shall also be responsible for the installation, maintenance, repair and replacement of such Dwelling's garage door opener. As provided in Section 5.7(a) hereof, the Association, not the Owners, is responsible for maintaining, repairing, replacing, and improving the Common Elements, except that each Owner is responsible for snow removal from decks and patios. In addition, each Owner shall be responsible for any damage to other Dwellings or any Common Elements resulting from the Owner's failure to perform or negligent performance of the Owner's maintenance and repair responsibilities as set forth in this Section 4.23. Each Owner shall perform the Owner's maintenance and repair responsibilities in such manner as shall not unreasonably disturb or interfere with other Owners or Guests.

Article 5: Association

Section 5.1 Organization. The Association is a non-profit Colorado corporation created for the purpose of administering and managing certain aspects of Thompson Park pursuant to its Articles and Bylaws and any other Rules or restrictions. Neither the Articles, Bylaws, Rules, nor other restrictions promulgated by the Association shall for any reason be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration. In case of conflict between this Declaration and the Articles, Bylaws or other restrictions, this Declaration shall control.

Section 5.2 Ownership Generally. Every Owner shall be a Member of the Association. When an Owner consists of more than one Person, all such Persons shall, collectively, constitute one Member of the Association and all such Persons shall be jointly and severally obligated to perform the responsibilities of Owner. Membership in the Association shall automatically terminate when a Person ceases to be an Owner, whether through sale, intestate succession, testamentary disposition, foreclosure or otherwise. The Association shall recognize a new Owner as a Member upon presentation of satisfactory evidence of Record of the sale, transfer, succession, disposition, foreclosures or other transfer of a Lot or Unit to such Owner. Membership in the Association may not be transferred, pledged or alienated in any way, except to a new Owner upon conveyance of a Lot or Unit. Any attempted prohibited transfer of a Membership shall be void and shall not be recognized by the Association.

Section 5.3 Voting Classes and Allocation of Votes. Each Member shall have voting rights in the Association. The vote of any Member owning a Deed Restricted Unit or a Free Market Lot shall amount to one (1) vote. Members' voting rights shall not be altered without prior approval from the Town of Carbondale Board of Trustees. If a Lot or Unit is owned by two or more Persons, then, pursuant to Section 5.2, such Persons shall constitute one Member, and shall share and jointly control, pursuant to the Bylaws, the voting rights allocated to such Lot or Unit.

Section 5.4 Board of Directors. The affairs of the Association shall be governed by the Board, which may, by resolution, delegate any portion of its authority to an executive committee or an officer or managing agent of the Association. Except as otherwise specifically provided by Law or in this Declaration, the Articles, or the Bylaws, the Board may exercise all rights and powers of the Association without a vote of the Members. The qualifications and number of Directors, the term of office of Directors, the manner in which Directors shall be appointed or elected and the manner in which Directors shall be replaced upon removal or resignation shall be as set forth in the Bylaws.

Section 5.5 Bylaws. The Board may adopt Bylaws for the regulation and management of the Association, provided that the provisions of the Bylaws shall not be inconsistent with the provisions of this Declaration. The Bylaws may include, without limitation, provisions regarding the appointment or election of the Board and the appointment or election of officers of the Association, subject to the terms of this Declaration.

Section 5.6 Adoption of Rules. This Declaration, the Articles, the Bylaws, and the Design Guidelines establish a framework of affirmative and negative covenants, conditions, easements and restrictions that govern Thompson Park. The RETA Covenant and Deed Restriction Agreement also impose additional restrictions on all or some of the Lots. The Board shall be authorized to and shall have the power to adopt, amend and enforce rules applicable within Thompson Park with respect to any Lot, Unit, Common Element or function of the Association, and to implement the provisions of this Declaration, including but not limited to, Rules to prevent or reduce fire hazard; to prevent disorder and disturbances of the peace; to regulate animals; to assure fullest enjoyment of use; to regulate signs; to regulate use of any and all Common Elements to assure fullest enjoyment of use; to promote the general health, safety and welfare of persons residing, visiting and doing business within the Property; and to protect and preserve property and property rights. No Rule shall conflict with the terms of this Declaration, the Bylaws, the Articles, RETA Covenant, Deed Restriction Agreement, or Design Guidelines. The Rules may be modified, cancelled, limited or exceptions created thereto, or expanded from time to time. Any amendment of or addition to the Rules may be made upon the affirmative vote of a majority of the Board. Except as may be set forth in this Declaration, all Rules shall comply with the following provisions:

- (a) The Rules shall be reasonable and shall be uniformly applied.
- (b) The Association may prohibit activities not normally associated with property restricted to residential use, and the Association may also restrict or prohibit any activities that create monetary costs for the Association or other Lots or Units, that generate excessive noise or traffic, that create unsightly conditions visible outside of a Lot, or that create a nuisance or source of annoyance.

(c) No Rule shall, by singling out a particular Owner, Lot, or Unit, alter the rights to use the Common Elements to the detriment of such Owner, Lot, or Unit. Nothing in this provision shall prevent the Association from changing Common Elements available, from adopting generally applicable Rules for the use of Common Elements or from denying use privileges to those who are delinquent in paying Assessments, misuse the Common Elements or violate the Restrictions. This provision does not affect the right to levy and collect Assessments pursuant to other terms of this Declaration.

(d) No Rule shall require the consent of the Association for transferring title to any Lot or Unit; provided that no transfer is permitted without compliance with the RETA Covenant or Deed Restriction Agreement, if applicable, according to their terms.

Section 5.7 Functions and Duties of the Association. The Association shall perform each of the following duties for the benefit of its members:

(a) Maintenance. The Association shall be responsible for (i) maintaining and repairing the structural elements, exterior, and roofs of all Dwellings; (ii) landscaping and maintaining the landscaping throughout the Property; (iii) landscaping, irrigating, and maintaining the landscape in public rights-of-way; (iv) maintaining (including snow removal), repairing, altering, replacing, and improving, when necessary or desirable in the Association's discretion, all General Common Elements including, without limitation, Open Space Easements, irrigation systems, drainage systems, water features, streets, roads, curbs, street gutters, sidewalks, public walkways, parking areas, common lighting, and common utilities; (v) maintaining (including snow removal), repairing, altering, replacing, and improving, when necessary or desirable in the Association's discretion, all Limited Common Elements, including, without limitation, driveways, yards, decks, patios, porches, and private walkways, provided, however, that the Owners shall be responsible for snow removal from their decks, patios, and private walkways; (vi) maintaining and repairing common utility lines within Dwellings or other Improvements; and (vii) maintaining, repairing, improving, replacing, painting, staining, or other resurfacing, when necessary, the exterior portions of all Dwellings, including the exterior doors, garage doors, decks, balconies, porches, planters, patios, and private walkways of the Dwellings. No individual Owner shall have any right to do any of such things (other than limited snow removal as provided above) without the express prior written consent of the Board of Directors. The Association shall have the sole discretion to determine the time and manner in which the above-described maintenance and improvements shall be performed, as well as the color or type of materials used.

If the need for such maintenance or repair results from the willful or negligent act of or from damage or destruction caused by an Owner or Guest, the Board of Directors shall have the right to perform such maintenance or repair and levy and collect a Specific Assessment upon the Owner and the Owner's Unit or Lot for the costs and expenses incurred by the Association in

connection therewith. The costs of maintenance and repair of Limited Common Elements shall be charged to the Owners entitled to use such Limited Common Elements.

(b) Additional Maintenance. In addition to the Association's Common Element maintenance obligations, the Association shall also be responsible, in perpetuity, for the irrigation and maintenance of the landscape strips and irrigation systems within the public rights-of-way within the Property. The Association shall also be responsible, in perpetuity, for maintaining, repairing, and/or replacing, as necessary, the open ditch channels that run through the Property. Said maintenance shall include, but not be limited to, annual cleaning of the channels to remove silt and debris and cleaning bar screens and pipeline inlets. This Section 5.7(b) shall not be amended without approval from the Town of Carbondale Board of Trustees.

(c) Mechanic's Liens on Common Elements. Declarant shall be responsible for the release of mechanics' liens filed with respect to Common Elements, 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 Elements, 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 Dwelling at the instance of the Owner thereof shall be the basis for filing a lien against the Common Elements. No labor performed or materials furnished with respect to a Common Element at the instance of the Association shall be the basis for filing a lien against any Lot, Dwelling, or Unit.

(d) Other Functions. The Association shall perform the other functions specifically required to be performed by the Association pursuant to the Restrictions, including, without limitation, determining, levying and collecting Assessments and enforcing the terms of the Restrictions as the Association deems appropriate.

Section 5.8 Powers and Authority. The Association shall have the following powers and authority:

- (a) Assessments. To determine, levy and collect Assessments.
- (b) Charges and Fees. To determine, levy and collect charges and fees for the violation of the Restrictions.
- (c) Rules. To make, establish and promulgate Rules. Owners and Guests shall be subject to the Rules and such Rules shall have the same purpose and effect as the covenants, conditions and restrictions included in this Declaration and shall be treated as incorporated herein.
- (d) Bylaws. To adopt and amend the Bylaws.

(e) Enforcement. To enforce, on its own behalf and on behalf of all Owners, all of the covenants, conditions and restrictions set forth in the Restrictions, and to perform all other acts reasonably necessary to enforce any of the provisions of the Restrictions, including, without limitation, the suspension of Membership privileges and the imposition of fines on Owners or Guests who violate or permit violations of the Restrictions.

(f) Management Company. To retain the services of a professional management company to manage some or all of the affairs of the Association.

(g) Borrowing. To borrow money and to incur indebtedness for the purposes of the Association.

(h) Assignment. To assign its right to future income, including the right to receive Assessments.

(i) Sale of Common Elements. To convey or subject to a lien or encumbrance any Common Elements.

(j) Insurance. To maintain the insurance coverage pursuant to Section 8.1.

(k) Contracts. To make contracts and incur liabilities in furtherance of its purposes.

(l) Additional Improvements. To cause additional Improvements to be made as part of the Common Elements, including the construction of any capital asset for the benefit of some or all of the Lots, Units, or Owners, including, without limitation, access roads, paths, walkways and landscaping changes; improvements (including without limitation, removal of trees and other vegetation) and appurtenances; recreational areas and facilities, picnic areas, playgrounds, shelters, exercise facilities, trash enclosures; postal facilities; parking areas; storage facilities for supplies and equipment; earth walls, retaining walls and other road supports; lighting; signage; and the additional right to construct any and all types of structures, facilities and Improvements useful or necessary to benefit Owners or to provide the services of the Association.

(m) Property. To acquire, hold, encumber and convey in its own name any right, title or interest in real or personal property.

(n) Sanctions. To impose and receive charges for late payments of Assessments, recover reasonable attorneys' fees and disbursements and other costs of collection for Assessments and other actions to enforce the rights of the Association, regardless of whether

or not suit is initiated, and after notice and opportunity to be heard, levy reasonable fines and penalties for violations of the Restrictions, including suspension of Membership privileges.

(o) Charges. Impose and receive reasonable charges for the preparation and recordation of amendments to this Declaration or statements of unpaid Assessments.

(p) Indemnification. Provide for the indemnification of the Association's officers and Board and maintain Directors' and Officers' liability insurance.

(q) Professional Services. To obtain and pay for legal, accounting and other professional services.

(r) Performance through Others. To perform any of its functions by, through or under contractual arrangements, licenses, or other arrangements with any governmental, quasi-governmental or private entity as may be necessary or desirable.

(s) Lawsuits. To institute, defend, or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more Owners on matters affecting Thompson Park, including construction defect cases, provided that the Association shall comply with the procedures set forth in C.R.S. § 38-33.3-303.5 and Section 5.11, below, prior to initiating a construction defect lawsuit.

(t) Law. To exercise any right or privilege provided to the Association by Law.

(u) Other. To carry out all other duties, functions or rights of the Association as set forth in the Restrictions from time to time.

(v) Implied Authority. To exercise any power or authority as may be necessary, convenient or desirable to fulfilling or exercising any duty, function or power that the Association may otherwise have or enjoy under the terms of this Declaration.

Section 5.9 Financial Statement. The Board shall provide a financial statement (which need not be audited) for the immediately preceding Fiscal Year, free of charge, to a Member so requesting or to any First Mortgagee of a Lot so requesting within a reasonable time after written request therefor by any such party, to the extent available.

Section 5.10 Association Books and Records. The Association shall make available to Owners current copies of this Declaration, the Articles, Bylaws, Rules, Design Guidelines, books, records and financial statements of the Association as required by Section 317 of the Act. Such records shall be made available for inspection upon request during normal weekday

business hours or under other reasonable circumstances. The Association may impose a reasonable charge for copies as provided by Section 317 of the Act.

Section 5.11 Testing for Construction Defects.

(a) The Association will not undertake or authorize any testing, including, without limitation, investigative testing, destructive testing, or invasive testing of any kind, for defects in construction of any Improvement, Dwelling, Unit, Common Element or Limited Common Element without first determining, based upon the presence of some readily observable evidence or condition, that a defect may exist. In making such a determination the Board will rely on the opinions and/or the conclusions of a qualified expert (e.g., a structural engineer); even in the event such evidence or conditions exist, the Association will not be obligated to authorize or undertake such testing.

(b) In determining whether to authorize such testing, the Board will be governed by the following considerations:

- i. Whether the Association's position is strong enough to justify taking any other or further action;
- ii. Whether, although a technical violation may exist or may have occurred, it is of such a material nature as to be objectionable to a reasonable person or to justify expending the Association's resources; and
- iii. Whether it is in the Association's best interests, based upon hardship, expense, inconvenience or other reasonable criteria to pursue the matter further.

(c) Notwithstanding the foregoing, under no circumstance will the Association authorize such testing as is contemplated under Section 5.11(a) unless the nature of the suspected defect is such that:

- i. It poses a significant risk to life, health, safety or personal property; and
- ii. It threatens or affects the structural integrity, functionality or performance of the Property (or a portion thereof) for its intended use.

(d) In the event that the Board undertakes or authorizes testing for construction defects, then prior to any testing taking place, Declarant and/or others responsible for the construction will be entitled to notice of the alleged defect, access to the area of the alleged defect, and an opportunity to inspect the area and repair any defect that is found to exist. Declarant and/or others responsible for construction will also be entitled to be

present during any testing and may record (via videotape, audio tape, still photographs, or any other recording method) all testing conducted and all alleged defects found.

(e) In the event that testing discloses any defects, Declarant and/or others responsible for construction will be given a reasonable amount of time, based on the nature and extend of the defect, to repair or correct the condition. If Declarant or others responsible for construction fail to repair or correct the condition, the Board will have the right, but not the obligation, to proceed with a "Claim" pursuant to this Article.

ARTICLE 6: Financial Matters and Assessments

Section 6.1 Annual Budget. The Board shall cause to be prepared and adopted annually, prior to the beginning of each Fiscal Year, a budget for the Association (the "**Annual Budget**"). The Annual Budget shall include all of the following: (i) the estimated Common Expenses and revenues of the Association for such Fiscal Year, in reasonable detail as to the various categories of expenses and revenues; (ii) the current cash balance in any reserve fund established and maintained by the Association for the purpose of funding the periodic repair or replacement of any of the Common Elements, including without limitation landscaping, irrigation systems, and private roads, and for unbudgeted and unplanned Common Expenses incurred by the Association from time to time (the "**Reserve Fund**"), (iii) an estimate of the amount required to be spent during such Fiscal Year from the Reserve Fund; and (iv) a statement of the amount required to be added to the Reserve Fund during such Fiscal Year to cover anticipated withdrawals and adequately address contingencies and anticipated needs in future Fiscal Years.

Section 6.2 Assessments. There shall be three types of Assessments: (a) Common Assessments as described in Section 6.3; (b) Special Assessments as described in Section 6.4; and (c) Specific Assessments as described in Section 6.5. Each Owner, by adoption of this Declaration or by accepting a deed or other instrument of conveyance for any Lot or Unit, is deemed to covenant and agree to pay these Assessments pursuant to the terms and conditions of this Declaration and the other applicable Restrictions.

Section 6.3 Common Assessments. The Owner of each Lot or Unit is liable for and subject to assessments for a portion of the Common Expenses equal to the Owner's Allocation Percentage (the "**Common Assessments**"). The Common Assessments shall be calculated, paid, adjusted and reconciled in accordance with the following provisions:

(a) Payment. The Board shall assess Common Assessments against the Owner of each Lot or Unit based on the Annual Budget in accordance with the Allocation Percentage. Each Owner is obligated to pay the Association the Common Assessments made against such Owner's Lot or Unit, and the payment shall be due on the first day of each fiscal quarter, in (4) equal installments, or in another reasonable manner designated by the Board which may be implemented without amending this Declaration. The Board's failure to fix the

Common Assessments prior to the commencement of any Fiscal Year shall not be deemed a waiver or modification of any of the provisions of this Declaration or a release of any Owner from its obligations to pay Common Assessments or any installments of them for that Fiscal Year, but the Common Assessments fixed for the preceding Fiscal Year shall continue until the Board fixes the new Common Assessment.

(b) Adjustment. To the extent that payments of Common Assessments during the balance of any Fiscal Year are inadequate or more than required to meet the Association's obligations intended to be covered by such Common Assessments, the Board may amend the Annual Budget and increase the Common Assessments for the balance of such Fiscal Year by giving not less than 30 days' prior notice to all Owners. Alternatively, in the event that payments of Common Assessments during the balance of any Fiscal Year are more than required to meet the Association's obligations, the Association may, at its discretion, put the surplus into the Reserve Fund instead of amending the Annual Budget as provided in this subsection.

(c) Reconciliation. After the end of each Fiscal Year, the Board may reconcile the actual Common Expenses incurred by the Association during that Fiscal Year against the Common Assessments that the Association received and intended to cover such Common Expenses. To the extent that the Owners have paid more than the actual Common Expenses, the Board may either (i) credit the overpayments against the Owners' Common Assessments for the next Fiscal Year; or (ii) deposit the overpayments into the Reserve Fund.

Section 6.4 Special Assessment. The Association may levy from time to time one or more special assessments ("**Special Assessments**") for the purpose of defraying in whole or in part the cost of any construction, maintenance, repair, improvement, modification, restoration, unexpected repair or replacement of any Common Element or for carrying out the other responsibilities or functions (whether required or discretionary) of the Association in accordance with this Declaration. Each Special Assessment shall be allocated in accordance with the Allocation Percentage. Each Owner shall pay all Special Assessments assessed against the Owner's Lot or Unit. Special Assessments shall be paid at the time(s) and in the manner reasonably determined by the Board. The Board may require that Special Assessments be paid before the service, improvement or other item for which the Special Assessment is being levied is provided.

Section 6.5 Specific Assessments. The Association shall have the power to levy assessments against one or more particular Lot(s) or Unit(s) as follows ("**Specific Assessments**"):

(a) to cover costs incurred in bringing the Lot or Unit into compliance with the terms of the Restrictions, or costs incurred as a consequence of the conduct of the Owner or such Owner's Guests;

(b) to cover necessary costs or expenses incurred by the Association that benefit one or more Lots or Units but fewer than all Lots and Units, such as repair and maintenance of Limited Common Elements or otherwise; and

(c) to cover any costs or expenses that are recoverable as Specific Assessments pursuant to other provisions of this Declaration.

Section 6.6 Default Assessments. All monetary fines assessed against an Owner pursuant to the Association Documents, or any expense of the Association which is the obligation of an Owner shall become liens against such Owner's Lot or Unit which may be foreclosed or otherwise collected as provided in this Declaration.

Section 6.7 Working Capital Fund. Upon the transfer of a Lot or unit (including both transfers from Declarant to the initial Owner, and transfers from one Owner to a subsequent Owner), a working capital fee in an amount equal to two (2) months of Common Assessments will be paid to the Association for the Association's working capital fund, unless the Declarant determines otherwise. The Board, in its discretion, may allocate all or a portion of any working capital fee to the Association's Reserve Fund. Upon termination of the Declarant Control Period (and only at such time), the Board will be permitted to modify any working capital fund assessment payable on the transfer of a Lot or Unit. Each working capital contribution will be collected upon the conveyance of the Lot or Unit from one Owner (including Declarant) to another (expressly including any re-conveyances of the Lot or unit upon resale or transfer thereof). Notwithstanding the foregoing provision, the following transfers will not be subject to the working capital contribution: (i) foreclosure of a deed of trust lien, tax lien, or the Association's assessment lien; (ii) transfer to, from, or by the Association; (iii) voluntary transfer by an Owner to one or more co-owners, to an entity (including a trust) owned or controlled by Owner, or to the Owner's spouse, child, or parent; or (iv) transfers made for estate planning purposes. Contributions to the fund are not advance payments of Common Assessments and are not refundable.

Section 6.8 Commencement of Assessments. The obligation to pay Common Assessments, Special Assessments and Specific Assessments is a continuing obligation.

Section 6.9 Allocation Percentage. The Allocation Percentage of each Owner shall mean the share of any Assessments to be allocated to each Lot or Unit. Subject to the Board's right to assess Assessments as provided in this Section 6, a Lot or Unit's Allocation Percentage is determined by the percentage equivalent of a fraction, the numerator of which fraction shall be the finished square footage area (including garage space) of each Owner's Dwelling and the denominator of which shall be the total of the finished square footage area of all Dwellings within the Development. Notwithstanding the foregoing, no Deed Restricted Unit shall pay more than 50% of the average Assessment paid by all Owners within the Development, including Owners of Deed Restricted Units. Accordingly, the Assessment charged to the Owner of a Deed Restricted Unit as determined by the annual budget shall be reduced to an amount not to exceed

50% of the average annual Assessment, and the budget deficit created by such reduction shall be allocated *pro rata* among the Free Market Lots within the Development.

As portions of the Property are annexed into the Development and made subject to the terms and provisions of this Declaration by the recording of one or more Notices of Applicability in accordance with Section 7.4 hereof, the Lots or Units included in such annexed portion of the Property will be automatically assigned Allocation Percentages in accordance with the formula set forth in this Section 6.9, and the Notice of Applicability will reflect such allocations.

Because Declarant intends to annex portions of the Property and Lots and Units in phases, the initial Lots and Units added to this Declaration will be allocated a higher Allocation Percentage than would otherwise be allocated to the Lots and Units if all of the Property was made subject to this Declaration at a single point in time. However, as additional Lots and Units are annexed into the Development and subjected to this Declaration, the Allocation Percentages previously allocated to the Lots and Units then subject to this Declaration will be reduced. The Notice of Applicability for each portion of the Property added to this Declaration will include the Allocation Percentages assigned to all Lots and Units within the Development after giving effect to the Lots and/or Units then being made subject to the Declaration. A schedule of Allocation Percentages which will apply to each Lot or Unit when all of the Property is annexed and subjected to the terms and provisions of this Declaration is attached hereto as Exhibit B. Exhibit B is an estimate only; final Allocation Percentages cannot be definitively determined until each and every Dwelling is constructed.

Section 6.10 Payment of Assessment; Notice and Acceleration. Each Owner shall pay all Assessments assessed against such Owner's Lot or Unit by the Association in accordance with the terms of this Declaration. Each Assessment is a separate, distinct and personal debt and obligation of the Owner against whose Lot or Unit the Assessment is assessed. All Assessments are payable in full without offset for any reason whatsoever. Each Owner's obligation to pay Assessments is entirely independent of any obligation of the Association to the Owner or any other Owner to that Owner. Any Assessment or installment of an Assessment not paid within five days after it becomes due is delinquent. If an Assessment or installment of an Assessment is delinquent, the Association may recover all of the following (collectively, the "Delinquency Costs"): (a) interest from the date due at the rate of 18% per annum; (b) late charges and other monetary penalties imposed by the Association pursuant to any Governing Document; and (c) all collection and enforcement costs, including reasonable attorneys' fees and expenses, incurred by the Association. If an Assessment or installment of an Assessment is delinquent, the Association may notify the Owner of the delinquency and state in the notice (i) the amount of the delinquent Assessment or installment; (ii) the Delinquency Costs accrued to date; and (iii) the date by which the delinquent Assessment or installment and all associated Delinquency Costs must be paid. If the Association gives such a notice and the delinquent Assessment or installment of an Assessment and all associated Delinquency Costs are not paid in full by the due date specified in the notice, then the Association, at its option, may declare all unpaid installments of the subject

Assessment for the current Fiscal Year to be immediately due and payable in full without further demand or notice and may enforce the collection of the Assessment (including any installments whose due dates were accelerated).

Section 6.11 Enforcement of Assessments. If any Assessment is not fully paid within five (5) days after the same becomes due and payable, then as often as the same may happen, (i) Delinquency Costs shall begin to accrue from the date due until the date of payment, (ii) the Association may accelerate the remaining payments in accordance with Section 6.10, (iii) the Association may thereafter bring an action at law or in equity or both against any Owner personally obligated to pay the same, and (iv) the Association may bring an action to foreclose its lien against the particular Lot or Unit as provided in the Act and herein in the manner and form provided by Colorado law for foreclosure of real estate mortgages.

- (a) Suit. The Association may bring a suit or suits at law to enforce the Owner's obligation to pay a delinquent Assessment (including any installments whose due dates are accelerated by the Association pursuant to Section 6.10) and associated Delinquency Costs. Each action shall be brought in the name of the Association. The judgment rendered in the action shall include costs and reasonable attorneys' fees in an amount adjudged by the court against the defaulting Owner. Upon full satisfaction of the judgment, the Association, by one of its officers, shall execute and deliver to the judgment debtor an appropriate satisfaction of the judgment.
- (b) Lien and Foreclosure. Assessments (including any installments whose due dates are accelerated by the Association pursuant to Section 6.10) and associated Delinquency Costs constitute a continuing mortgage lien on the Lots or Units against which they are assessed from the date due. Such lien shall be perfected upon the Recording of this Declaration and no further claim shall be required. If an Assessment is delinquent, if the Association gives a notice concerning the delinquency and if the delinquent Assessment is not paid in full by the due date specified in the notice, then the Association may foreclose the lien securing the Assessment, any installments whose due dates are accelerated by the Association pursuant to Section 6.10, and any associated Delinquency Costs in accordance with the laws of the State of Colorado. The Association may undertake and conduct such foreclosure in the manner for foreclosure of mortgages under the laws of Colorado.
- (c) Further Actions by Association. The foreclosure or attempted foreclosure by the Association of its lien shall not be deemed to estop or otherwise preclude the Association from again foreclosing or attempting to foreclose its lien for any subsequent Assessments (or installment thereof which are not fully paid when due or for any subsequent default Assessments). Except as limited by the Deed Restriction Agreement, the Association shall have the power and right to bid in or purchase any

Lot or Unit at foreclosure or any other sale and to acquire and hold, lease, or mortgage the Lot or Unit and to convey, or otherwise deal with the Lot acquired in such proceedings.

- (d) The remedies provided above are not exclusive of any other remedies provided for in favor of the Association under the other terms of the Restrictions or otherwise available to the Association under law or in equity. By electing to pursue one or more available remedies, the Association shall not be deemed to have waived its right to pursue any other remedies that may be available to it for a failure by an Owner to pay any Assessment.

Section 6.12 Purchaser's Liability for Assessments. Notwithstanding the personal obligation of each Owner to pay all Assessments levied against the Lot or Unit, and notwithstanding the Association's perpetual lien upon a Lot or Unit for such Assessments, all purchasers shall be jointly and severally liable with the prior Lot or Unit Owner(s) for any and all unpaid Assessments against such Lot or Unit, without prejudice to any such purchaser's right to recover from any prior Owner any amounts paid thereon by such purchaser. A purchaser's obligation to pay Assessments shall commence upon the date on which the purchaser becomes the Owner of a Lot or Unit. For Assessment purposes, the date a purchaser becomes a Lot or Unit Owner shall be determined as follows:

- (a) In the event of a conveyance or transfer by foreclosure, the date a purchaser becomes the Lot or Unit Owner shall be deemed to be upon the expiration of all applicable redemption periods;
- (b) In the event of a conveyance or transfer by deed in lieu of foreclosure, a purchaser is deemed to become the Lot or Unit Owner upon the execution and delivery of the deed or other instruments conveying or transferring title to the Lot or Unit, irrespective of the date the deed is recorded; and
- (c) In the event of a conveyance or transfer by deed, a purchaser shall be deemed to become the Lot or Unit Owner upon the execution and delivery of the deed or other instruments conveying or transferring title of the Lot or Unit, irrespective of the date the deed is recorded.

However, such purchaser shall be entitled to rely upon the existence and status of unpaid Assessments as shown upon any certificate issued by or on behalf of the Association to such named purchaser pursuant to the provisions set forth herein.

Section 6.13 Waiver of Homestead Exemption; Subordination of Association's Lien for Assessments. By acceptance of a deed or other instrument of a transfer of a Lot or Unit, each Owner irrevocably waives the homestead exemption provided in C.R.S. §38-41-201, as

amended. The Association's perpetual lien on a Lot or Unit for Assessments shall be superior to all other liens and encumbrances except the following:

- (a) Real property ad valorem taxes and special assessment liens duly imposed by a Colorado governmental or political subdivision or special taxing district, or any other liens made superior by statute; and
- (b) To the extent permitted under the Act, the lien of any First Mortgagee, including any and all advances made by the First Mortgagee and notwithstanding that any of such advances may have been subsequent to the date of the attachment of the Association's liens (except that the Association's priority lien under the Act shall remain superior to the First Mortgagee).

All other persons or entities not holding the liens described in (a) or (b) above and obtaining a lien or encumbrance on any Lot or Unit after the recording of this Declaration shall be deemed to consent that any such lien or encumbrance shall be subordinate and inferior to the Association's future liens for Assessments, interest, late charges, costs, expenses, and attorney's fees as provided herein, whether or not such consent is specifically set forth in the instrument creating any such lien or encumbrance.

A sale or other transfer of a Lot or Unit, including but not limited to a foreclosure sale, shall not affect the Association's lien on such Lot or Unit for assessments, interest, late charges, costs, expenses and attorney's fees due and owing prior to the time such purchaser acquires title and shall not affect the personal liability of each Owner who shall have been responsible for the payment thereof. Further, no such sale or transfer shall relieve the purchaser or transferee of a Lot or Unit from liability for, or the Lot or Unit from the lien of, any Assessments made after the sale or transfer.

Section 6.14 Owners not Exempt from Liability. No Owner is exempt from liability for payment of Assessment by waiver of the use or enjoyment of any portion of the Common Elements, by abandonment of its Lot or Unit, or otherwise.

Section 6.15 Reallocation. If any Assessment remains unpaid for more than six months after it is first due, the Association may treat the unpaid Assessment as a Common Expense to be assessed against all Lots or Units other than Deed Restricted Units; provided, however, that if the Association subsequently collects all or any part of the unpaid Assessment, through foreclosure of its lien or otherwise, then any Owner who has paid a portion of the unpaid Assessment as a Common Expense is entitled to a credit (in an amount equal to its pro rata share of the amount of the unpaid Assessment that the Owner paid that was subsequently collected by the Association) against any Common Assessments subsequently due from that Owner.

Section 6.16 Failure to Assess. The omission or failure of the Board to fix the Assessment amounts or rates or to deliver or mail an Assessment notice to each Owner will not

be deemed a waiver, modification, or release of any Owner from the obligation to pay Assessments. In such event, each Owner will continue to pay Assessments on the same basis as for the last year for which an Assessment was made until a new Assessment is made, at which time any shortfalls in collections may be assessed retroactively by the Association in accordance with any budget procedures as may be required by the Act.

Section 6.17 Disputes and Records. Any Owner or an Owner's authorized representative may inspect the books and records of the Association during regular business hours upon reasonable notice. If an Owner disputes the amount of any Assessment against its Lot or Unit and is unable to resolve the issue through an inspection of the Association's books and records, the Owner will continue to pay in a timely manner the full amount of the disputed Assessment until, if ever, it is finally determined that the amount is incorrect (in which case the Association will promptly refund any overpayment). If the Owner fails to pay the disputed Assessment while the dispute is pending, the Association may immediately pursue any of its remedies for the failure (including, without limitation, suit against the Owner and/or foreclosure of the Association's lien against the Owner's Lot or Unit), and the pendency of the dispute is not a bar or defense to any actions by the Association.

Section 6.18 Certificate. Within 21 calendar days after receiving a written request from any Owner, Mortgagee or designee of either of them, or any title company, delivered personally or by certified mail, first class postage prepaid, return receipt requested, to the Association's registered agent, the Association will furnish to the requesting party a certificate executed on behalf of the Association and addressed to the requesting party, stating that any unpaid Assessment due from the requesting Owner or Owner of the Lot or Unit encumbered by the requesting Mortgagee's Mortgage, or stating that there are no unpaid Assessments due from such Owner, as the case may be. A certificate furnished by the Association pursuant to this Section 6.18 is binding upon the Owner and the Association. The Association may charge the Owner of any Lot or Unit for which such a certificate is furnished pursuant to this Section 6.18, and the Owner will pay as a Specific Assessment, a reasonable fee for the preparation of the certificate in an amount determined by the Association from time to time.

ARTICLE 7: Declarant's Reserved Rights

Section 7.1 Construction and Marketing. Declarant, for itself and its successors and specific assigns, hereby retains a right and easement of ingress and egress over, in, upon, and across the Property and all other real property owned by Declarant as depicted on the Master Plat, and the right to store materials thereon and to make such other use thereof as may be reasonably necessary or incident to the complete construction of all Improvements and sale of all Lots and Units and future Lots and Units proposed for the Property and other parcels shown on the Master Plat as approved by the Town of Carbondale including, but not limited to, construction trailers, temporary construction offices, sales offices, and directional and marketing signs. Declarant, for itself and its successors and specific assigns, hereby retains the right to

maintain any Lot(s) or Unit(s) as sales offices, management offices, or model residences so long as Declarant, or any successor Declarant, continues to own, lease, or control a Lot or Unit. The use by Declarant of any Lot or Unit as a model residence, office, or other use shall not affect the Lot or Unit's designation as a separate Lot or Unit subject to Assessments. Notwithstanding any other provision of this Declaration, Declarant shall have the right to construct all types of Improvements, including without limitation new Dwellings or Units on any of the Lots, without restriction by the Association or the Owners and without any requirement for any type of permission or pre-approval. The design review process described above in Section 4.4 shall not apply to any construction of homes or any other Improvements whatsoever by Declarant.

Section 7.2 Reservation for Expansion. Declarant hereby reserves to itself and the Association and/or Owners in all future phases of Thompson Park Subdivision as shown on the Master Plat an easement and right-of-way over, upon and across the Property, including the Future Development Parcels, for construction, utilities, drainage, irrigation, and ingress and egress to and from all parcels shown on the Master Plat, and for use of the Common Area as may be reasonably necessary or incident to the construction of Improvements on the Lots or future Lots that may be created on the Property. The location of these easements and rights-of-way may be made certain by Declarant or the Association by instruments recorded in the Records.

Section 7.3 Supplemental Declaration and Development Rights. Declarant shall have the right to create additional Lots, Units, and Common Elements within the Future Development Parcels, which Lots, Units, and Common Elements shall become part of the Development and be subject to this Declaration upon the recordation of a Notice of Applicability as provided in Section 7.4, below, and to record one or more additional Plats regarding the same. The Future Development Parcels as shown on the Master Plat and any other Plat may be developed and platted in any order determined by Declarant in its sole discretion. Declarant or the Association may annex real property adjacent to the Property into Thompson Park according to the procedures set forth in the Act upon prior approval of such annexation by the Town of Carbondale Board of Trustees and the owner of the subject property. Following annexation, a Notice of Applicability regarding the annexed property shall be recorded in order to subject the same to this Declaration. The rights of Declarant and any successor or specific assign to exercise such rights to annex additional real property shall expire 50 years after the date of recording of this Declaration.

Section 7.4 Notice of Applicability. Recording this Declaration serves to provide notice that at any time, and from time to time, all or any portion of the Property may be made subject to the terms, covenants, conditions, restrictions and obligations of this Declaration. This Declaration will apply to and burden a portion or portions of the Property upon the recording of a Notice of Applicability describing such Property by a legally sufficient description and expressly providing that such Property will be considered a part of the Development and will be subject to the terms, covenants conditions, restrictions and obligations of this Declaration. To be effective, a Notice of Applicability must be executed by the Declarant and the record title owner of the

Property being made subject to this Declaration if such Property is not owned by the Declarant. To make the terms and provisions of this Declaration applicable to a portion of the Property, Declarant will be required only to cause a Notice of Applicability to be recorded in substantially the form set forth in Exhibit C hereto.

To the extent required by applicable law, a Notice of Applicability will constitute an amendment to this Declaration and may be executed unilaterally by the Declarant provided that Declarant is the owner of the Property described in the Notice of Applicability. If all or a portion of the Property described in the Notice of Applicability is not owned by the Declarant, only the owner of such portion and the Property and the Declarant must execute the Notice of Applicability.

Section 7.5 No Amendment. The terms and provisions of this Article 7 inure to the benefit of Declarant, are enforceable by Declarant, and shall not be amended without the express written consent of Declarant and without regard to whether Declarant owns any portion of the Property at the time of such amendment.

Section 7.6 Declarant Control Period. Notwithstanding anything to the contrary, Declarant, or its successors or assigns, will have the absolute right to appoint members of the Board and their successors (any appointment of a successor will be a deemed removal of the Board Member being replaced by such appointment) until expiration or termination of the Declarant Control Period. The same is true regarding members of the Architectural Control Committee. Declarant may voluntarily surrender the right to appoint and remove officers and members of the Board and Committee before termination of the Declarant Control Period. In that event, Declarant may require, for the duration of the Declarant Control Period, that specified actions of the Committee, Board, or Association, as described in a recorded instrument executed by Declarant, be approved by Declarant before they become effective.

Section 7.8 Financial Contributions. Declarant shall have the right, in its sole discretion and from time to time, to contribute to the revenues of the Association. At the option of Declarant, such contribution may be reflected on the books and records of the Association as a loan, in which event it shall be repaid by the Association to Declarant, at the discretion of Declarant. If treated as a loan, the contribution shall accrue interest, compounded annually, from the date it is made until the date of its repayment, at the statutory rate of eight percent (8%).

ARTICLE 8: Insurance and Indemnity

Section 8.1 Association's Insurance. The Association has the following responsibilities with respect to insurance and, except as otherwise expressly provided in this Declaration, the cost of all insurance maintained by the Association under this Section 8.1 shall be included in the Common Expenses:

(a) Property Insurance. Property insurance on the roof and exterior of all Dwellings, all Common Elements, and all Improvements on or in the Common Elements (excepting any such improvements installed by an Owner) within the Property. Such insurance shall not include or cover the finished interior surfaces of the walls, floors, and ceilings of the Dwellings. 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 and earthquake 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, and shall include such endorsements as the Board of Directors considers appropriate from time to time.

The Association's property insurance shall be maintained in the name of the Association. To the extent available on reasonable terms, such property insurance also shall (i) contain no provisions by which the insurer may impose a so-called "co-insurance" penalty; (ii) be written as a primary policy, not contributing with and not supplemental to any coverage that any Owner carries; (iii) provide that no act or omission by any Owner, unless acting within the scope of the Owner's authority on behalf of the Association, voids the policy or is a condition to recovery under the policy; (iv) provide that it may not be cancelled, nor may coverage be reduced, without 30 days prior notice to the Association; (v) include a so-called "inflation guard" endorsement; and (vi) provide for a waiver of subrogation by the insurer as to claims against each Owner and each Owner's Guests.

Any loss covered by the property insurance policy described in this Section 8.1(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, 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, Owners, and lienholders are not entitled to receive payments of any portion of the proceeds unless there is a surplus of proceeds after the property has been completely restored or Thompson Park is terminated.

(b) Liability Insurance. The Association shall maintain bodily injury and property damage liability insurance for the benefit of the Association and its officers, directors, agents and employees in amounts and with coverage as determined from time to time by the Board. All Owners shall be named as additional insureds for claims and liabilities arising from their Membership in the Association and/or interest in the Common Elements. To the

extent available on reasonable terms, such liability insurance shall (i) have a per occurrence limit of not less than \$1,000,000.00; (ii) be on a commercial general liability form; (iii) contain a "severability of interest" or "cross-liability" endorsement which precludes the insurer from denying the claim of any named or additional insured due to the negligent acts, errors or omissions of any other named or additional insured; (iv) be written as a primary policy, not contributing with and not supplemental to any coverage that any Owner may carry; (v) provide that no act or omission by any Owner, unless acting within the scope of such Owner's authority on behalf of the Association, voids the policy or is a condition to recovery under the policy; (vi) insure all of the named and additional insured parties against liability for negligence resulting in death, bodily injury or property damage arising out of or in connection with the use, ownership or maintenance of the Common Elements; and (vii) provide that it may not be cancelled, nor may coverage be reduced, without 30 days' prior notice to the Association and all additional insureds named in the policy.

(c) Worker's Compensation and Employer's Liability. If the Association has any employees, then it shall maintain worker's compensation and employer's liability insurance as determined from time to time by the Board. At a minimum, the Association shall maintain such insurance in amounts and with coverages required by applicable law.

(d) Directors and Officers Liability Insurance. The Association may, in its discretion, carry directors' and officers' liability insurance in such amount as the Board of Directors may deem appropriate.

(e) Automobile Insurance. If the Association operates owned, hired or non-owned vehicles, the Association shall maintain comprehensive automobile liability insurance at a limit of liability of not less than \$300,000.00 for combined bodily injury and property damage.

(f) Other Insurance. The Association may procure and maintain other insurance as the Board from time to time deems appropriate to protect the Association or the Owners or as may be required by the Act. In no event shall insurance coverage obtained or maintained by the Association obviate the need for Owners and Guests to obtain insurance for their own benefit.

(g) Licensed Insurers. All policies of insurance required to be maintained by the Association shall be placed with insurers licensed in the State of Colorado.

Section 8.2 Owner's Insurance. Each Owner of a Lot or Unit shall obtain insurance, at the Owner's expense, to the extent and in the amount the Owner deems necessary to protect its interests; provided, however, that such insurance shall, at a minimum, cover all interior fixtures, fittings, flooring, ceilings, and walls of the Owner's Dwelling.

Section 8.3 Association's Indemnity. The Association shall be liable to and shall protect, defend, indemnify and hold harmless each Owner from and against any and all damages, claims, demands, liens (including, without limitation, mechanics' and materialmen's liens and claims), losses, costs and expenses (including, without limitation, reasonable attorneys' fees, court costs and other expenses of litigation) and liabilities of any kind or nature whatsoever

suffered or incurred by, or threatened or asserted against, the Owner as a result of or in connection with the use, enjoyment or ownership of the Common Elements by the Association, and its directors, officers, agents and employees acting within the scope of their authority, and to the extent not covered by Section 8.4, by licensees, permittees, or other third parties using the Common Elements. Nothing contained in this Section 8.3 shall be construed to provide for any indemnification that violates Law or voids any or all of the provisions of this Section 8.3.

Section 8.4 Owners' Indemnity. Each Owner of a Lot or Unit shall be liable to and shall protect, defend, indemnify and hold harmless the Association, the Board, and each other Owner from and against any and all damages, claims, demands, liens (including, without limitation, mechanics' and materialmen's liens and claims), losses, costs and expenses (including, without limitation, reasonable attorneys' fees, court costs and other expenses of litigation) and liabilities of any kind or nature whatsoever suffered or incurred by, or threatened or asserted against, the Association, the Board, or any such other Owner as a result of or in connection with the use, enjoyment or ownership of any portion of such indemnifying Owner's Lot or the Common Elements by the indemnifying Owner or its Guests and caused by the negligence, recklessness or intentionally wrongful acts or omissions of the indemnifying Owner or its Guests. Nothing contained in this Section 8.4 shall be construed to provide for any indemnification that violates Law or voids any or all of the provisions of this Section 8.4. All amounts owed by an Owner of a Lot to the Association pursuant to this Section 8.4 shall be expenses for which the Association may levy Specific Assessments against such Owner's Lot.

Section 8.5 Proceeds and Adjustment. The Board is solely responsible for adjustment of any losses under insurance policies maintained by the Association and is hereby irrevocably appointed the agent of all Owners, Mortgagees, and other Persons having an interest in Thompson Park for purposes of adjusting all claims arising under insurance policies maintained by the Association and executing and delivering releases when claims are paid. The Association may receive all proceeds of any insurance policy maintained by the Association, except other insured parties under liability insurance policies shall be entitled to proceeds arising out of their insured losses.

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 benefitting from such repair or restoration for all deductibles paid by the Association. In the event more than one Dwelling is damaged by a loss, the Association in its reasonable discretion may assess each 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 that the Declarant reimburses the Association for any additional premium payable on account thereof, name Declarant as an additional insured and shall contain a waiver of subrogation rights as against Declarant.

ARTICLE 9: Miscellaneous Provisions

Section 9.1 Term of Declaration. Except as provided below in this Section 9.1, all

provisions of this Declaration shall continue in effect in perpetuity unless this Declaration is terminated by written ballot of 75% of the Owners. The termination of this Declaration shall be effective upon the Recording of a certificate, executed by the President or a Vice President and the Secretary of the Association, stating that this Declaration has been terminated by the Owners as provided herein. Notwithstanding the foregoing, for so long as Declarant owns any Lot, Unit, or any additional parcel shown on the Master Plat, subject to Declarant's reserved rights set forth above in Article 7, this Declaration shall not be terminated without the written consent of Declarant.

Section 9.2 Amendment. Except as otherwise provided in this Declaration, any provision of this Declaration may be amended or repealed at any time and from time to time upon approval of the amendment or repeal by the Owners holding at least 67% of the voting power of the Association. The amendment shall be effective upon the Recording of a certificate, executed by the President or a Vice President and the Secretary setting forth the amendment in full and certifying that the amendment or repeal has been approved by the Owners as provided herein. Notwithstanding the foregoing, the Town of Carbondale must approve any change to (i) the definitions of Common Expenses and General Common Elements as provided in those definitions; (ii) Sections 4.17, 5.3, 5.7(a)(iii) & (iv), and 5.7(b); and (iii) the limitation on Assessments paid by Owners of Deed Restricted Units set forth in Section 6.9.

Section 9.3 Notice. Any notice permitted or required to be given under this Declaration shall be in writing and shall be deemed properly given and received on the earlier of: (a) when actually received if delivered personally, by messenger service, by e-mail, facsimile, or otherwise; (b) on the next business day after deposit for delivery (specifying next day delivery) with any recognized overnight courier service; or (c) three business days after mailing, by registered or certified mail, return receipt requested. All such notices shall be furnished with delivery or postage charges paid, addressed (which term, for purposes of this Section 9.4, shall include the facsimile number in the case of a notice given by facsimile) as follows: (i) to the Association or Board at the address established for the Association by the Board; and (ii) to an Owner of a Lot or Unit at the address for such Person maintained in the Association's records; provided, however, that if the Association does not provide an address for an Owner, then notice to such person may be given in any manner in which notice is permitted to be given to a Person under the Law of the State of Colorado in connection with the foreclosure of mortgages, including publication. Each Owner shall give notice to the Association at its mailing or street address and, with each change of its address, shall give notice of such change promptly, in the manner provided for giving notice to the Association in this Section 9.3.

Section 9.4 Persons Entitled to Enforce this Declaration. The Association and any Owner (including Declarant so long as it owns any of the real property shown on the Master Plat) shall each have the right to enforce any or all of the Restrictions contained in this Declaration against all or any portion of the Property and the Owner(s) thereof; provided,

however, that no Owner shall be permitted to bring any enforcement action under this Declaration unless the Association declines to bring a similar action. The Association shall be deemed to have declined to bring an enforcement action if (a) an Owner gives notice to the Association in accordance with Section 9.3, that such Owner intends to bring an enforcement action (which notice shall specify the Restriction at issue and shall briefly summarize the circumstances prompting such action), and (b) the Association gives notice to such Owner, in accordance with Section 9.3, that the Association declines to enforce the Restriction or the Association fails to initiate an enforcement action or otherwise cause compliance with the Restriction within 60 days after the date of such Owner's notice to the Association. The right of enforcement shall include the right to bring an action for damages as well as any equitable relief, including any action to enjoin any violation or specifically enforce the Restriction or other provision of this Declaration.

Section 9.5 Violations Constituting a Nuisance. Any violation of any Restriction or other provisions of this 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.

Section 9.6 Violations of Law. Any violation of Law pertaining to the ownership, occupation or use of any of the Property is hereby declared to be a violation of this Declaration and shall be subject to any and all of the enforcement procedures set forth in this Declaration.

Section 9.7 Remedies Cumulative. Each remedy that is provided under this Declaration is cumulative and not exclusive.

Section 9.8 No Implied Waivers. Failure to enforce any Restriction or other provision of this Declaration shall not operate as a waiver of that Restriction or provision or of any other Restriction or provision of this Declaration.

Section 9.9 Costs and Attorneys' Fees. In any action or proceeding under this Declaration, the party determined by the court or arbitrator, as the case may be, to be the prevailing party shall be entitled to recover its costs and expenses in connection therewith, including reasonable attorneys' fees and expenses.

Section 9.10 Interpretation. The provisions of this Declaration shall be liberally construed as a whole to effectuate the purposes of this Declaration. With respect to matters addressed by more than one restriction, the more restrictive shall be interpreted to override the less restrictive. The term "including," unless otherwise specified, shall be interpreted in its broadest sense to mean "including without limitation."

Section 9.11 Governing Law. This Declaration shall be construed and governed under the laws of the State of Colorado. In the event of court action to enforce this Declaration, the exclusive venue shall be the county court or district court of Garfield County, Colorado.

Section 9.12 Severability. Each of the provisions of this Declaration shall be deemed independent and severable and the invalidity or unenforceability or partial invalidity or partial enforceability of any provision or portion thereof shall not affect the validity or enforceability of any other provision.

Section 9.13 Registration by Owner of Mailing Address. Each Owner shall register their mailing address with the Association, including an e-mail address if available. Assessment statements and all other notices or demands intended to be served upon an Owner shall be sent via e-mail if one is available, or otherwise by regular U.S. Mail, postage prepaid, addressed in the name of the Owner at such registered mailing address. All notices, demands or other notices intended to be served upon the Association shall be sent certified mail, postage prepaid, to the address of the Association as designated in the Bylaws of the Association.

Section 9.14 Number and Gender. Unless the context requires a contrary construction, 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 9.15 Captions for Convenience. The titles, headings and captions used in this Declaration are intended solely for convenience of reference and shall not be considered in construing any of the provisions of this Declaration. Reference to articles, sections and exhibits in this Declaration are to the indicated provisions and Exhibits of this Declaration unless otherwise specified.

[SPACE INTENTIONALLY LEFT BLANK; SIGNATURE PAGE FOLLOWS]

Executed this 15th day of November, 2019.

Thompson Park, LLC, a Colorado limited liability company

By: _____

Print Name: Jacques Machol

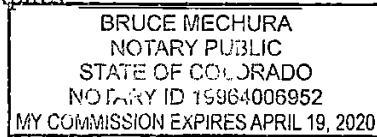
Title: Co-Manager

STATE OF COLORADO)
 Denver) ss.
COUNTY OF ~~GARFIELD~~)

The foregoing instrument, Declaration of Covenants, Conditions, Easements and Restrictions for Thompson Park Subdivision, was acknowledged before me this 15th day of November, 2019, by Jacques Machol as co-manager of Thompson Park, LLC, a Colorado limited liability company.

Witness my hand and official seal.

My commission expires: _____



Notary Public

Reception#: 928313
11/18/2019 10:04:44 AM Jean Alberico
40 of 44 Rec Fee: \$228.00 Doc Fee: 0.00 GARFIELD COUNTY CO

EXHIBIT A
Property Legal Description

Parcels 2, 3, and 4 of the THOMPSON PARK SUBDIVISION according to the MASTER PLAT thereof recorded May 19, 2015, as Reception No. 862909, Garfield County, Colorado.

Reception#: 928313
11/16/2019 10:04:44 AM Jean Alberico
41 of 44 Rec Fee:\$228.00 Doc Fee:0.00 GARFIELD COUNTY CO

EXHIBIT B
Allocation Percentages

EXHIBIT B
 Allocation Percentages

Lot/Unit #	Lot/Unit Sq.Ft	Allocation Percentage
Parcel 2		
1-A*	1381	1.60%
1-B*	1392	1.61%
2-A*	1205	1.39%
2-B*	1187	1.37%
2-C*	1308	1.51%
3	2215	2.56%
4	2220	2.57%
5	2220	2.57%
6	2215	2.56%
7	2215	2.56%
8	2220	2.57%
9	2220	2.57%
10	2215	2.56%
11	2215	2.56%
12	2220	2.57%
13	2220	2.57%
14	2220	2.57%
15	2215	2.56%
16	2215	2.56%
17	2220	2.57%
18	2220	2.57%
19	2215	2.56%
20	2215	2.56%
21	2220	2.57%
22	2174	2.51%
23	2214	2.56%
24	2214	2.56%
Parcel 3		
1-A*	1205	1.39%
1-B*	1187	1.37%
1-C*	1308	1.51%
2	2215	2.56%
3	2220	2.57%
4	2174	2.51%
Parcel 4		
1	3000	3.47%
2	3000	3.47%
3	3000	3.47%
4	3000	3.47%
5	3000	3.47%
6	3000	3.47%
7	3000	3.47%
Total sq. ft.	86,519	100.00%

*Deed Restricted Unit

EXHIBIT C
 Form Notice of Applicability

NOTICE OF APPLICABILITY

THIS NOTICE OF APPLICABILITY (“Notice”) is executed this ___ day of _____, 20___, by Thompson Park, LLC, a Colorado limited liability company (“Declarant”) [and _____ (“Owner”)]¹. Unless otherwise defined herein, capitalized terms shall have the meanings set forth in the Declaration (defined below).

WHEREAS, Declarant is the declarant identified in the Declaration of Covenants, Conditions, Easements and Restrictions for Thompson Park Subdivision recorded _____, 2019, in the Garfield County Real Property Records at Reception No. _____ (“Declaration”); and

WHEREAS, Declarant [Owner] is the owner of the real property legally described as follows, to wit:

Lot ___ - Lot ___, Phase ___, Thompson Park Subdivision, according to the plat thereof recorded _____, 20___, at Reception No. _____.

(the “Annexed Property”); and

WHEREAS, the Annexed Property is part of the Property described in Exhibit A to the Declaration; and

WHEREAS, pursuant to Section 7.4 of the Declaration, Declarant [and Owner] desire to include the Annexed Property in the Development and subject the same to the Declaration.

1. The Annexed Property is hereby annexed into and made a part of the Development and is now subject to all provisions, covenants, conditions, and restrictions set forth in the Declaration.

2. The plat creating the Annexed Property was recorded at Reception No. _____ and is incorporated herein by reference.

3. The Allocation Percentages of all Lots subject to the Declaration after giving effect to the Annexed Property described in the Notice are as follows:

Lot Number	Allocation Percentage

DATED as of the date first set forth above.

DECLARANT

Thompson Park, LLC, a Colorado limited liability company

 By:
 Title:

STATE OF _____)
)ss
 COUNTY OF _____)

Acknowledged before me this ___ day of _____, 20__ by _____ as _____ of Thompson Park, LLC, a Colorado limited liability company.

[OWNER

 By:
 Title:

STATE OF _____)
)ss
 COUNTY OF _____)

Acknowledged before me this ___ day of _____, 20__ by _____.]

¹ Bracketed provisions should be modified or deleted as necessary.

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