

DECLARATION OF COVENANTS, CONDITIONS, AND
RESTRICTIONS FOR CLEVELAND PLACE SUBDIVISION

This Declaration of Covenants, Conditions and Restrictions is made on this 27th
day of July, 2005 by 211 Eighth, LLC, a Colorado Limited Liability
Company ("211 Eighth"), hereinafter referred to as "Declarant."

Declarant is owner of the real property in the Town of Carbondale, Garfield
County, Colorado, described as Lots 1A, 1B, 2A, 2B, 3A, 3B, 4A, 4B, 5, 6, 7, 8, 9A, 9B,
10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25 and 26 as hereinafter defined,
and which Lots, together with all dedications to the Town of Carbondale, shall be
hereinafter referred to in the aggregate as the "Subdivision." This Declaration shall
provide for creation of the Cleveland Place Homeowners Association, as an
unincorporated nonprofit association under the provisions of C.R.S. 7-30-101, *et seq.*, for
the purpose of administering and enforcing these covenants, conditions and restrictions
and to perform such other functions and duties and for such other purposes as hereinafter
provided.

Desiring to protect the value and desirability of the Subdivision and to develop
the Subdivision in accordance with a master plan and general scheme of development
into a residential community, Declarant hereby declares that each and all restrictions,
covenants, and conditions shall be applicable to and run with title to all of the Lots in the
Subdivision.

ARTICLE I
DEFINITIONS

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

1.1 "Access Easements" shall mean those easements for vehicular and
pedestrian access appurtenant to Lots 5, 6, 7, 8, 10, 11, 12 and 13, as more particularly
defined in Article 3 below and as described and shown on the Plat.

1.2 "Association" shall mean the Cleveland Place Homeowners Association,
an unincorporated nonprofit association hereby formed pursuant to C.R.S. 7-30-101, *et
seq.*, for the purposes and with the powers and duties, and the membership, management
and operation thereof to be as provided in Article 4 and Article 5 below.

1.3 "Association Action" means any act, approval or decision of the
Association and shall only be taken with the approval of more than 50.0% of the total

voting rights of the Owners of all Lots as provided below in Section 4.2 hereof. Unless otherwise specified, any provision herein requiring the approval of the Owners or Members or action by the Association means the approval by more than the aforesaid 50.0% of all voting rights in the Association.

1.4 "Association Rules" shall mean the rules and regulations adopted by the Association, which Association Rules shall conform to the provisions of the Declaration except as otherwise herein provided.

1.5 "Town" shall mean the Town of Carbondale, Colorado, a home rule municipal corporation.

1.6 "County" means Garfield County, Colorado.

1.7 "Declarant" means 211 Eighth, LLC, its successors and assigns, or any person to whom the Declarant's rights hereunder are assigned by recorded instrument, or any Mortgagee of the Declarant which acquires title to or succeeds to the interest of the Declarant in any portion of the Subdivision by reason of the foreclosure, conveyance in lieu of foreclosure or trustee's sale under such Mortgage encumbering Declarant's interest in the Subdivision.

1.8 "Declaration" means this instrument, as amended from time to time.

1.9 "DRC" shall mean the Design Review Committee created, constituted and granted the powers, duties and authority as provided in Articles 4 and 5 below.

1.10 "Recreation Easement" shall mean those areas depicted on the Plat as being located on Lots 14, 15, 16, 19, 20, 25 and 26. Such Recreation Easement shall be appurtenant to and for the benefit of the Lot contiguous thereto and shall be for the purposes of and restricted to those uses by both the Lot Owner upon which the Recreation Easement is located and the Lot Owner of the Lot to which such Recreation Easement is appurtenant, respectively, all as more particularly provided in Article 3 below.

1.11 "Home Occupation" shall mean a business operated from a residential building which does not require customers or clients to visit the property and is conducted entirely within the Lot Owner's residential building or permitted appurtenant structures, all as more particularly defined and provided in the Ordinances of the Town.

1.12 "Lot" means any of the platted Lots numbered 1A, 1B, 2A, 2B, 3A, 3B, 4A, 4B, 5, 6, 7, 8, 9A, 9B, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25 and 26 as shown on the Plat. There shall be three categories of Lots designated on the Plat as follows:

<u>Designation</u>	<u>Lot Nos.</u>
Single-family Residential ("SFR Lots")	14, 15, 16, 19, 20, 25 and 26
Single-family Residential or Duplex Residential ("SFR/DR Lots")	5, 6, 7, 8, 10, 11, 12, 13, 17, 18, 21, 22, 23 and 24
Duplex Residential ("DR Lots")	1A, 1B, 2A, 2B, 3A, 3B, 4A, 4B, 9A and 9B

1.13 "Lot" or "Lots" without further designation, and where the context so requires, shall mean all of the categories of Lots described in 1.12 immediately above.

1.14 "Managers" shall mean the duly appointed, by Association Action, Managers of the Association.

1.15 "Member" means the members of the Association being the Owners of Lots all as more particularly provided and defined in Article 4 below.

1.16 "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 the performance of an obligation or the payment of a debt and which is required to be released upon performance of the obligation or payment of the debt.

1.17 "Mortgagee" means a mortgagee under a Mortgage or a beneficiary under a Deed of Trust, and the assignees of such mortgagee, encumbering a Lot.

1.18 "Mortgagor" means the Lot Owner who mortgages his or its property to another. The term "Mortgagor" shall include a grantor under a Deed of Trust or mortgage.

1.19 "Owner" shall mean the Person, including Declarant, or, if more than one, all Persons collectively, who holds fee simple title to a Lot.

1.20 "Person" shall mean a natural person, a corporation, a partnership, or any other entity capable of holding title to real property pursuant to the laws of the State of Colorado, and their heirs, personal representatives, successors and assigns.

1.21 "Plat" shall mean the Final Plat of Cleveland Place Subdivision, recorded as Reception No. 678760 in the County Records, and all amendments thereto made in accordance with this Declaration and the land use regulations of the Town.

1.22 "Record" or "Recording" shall mean the filing for record of any document in the office of the Clerk and Recorder of Garfield County, Colorado.

1.23 "Subdivision Improvements Agreement" shall mean the agreement made by Declarant and the Board of Trustees of the Town recorded as Reception No. 678763 of the County records and any amendments thereto (the "SIA").

In addition to the foregoing definitions, other definitions are contained in certain of the following specific provisions of the Declaration.

ARTICLE 2
RESTRICTIONS ON USE AND OCCUPANCY

2.1 Residential Use and Buildings. All Lots shall be used for residential buildings and purposes and appurtenant structures approved by the DRC, and none other. All SFR Lots shall be used for single-family residential buildings and purposes and appurtenant structures approved by the DRC and none other. All DR Lots shall be used for two-family duplex residential buildings and purposes and appurtenant structures approved by the DRC and none other. All SFR/DR Lots may be used for either single-family or two-family duplex residential buildings and purposes and appurtenant structures approved by the DRC and none other; provided that any such SFR/DR Lots which are used for two-family duplex structures shall be in the following combination of Lots, to wit:

- Lots 5 and 6
- Lots 7 and 8
- Lots 10 and 11
- Lots 12 and 13
- Lots 17 and 18
- Lots 21 and 22
- Lots 23 and 24

and that the common boundaries between such above-described combined Lots shall also become and constitute the center of the party wall separating the two duplex units and any drainage and utility easements located along such common Lot boundary shall be vacated by the terms hereof and relocated in accordance with Section 2.18 below to serve the duplex structure. Further, no residential building, whether located on a SFR, DR or SFR/DR Lot, shall be allowed to contain more than a single Dwelling Unit in the case of an SFR Lot (or an SFR/DR Lot upon which a single-family residence building is constructed) or two Dwelling Units in the case of a DR Lot or an SFR/DR Lot used for a duplex structure. The term "Dwelling Unit" is as defined in Section 18.70.260 of the Carbondale Municipal Code.

No business or commercial building may be erected on any Lot and no business or commercial enterprise or other non-residential use may be conducted on any part thereof except as permitted under this Declaration. No temporary buildings, structures or trailers may be erected, placed or maintained on any Lot except as expressly permitted by and in compliance with this Declaration. Nothing herein shall be construed as precluding the installation and construction on a Lot of a Manufactured Home which has been built

and installed on a Lot in compliance with National Manufactured Housing Construction and Safety Standards Act of 1976. Nothing herein shall be deemed to restrict a Lot Owner's right to conduct a Home Occupation so long as the same is permitted under the Ordinances of the Town.

In addition, any residential structures constructed on any Lot shall be constructed in general conformity with the conceptual design and elevations shown on Exhibits A-1, A-2, A-3 and A-4 hereto, the latter Exhibit A-4, as to location of paved parking areas and structural improvement siting on a Lot; and no substantial deviation therefrom shall be permitted without written concurrence of the Town and the DRC.

2.2 Occupancy Limits. Occupancy of any residential building located upon a Lot shall not exceed a total of two (2) persons per bedroom located in the residential building. For illustrative purposes, the maximum number of people who may occupy a two-bedroom residential building shall be four (4); and the maximum number of persons who may occupy a three-bedroom residential building shall be six (6).

2.3 Owner's Responsibility. Except as may be otherwise herein provided, each Owner shall furnish and be responsible, at his own expense, for all maintenance, repairs and replacements within and upon his Lot. Each Owner shall, at his sole cost and expense, repair his residential buildings and any approved appurtenant structures, keeping the same in a condition comparable to the condition of such improvements at the time of their initial installation and construction, excepting only normal wear and tear.

2.4 Owner's Obligations to Rebuild. If all or any portion of a residential building is damaged or destroyed by fire or other casualty, it shall be the duty of the Owner thereof, with all due diligence, to rebuild, repair, or reconstruct such residential building in a manner which will substantially restore it to its appearance and condition immediately prior to the casualty. Reconstruction shall be undertaken within three (3) months after the damage occurs, and shall be completed within twelve (12) months after the damage occurs, unless prevented by causes beyond the control of the Owner or Owners. If construction does not begin within three months, the structure shall be presumed to be a public nuisance and which may be so decreed by Garfield County District Court upon petition by the Association. Such decree may allow razing of the structure, the costs of which shall be borne by the Lot Owner.

2.5 Violation of Law or Insurance. No Owner shall permit anything to be done or kept in his Lot which will result in the cancellation of insurance thereon or which would be in violation of any law.

2.6 Signs. No sign of any kind shall be displayed to the public view from any Lot without the approval of the DRC, except: (a) such signs as may be used by Declarant in connection with the development and sale of Lots in the Subdivision; (b) such signs as may be required by legal proceedings, (c) such signs as may be required for traffic control, or, (d) one "for sale" sign on a Lot which shall not exceed two feet by three feet.

2.7 Animals. No animals, including horses or other domestic farm animals, fowl or reptiles of any kind may be kept, bred or maintained on any Lot, except that not more than two (2) cats and two (2) dogs may be kept on any Lot subject to the further conditions hereof. No animals shall be kept, bred or raised within the Subdivision for commercial purposes. In no event shall any domestic pet be allowed to depart from its Owner's Lot without a leash.

2.7.1 Lot Owners shall be permitted to keep not more than two (2) dogs on their property pursuant to the following restrictions and limitations:

(a) Dogs shall be kept under the control of the Owner at all times and shall not be permitted to run free or to cause a nuisance in the Subdivision.

(b) Dogs shall not be allowed to bark continuously, which shall be defined as barking for an uninterrupted 15-minute period.

(c) All Lot Owners shall keep animals reasonably clean, and all Lots shall be kept free of refuse and animal waste.

2.8 Nuisances. No Owner shall permit or suffer anything to be done or kept about or within his Lot, or on or about the Subdivision, which will obstruct or interfere with the rights of other Owners, occupants or Persons, or annoy them by unreasonable noises or otherwise, nor will such Owner commit or permit any nuisance or commit or suffer any illegal act to be committed therein. Each Owner shall comply with the Association Rules, the requirements of all health authorities, the Town and other governmental authorities having jurisdiction over the Subdivision.

2.9 Boats, RV's and Motor Vehicles. Except as otherwise specifically permitted by the Association Rules, (a) no boats, trailers, buses, motor homes, campers, snowmobiles, all-terrain vehicles, or other similar vehicles shall be parked or stored in or upon a Lot except within an enclosed garage; and (b) no vehicle shall be repaired or rebuilt in any Lot except within a garage and then only if such vehicle is owned by the Lot Owner. No more than a total of two (2) motor vehicles shall be parked on any Lot outside a garage, and not more than two (2) such motor vehicles may be parked on a paved driveway or other paved area designed for parking purposes on a Lot as more particularly shown on Exhibit A-4 hereto. The Association may remove, or cause to be removed, any unauthorized vehicle at the expense of the owner thereof in any manner consistent with law and as a matter of enforcement of this Declaration.

2.10 Lights. No spotlights, flood lights or other high intensity lighting shall be placed or utilized upon any Lot, which in any manner will allow light to be directed or reflected upon streets, or any other Lot, or any neighboring property. Security lighting is subject to this provision and must be shielded and directed downward. All lighting must comply with the Town's lighting ordinance.

2.11 Antennas. No radio, television or other antennas of any kind or nature, or device for the reception or transmission of radio, microwave or other similar signals, shall be placed or maintained upon any Lot except as may be permitted by the Association Rules. One 18-inch satellite dish is acceptable as long as the DRC approves the placement location upon the residence.

2.12 Garbage and Trash. No rubbish, garbage or trash, or other waste material shall be kept, or permitted on any Lot so as to be visible from another Lot. No incinerators shall be kept or maintained on any Lot. No refuse pile or unsightly objects shall be allowed to be placed, accumulated or suffered to remain anywhere on a Lot.

2.13 Safe Condition. Without limiting any other provision in this section, each Owner shall maintain and keep his Lot and the improvements thereon and the Recreation Easement, if any, at all times in a safe, sound and sanitary condition and repair and shall correct any condition or refrain from any activity which might interfere with the reasonable enjoyment by other Owners of their respective Lots.

2.14 Fires. Other than commercially manufactured barbecues or properly constructed barbecue pits or grills, and firepits in compliance with the Association Rules, or as otherwise expressly permitted in the Association Rules, no open fires shall be permitted on any Lot nor shall any other similar activity or condition be permitted which would tend to increase the insurance rates for other Owners.

2.15 Clothes Drying Area. No portion of any Lot shall be used as an outdoor drying or hanging area for laundry of any kind unless totally screened from view.

2.16 Swimming Pools. Swimming pools or tubs shall be sited in accordance with the Association Rules and Design Guidelines.

2.17 Weed Control and Front Yard Landscaping Maintenance, Irrigation System. It shall be each Lot Owner's responsibility to control all weeds and thistle on such Owner's entire Lot, except the Recreation Easement, if any, to which such Lot may be subject, and any obligation of maintenance imposed upon a Lot Owner for such a Recreation Easement shall instead be the obligation of the Lot Owner to whose Lot such Recreation Easement is appurtenant as herein provided, including the obligation of such Lot Owner to supply irrigation water to their respective Lots and any Recreation Easement appurtenant to such Lot. Further, the irrigation system located on each Lot shall be maintained in operable condition by the Lot Owner, including the system serving the Recreation Easement by the Lot Owner to which such Recreation Easement is appurtenant. The Association shall retain a lawn and landscape maintenance contractor to mow, trim and generally maintain the front yards of all Lots which have been improved by installation and construction of residence dwellings and required landscaping, which mowing, trimming and maintenance work shall be performed on a weekly basis during the growing season. The Owner of each Lot shall reimburse the Association for the cost of any such service on such Owner's Lot. The cost to each such

Lot Owner shall be the total cost charged by such contractor on a monthly basis divided by the total number of Lots receiving such service from time to time, and such reimbursement shall be made by the Lot Owner to the Association within ten (10) days of the delivery of an invoice for the aforesaid amount of such service. The Association shall also have the right if a Lot Owner fails to maintain the Lot's sprinkler system in an operable condition to maintain such system and to charge the Lot Owner or the Recreation Easement Owner, as the case may be, for the expense of any required maintenance. For purposes of this provision, the "front yard" of a Lot shall mean the area created by a fence erected for the purpose of dividing the front yard from the rear yard of a Lot, or the Recreation Easement, if any, to which such Lot is subject; but in no event shall the front yard area be less than that created by the front yard setback required by the Ordinances of the Town of Carbondale.

2.18 Duplex Lots.

A. Party Wall and Easements – Duplex Lots. Upon the conveyance by Declarant of any of the above-described DR or SFR/DR Lots and construction of a duplex structure thereon, the wall or structural extension thereof which forms a portion of the division between such Lot and the adjoining Lot identified by the same DR Lot number or combined SFR/DR Lots as provided in Section 2.1 above (not exceeding one foot in width) is hereby declared to be a party wall upon the alignment of the common boundary of such Lots as shown on the Plat, to be shared and owned in common by the Owners of such Lots, respectively. Each such Lot shall be subject to an easement for encroachment created by construction, setting or overhang of the existing party wall, and to a reasonable degree, any subsequent improvement, addition or replacement of the same, so long as such encroaching portion stands and exists. In the event the building occupying either of said Lots is partially or totally destroyed by fire or otherwise and is rebuilt by the Owner thereof, the Owners of both such Lots agree that minor encroachment of parts of the adjacent improvements upon the other Lot due to such reconstruction shall be permitted and that a valid easement for said encroachment and the maintenance thereof shall and does exist. Each such Owner shall have an easement for horizontal and lateral support for improvements situated on such Owner's Lot. Each Owner of such a Lot shall have the irrevocable right to have reasonable access to the other Lot during reasonable hours as may be necessary for the inspection, maintenance, repair or replacement of the party wall or any utilities located therein or for making emergency repairs necessary to prevent damage to the party wall or the Lot.

Responsibility for Party Wall. Except as is otherwise provided in this Declaration, the cost of reasonable maintenance, repairs and replacement of the party wall shall be the joint expense of the Owners sharing the party wall. The cost of repairs and maintenance of the finished surface of the party wall located within any such Lot shall be the sole expense of the Owner of the Lot. An Owner shall have the right to reasonably maintain and repair any utility installation located within the party wall, but in so doing shall restore the party wall to its original condition.

Negligence by Owner. In the event the party wall is damaged or destroyed by the act, omission, default or negligence of one of the Owners, such Owner shall rebuild or repair such wall and shall compensate the other Owner for any damage to the latter's property. In addition, an Owner who by negligence or willful act causes or permits the party wall to be exposed to the elements of nature shall bear the whole cost of furnishing the necessary protection against such elements so as to protect the party wall and other Owner's property against such elements.

Common Law Application. To the extent they are not inconsistent with the provision of this Declaration, the general rules of law regarding party walls shall be applicable to all such Lots and party walls and shall supplement this Declaration.

B. Utility Easements - DR and SFR/DR Lots Used for Duplex Structures. At the time of conveyance by Declarant of any of the said Lots, this Declaration shall constitute a grant as an appurtenance to each Lot conveyed of an easement for utilities serving the Lot conveyed for purposes of the operation, maintenance, repair and replacement thereof as well as an easement for reasonable access to such utilities for the purposes aforesaid. Similarly in any such conveyance, this Declaration shall constitute a reservation, as appropriate, of an easement for utilities serving the Lot and an easement for access thereto for purposes of operation, maintenance, repair or replacement of any such utilities. Any damage caused to the Lot burdened by the easement by the owner of the easement granted or reserved in the use of such easement shall be immediately repaired by both Owners of such Lot or Lots. Any expense of maintenance, repair or replacement of any of the utilities located within the foregoing described easements shall be borne equally by the respective Owners of the Lots unless such maintenance, repair or replacement is necessitated by the intentional or negligent act or omission of the Owner of one of the Lots, in which case the latter Owner shall be solely responsible for the cost of such maintenance, repair or replacement. Further, neither of the Owners of any such Lot shall build or erect any structure over existing easements and utilities located therein, except for those portions of such easements which are necessarily located under or through buildings and structures erected and installed on the Lots.

The above and foregoing covenants, restrictions and easements shall be covenants running with title to all Lots upon which duplex structures are erected, both as to the benefits and burdens thereof, and either Owner of such a Lot subject to this Subsection 2.18 may enforce the provisions hereof by any legal or equitable remedy available.

2.19 No Obstruction of Drainage. Except as otherwise herein provided, with respect to Lots upon which duplex structures are located no Owner shall erect, construct, maintain, permit or allow any fence or other improvement or other obstruction which would interrupt the normal drainage of the land or within any area designated on the Plat, or other recorded document, as a "drainage easement," and also except that, with the prior consent of the Town and the Association, non-permanent structures, including fences, may be erected in those areas which contain only underground closed conduit storm drainage facilities.

2.20 Sewage Disposal. Each residence shall contain at least one (1) fully-equipped bathroom. All sewage shall be disposed of by means of the Town sewer system.

2.21 Resubdivision Prohibited. Subject to the provisions of Section 2.1 hereof, the resubdivision of a Lot by a Lot Owner is prohibited. Boundary line adjustments which do not result in the creation of additional Lots shall not constitute resubdivision but shall require written approval of the Association and shall comply with all requirements of the Town.

2.22 Fences and Hedges. Subject to the further provisions hereof regarding Recreation Easements, the DRC must approve the type and location of all fencing prior to installation. Only wooden fencing shall be permitted within the Subdivision, with limited exceptions pertaining specifically to gardens, kennels, or other elements where a wooden fence would not serve the purpose desired, be it to keep animals in an enclosed area or to keep wildlife out of an enclosed area. No fences or hedges shall be constructed, grown or maintained on any Lot higher than six (6) feet above ground level nor shall any fence be constructed or installed within the front yard setback as such setback is defined and provided by the Ordinances of the Town of Carbondale, Colorado, but this height restriction shall not apply to patio fences attached to dwellings. Nothing herein shall be construed as being in conflict with fencing requirements of the Town and the latter shall prevail and supercede if such a conflict exists. Further, all fences on Lots having a common boundary with North Eighth Street in the Town shall be installed, maintained and replaced at a distance of 2.0 feet inside the Lot's common boundary line with Eighth Street.

2.23 Rear Yard and Side Yard Landscaping or Fencing. If only the front yard is to be landscaped, then to satisfy this Article the rear yard must be privately fenced in a manner that is acceptable to the DRC. All landscaping that is installed in the rear or side yard of a Lot shall be properly cared for and maintained by the Lot Owner.

2.24 Woodburning Stoves and Fireplaces. Each Lot within the Subdivision shall be prohibited from operating or installing an open hearth solid fuel burning device or a woodburning stove or any such appliance which does not comply with requirements of EPA class 3 rated devices. Owners shall be entitled to an unrestricted number of natural gas burning fireplaces or appliances within their residence so long as the same are in conformity with the Ordinances of the Town of Carbondale, Colorado.

2.25 Enforcement. The Association or its authorized agents may enter any Lot in which a violation of this Declaration and these restrictions exists and may correct such violation at the expense of the Owner of such Lot. All remedies provided in Article 6 hereof and all other rights and remedies available at law or equity shall be available to the Association or to any Lot Owner in the event of any breach of any provision of this Declaration by any other Owner. In addition to the foregoing enforcement rights, the Town, as a third party beneficiary of this Declaration, shall have the right, but not the obligation, to investigate and enforce any violation of the provisions and restrictions set

forth in this Article 2, which enforcement rights shall be co-extensive with the enforcement right of the Association or any other Lot Owner with regard to this Article 2.

2.26 Modification. The Association may modify or waive the foregoing restrictions or otherwise restrict and regulate the use and occupancy of the Subdivision and the Lots by reasonable rules and regulations of general application adopted by the Association from time to time which shall be incorporated into the Association Rules. Any amendment, modification or waiver by the Association of the provisions of this Article 2 shall be effective only if and when the Town specifically approves, in writing, any such modification or waiver.

ARTICLE 3 RECREATION EASEMENT AND ACCESS EASEMENTS

A. Recreation Easement.

3.1 Purposes, Uses and Restrictions on Use of Recreation Easement by Owner of Lot Benefited. The Owner of the Lot that is immediately adjacent to a Recreation Easement, and also the family members, tenants, guests and invitees of such Owner, shall have the right to use the adjacent Recreation Easement in a manner that is consistent with this Declaration, to the exclusion of the Owner of the Lot on which such Recreation Easement is located, except as otherwise provided in this Article. Subject to compliance with all terms and provisions of this Declaration, including, without limitation, obtaining the prior written approval of the Design Review Committee as required, such permitted uses of the Recreation Easement include those uses described as follows: planting and maintenance of grass, shrubs, plants, flowers, vegetables and trees, construction, location and use of hot tubs, patios, trellises, chairs and tables, and similar improvements, but not including building improvements of any kind. The Recreation Easement may be used as a general recreational, picnic, social and garden area, as though such Recreation Easement were owned by the Owner of the Lot with a right to use such Recreation Easement; provided that such Recreation Easement shall not be used in any manner, at any time, to unreasonably disturb the Owner of the Lot on which the Recreation Easement is located or such Owner's family members, tenants, guests and invitees, and nothing shall be attached to the exterior wall of the dwelling unit on such Lot on which the Recreation Easement is located.

3.2 Right of Entry and Use of Recreation Easement by Owner of Lot Burdened. The Owner of the Lot upon which the Recreation Easement is located shall be excluded from all use of such Recreation Easement except that such Owner may have access over, across and upon the Recreation Easement for the purpose of maintenance, repair and replacement of any building improvements located on such Owners' Lot contiguous to the Recreation Easement. Such access and activities by said Lot Owner on the Recreation Easement shall be conducted at reasonable times and only for reasonable periods of time with respect to the particular activity to be undertaken and shall be done with no unnecessary disruption of the purposes for which the Recreation Easement is intended to be used by the Owner of the Lot to which they are appurtenant and shall

include the obligation of restoration of the Recreation Easement.

3.3 Right of Drainage. There shall be the right of drainage over, across and upon the Recreation Easement for normal precipitation upon and irrigation of the Lot on which the Recreation Easement is located, as long as such is done in accordance with the approved drainage plan, and the Owner of the Lot adjacent to such Recreation Easement and benefited thereby shall not do or permit to be done any act which interferes with such drainage.

3.4 Right of Support. The Lot on which the Recreation Easement is located shall have the right of lateral and subjacent support for the dwelling unit and all improvements now or hereafter constructed upon such Lot, and no use of the Recreation Easement shall adversely affect such right of support.

3.5 Indemnity of Fee Owner of Recreation Easement. The Owner of the Lot to which the Recreation Easement is appurtenant shall indemnify and hold the Owner of the Lot which is subject to the Recreation Easement harmless from damage to any improvements now or hereafter constructed, located or erected on the Lot on which such Recreation Easement is located, and from any personal injury (including death), to the extent that any such damage or injury caused by use of the Recreation Easement by the Owner of the adjacent Lot to which the Recreation Easement is appurtenant or by such Owner's family members, tenants, guests and invitees. The Owner of the Lot to which the Recreation Easement is appurtenant shall acquire and keep in force adequate hazard and liability insurance covering the Recreation Easement, naming the Owner of the Lot subject to the Recreation Easement as an additional insured.

3.6 Maintenance of Recreation Easement. The Owner of the Lot which has the right to use a Recreation Easement and to which the latter is appurtenant, as provided in this Article, shall be responsible for maintenance, repair and replacement of the Recreation Easement, and of all improvements that are located thereon by or for the benefit of such Lot, to the same extent as if the Recreation Easement were a portion of such Lot and owned by the Owner of such Lot. The foregoing shall include, without limitation, watering of landscaping on the Recreation Easement and maintenance, repair and replacement of any fence that lies on, or borders, the Recreation Easement.

Each of the Recreation Easements hereby reserved and granted are as shown and located on the Plat.

B. Access Easements.

3.7 The Owners of Lots 5 and 6 are hereby granted an easement for pedestrian and vehicle access from the street known as Cleveland Place to their respective Lot boundaries over and across the northerly twelve (12) feet of Lots 7 and 8 and the Owners of Lot 7 and Lot 8 are hereby granted similar easements over and across the southerly twelve (12) feet of Lots 5 and 6 to their respective Lot boundaries for such purposes. The Owners of Lots 5, 6, 7, and Lot 8 shall each be responsible for the maintenance of the

easement and roadway constructed thereon, including snow removal, located upon and burdening their respective Lots.

3.8 The Owners of Lots 10 and 11 are hereby granted an easement for pedestrian and vehicle access from the street known as Cleveland Place to their respective Lot boundaries over and across the northerly twelve (12) feet of Lots 12 and 13 and the Owners of Lot 12 and Lot 13 are hereby granted similar easements over and across the southerly twelve (12) feet of Lots 10 and 11 to their respective Lot boundaries for such purposes. The Owners of Lots 10, 11, 12 and 13 shall each be responsible for the maintenance of the easement and roadway constructed thereon, including snow removal, located upon and burdening their respective Lots.

Each of the Access Easements described and granted in Subsections 3.7 and 3.8 above are as shown and located on the Plat and are physically co-extensive with utility and drainage easements dedicated to the Town of Carbondale on the Plat.

ARTICLE 4
ASSOCIATION, DECLARANT
AND MEMBER DUTIES AND POWERS

4.1 Association, Members and Managers. The affairs of the Association shall be managed by the Members and not less than three (3) Managers of the Association, the Members being all of the Owners and the three (3) Managers shall be appointed by Association Action. The three (3) Managers must also be Members. Each Owner of a Lot shall be a Member of the Association with the voting rights defined and stated in Subsection 4.2 below, and membership shall be inseparable from ownership of such Lot or Lots. Each of the three (3) Managers shall be appointed by Association Action for a term of one (1) year or until successor Managers are so appointed and each of such Managers shall otherwise serve at the pleasure of the Members. Such appointment shall occur at the annual meeting of the Association. Any dispute among the three (3) Managers shall be resolved by Association Action.

4.2 Voting Rights of Members. The Owner of each Lot, regardless of whether such Lot is a SFR Lot, a DR Lot, or a SFR/DR Lot, shall have one (1) Member vote for each Lot owned, and in the event that there are multiple Owners of the same Lot, all such multiple Owners shall select and confirm in writing to the Association, from time to time, one of their Members to exercise such Owner/Member voting rights. Voting by proxy shall be permitted.

4.3 Association Duties and Powers. The Association, by Association Action, and the Managers shall enforce the provisions of this Declaration, adopt Association Rules as herein provided, and undertake performance of any other duties and functions expressly or implicitly imposed upon or granted to the Association and the Managers under this Declaration.

4.4 Annual Meeting, Right to Call and Notices of All Other Meetings. The annual meeting of the Members of the Association shall be held on January 5 of each year and any matter within the Association purpose and jurisdiction may be taken up at such annual meeting. Each Member shall be entitled to notice of any meeting at which such Member has the right to vote. A meeting may be called by four (4) or more Members, by written request therefor delivered to any Manager, specifying the matters to be taken up at such meeting and the Manager shall set the date, time and place of the meeting and give notice thereof, all in accordance with the provisions hereof. Notices of any meetings, including the annual meeting, shall be given by the Managers and shall be in writing and shall state the date, time and place of the meeting and shall, except for the annual meeting, indicate each matter to be voted on at the meeting which is known to the Association at the time notice of the meeting is given. Such notices shall be given not less than ten (10) nor more than fifty (50) days before the date for the meeting. Any notice shall be deemed given and information or material shall be deemed furnished or delivered to a party at the time a copy thereof is deposited in the mail, postage or charges prepaid, addressed to the party, and in any event, when such party actually receives such notice, information or material. Any notice, information or material shall be deemed properly addressed to a Member if it is addressed to the name and address shown on the most recent written notice of name and address, if any, furnished to the Association by such Member or, if a name and address is not so furnished, if it is addressed "To The Owner" at the address of the Lot of such Member.

4.5 Record Date. The Managers of the Association shall have the power to fix in advance a date as a record date for the purpose of determining Members entitled to notice of or to vote at any meeting, or in order to make a determination of Members for any purpose. The Members existing on any such record date shall be deemed the Members for such notice, vote, meeting, furnishing of information or material or other purpose and for any supplementary notice, or information or material with respect to the same matter and for any adjournment of the same meeting. A record date shall not be more than fifty (50) days prior to the date on which the particular action requiring determination of Members is proposed or expected to be taken or to occur. If no record date is established for a meeting, the date on which notice of such meeting is first given to any Member shall be deemed the record date for the meeting.

4.6 Quorums. The presence of Members who hold votes equal to fifty percent (50%) of the total voting power of the Association, in person or by proxy, at a meeting to consider a matter shall constitute a quorum for consideration of that matter. If a quorum is established for consideration of that matter, except if a greater percentage of votes is required under a specific provision of this Declaration, greater than fifty percent (50%) of the votes cast on the matter shall decide the matter.

4.7 Statement of Authority. If a Statement of Authority is required under the provisions of C.R.S. 7-30-105, it shall be prepared and filed by the Association simultaneous with conveyance of the first Lot by Declarant.

4.8 Assessments. Each Member shall pay to the Association amounts as hereinafter provided and limited, which amounts are herein called Assessments. The power of the Association to levy such Assessments shall be limited to the specific use and purpose of enforcement of the provisions hereof, including the retaining of attorneys and other professionals in this enforcement purpose. Such Assessments shall not exceed \$50.00 per month per Member over the course of any one calendar year and shall be levied on a ratable basis, a 1/31st share of the total Assessment per Lot. No amendment increasing the aforesaid maximum Assessment over the \$50.00 per month per Member shall be made by the Association so long as the Declarant holds votes and voting power equal to or in excess of fifty percent (50%) of the total Member voting rights as herein provided. At such time as the Declarant's voting rights have decreased below fifty percent (50%) of the total voting rights in the Association, the Association, by Association Action, may increase the amount of such Assessment. Initial Assessment shall be \$10.00 per month. Subject to the above provisions and limitations hereof, the Association, through its Managers, shall have the power and authority to determine all matters in connection with Assessments, including, without limitation, power and authority to determine where, when and how Assessments should be paid to the Association, and each Member shall comply with all such determinations as notified thereof by the Managers in writing. The lawn maintenance payments due to the Association under Section 2.17 above shall not be construed as being an Assessment.

4.9 Design Review Committee: The membership of the Design Review Committee ("DRC") shall initially be comprised of the Managers of the Declarant, currently David Hicks and Thomas Neel, and the DRC shall continue to be so composed so long as Declarant shall retain ownership of a least one (1) Lot, and thereafter the members of the DRC shall be appointed by Association Action.

4.10 Amendment to Declaration. Except as otherwise provided in Section 2.26 above, the Association, by Association Action, may amend this Declaration from time to time, provided that no such amendment shall be operative or effective retrospectively, i.e., no such amendment shall have the effect of depriving an Owner of any right to continue to use or maintain his Lot in a manner or condition which was in conformance with this Declaration immediately prior to the adoption of any such amendment, and no such amendment shall affect the makeup of the DRC as initially established as set forth in Subsection 4.9 above.

4.11 Plat Amendment. The Declarant or the Association, by Association Action, may amend the Plat at any time, provided no such amendment shall affect or alter the boundaries of any Lot without the express approval of the Owner of such Lot and provided further, that such amendment is accomplished in accordance with Ordinances of the Town.

4.12 Records. The Association shall, upon reasonable written request and during reasonable business hours, make available for inspection by each Lot Owner the books, records and financial statements of the Association, this Declaration, the

Association Rules, and Design Guidelines.

ARTICLE 5
ARCHITECTURAL DESIGN AND LANDSCAPE CONTROL

5.1 Approval of Improvements Required. No improvement to a Lot or a Recreation Easement, if any, appurtenant to such Lot, shall be constructed without prior DRC approval, except where approval is not reasonably required to carry out the purposes of this Declaration as determined by the Association Rules. Improvement to a Lot shall mean the construction, erection, installation, or exterior expansion of any building, structure, or utility facilities and fences, or destruction or removal of any building, structure, tree, vegetation or other improvement, or the grading, excavation, filling or similar disturbance to the surface of the land, or any change of any previously approved improvement to a Lot, including any change of exterior appearance, color or texture thereof, but exclusive of any improvement, repair or maintenance work interior to a residential improvement.

5.2 Design Review Committee. The DRC shall consist of those Persons determined as provided in Article 4 above.

5.3 Design Guidelines. The DRC shall establish reasonable procedural rules, regulations, architectural standards and design guidelines ("Design Guidelines"), which the DRC may, from time to time in its discretion, amend, repeal or augment. The Design Guidelines may include, among other things and without limitation upon the DRC:

5.3.1 Procedures for submittal of all construction plans and specifications for improvements to a Lot to the DRC.

5.3.2 Time limitations for the completion, after commencement of construction of the improvements to a Lot for which approval is required and granted pursuant to the Design Guidelines and this Declaration.

5.3.3 No structure shall be sited on a Lot without DRC approval. The DRC shall, within its discretion, approve the building's location as near to the location selected by the Owner as it deems appropriate.

5.3.4 The DRC shall list the varieties of plants that shall be permitted to be planted on any Lot, including a Recreation Easement, if any, appurtenant to a Lot. A list of such plants shall be kept on file at all times by the DRC. The DRC may, from time to time, amend the list of permitted plants to add or delete certain varieties.

5.3.5 The DRC may make rules permitting or prohibiting the use of certain chemical pesticides and herbicides in its sole discretion with regard to application to front yards of any Lot.

5.3.6 Such other requirements, limitations and restrictions as the DRC in its reasonable discretion shall adopt, including, without limitation, the regulation of all exterior lighting, landscaping (including, without limitation, absolute prohibition of certain types of landscaping, trees and plants), construction, reconstruction, exterior addition, change or alteration to or maintenance of any building, structure, foundation system, wall or fence, including, without limitation, the nature, style, shape, height, materials, exterior color, surface texture, location of any such improvement, and prohibition of construction during certain periods of the year.

5.4 General Provisions.

5.4.1 The DRC may assess reasonable fees in connection with its review of plans and specifications. In the event that an application requires extraordinary legal, engineering, or other fees, the DRC will notify the applicant of the amount of such fees, and the DRC will not be required to take further action until such extraordinary costs are paid by the applicant Lot Owner.

5.4.2 The DRC may delegate its plan review responsibilities, except final review and approval as may be required by the Design Guidelines, to one or more of its Members or architectural consultants retained by the DRC. Upon such delegation, the approval or disapproval of plans and specifications by such Members or consultants shall be equivalent to approval or disapproval by the entire DRC unless otherwise provided in the Design Guidelines.

5.4.3 The establishment of the DRC and the procedures herein provided for architectural approval shall not be construed as changing any rights or restrictions imposed upon Owners to maintain or repair their Lots as may otherwise be specified in this Declaration or Association Rules.

5.4.4 The DRC shall approve or disapprove any plans and specifications submitted to it in accordance with the Design Guidelines within a period of thirty (30) days.

5.5 Approval and Conformity of Plans. No building, fence, wall or other structure or improvement to a Lot or Recreation Easement, if any, of whatever type, including without limitation, landscaping and irrigation facilities, shall be commenced, erected or maintained upon any Lot or Recreation Easement, if any, nor shall there be any addition to or change to the exterior of any residential or other structure, improvement, or facility upon a Lot or Recreation Easement, if any, or the landscaping, grading or drainage thereof, including, without limitation, the painting (other than painting with the original or subsequently approved color of paint) of exterior walls, patio covers and fences, except in compliance with plans and specifications therefore which have been submitted to and approved by the DRC. Approval of the DRC of plans and specifications shall not constitute approval of engineering design or for compliance with zoning and building ordinances. By approving such plans and specifications, neither the DRC nor the Declarant make any warranty that said plans or specifications comply with applicable

governmental ordinances and building codes, nor may the DRC or Declarant be held liable in the event that the plans and specifications do not so comply. The foregoing notwithstanding, the designs, elevations and site layout of residential building improvements on any Lot shall conform generally with those shown on Exhibits A-1, A-2, A-3 and A-4, all as provided in Section 2.1 hereof.

5.6 Inspection and Recording of Approval. Any member of the DRC or authorized representative or consultant of the Association may at any reasonable time enter, without being deemed guilty of trespass, upon any Lot or Recreation Easement, if any, after reasonable notice as provided herein to the Owner in order to inspect improvements constructed or being constructed on such Lot or Recreation Easement, if any, to ascertain that such improvements have been or are being built in compliance with the Design Guidelines and this Declaration. The DRC shall cause such an inspection to be undertaken within thirty (30) days of a request therefore from any Owner as to his Lot or Recreation Easement, if any, and if such inspection reveals that the improvements located on such Lot or Recreation Easement, if any, have been completed in compliance with the Design Guidelines and this Article, the DRC shall provide to such Owner a notice of such approval in recordable form that, when recorded, shall be conclusive evidence of compliance with the provisions of this Article and the Design Guidelines as to the improvements described in such recorded notice.

5.7 Additional Powers of the DRC. The DRC may promulgate as a part of the Design Guidelines such additional architectural and landscape standards, rules and regulations as it deems to be appropriate and as are not in conflict with this Declaration.

ARTICLE 6 REMEDIES

6.1 General Remedies. In the event of any default or violation by any Owner, occupant or other Person under the provisions of this Declaration, the Association Rules or Design Guidelines, the Association, or its Managers, the Declarant, or any Lot Owner shall have each and all of the rights and remedies which may be provided for in this Declaration, the Association Rules or Design Guidelines, or which may be available at law or equity, and may prosecute any action or other proceedings against such defaulting Owner, occupant or other Persons for an injunction, or specific performance, or for judgment for payment of money and collection thereof, or for any combination of such remedies. The Association shall also have the right to make other rules providing for penalties to be assessed to an Owner for violation of any provision herein. All expenses of the Association or the Declarant, or any other Owner granted rights of enforcement hereunder, incurred through any enforcement procedure, including court costs, reasonable attorneys' fees and other fees and expenses, and all damages, shall be recoverable by the party incurring the same against any violating or defaulting Lot Owner, including a Recreation Easement Owner, if any, judicially determined to be in violation of any provision of this Declaration, and this remedy shall include the right to file a first and primary lien against a Lot for any sums due and owing to the Association resulting from the breach or violation of any of the provisions hereof. The provisions of Section 2.25

above are operable with respect to this Section 6.1.

6.2 No Personal Liability of Mortgagee. A Mortgagee shall not in any case or manner be personally liable for the payment of any item of monetary damage payable for violation hereunder but only for those matters that are enforceable by injunctive or other equitable actions, but the lien of such Mortgagee's mortgage shall be inferior to any lien of the Association provided hereunder.

6.3 Enforcement After Foreclosure Sale. Notwithstanding the foregoing, an action to abate the breach of this Declaration may be brought against the purchasers who have acquired title through foreclosure of a Mortgage and the subsequent foreclosure or trustee's sale (or through any equivalent proceedings), and the successors in interest to said purchasers, even though the breach existed prior to the time said purchaser acquired an interest in such Lot.

6.4 Exercise of Owner's Rights. During the pendency of any proceedings to foreclose a Mortgage (including any period of redemption) or from the time a trustee under a deed of trust has given notice of sale pursuant to power of sale conferred under a deed of trust and pursuant to the law, the Mortgagee, or a receiver appointed in any such action, may, but need not, exercise any or all of the rights and privileges of the Owner in default.

6.5 Effect on Mortgage. Anything to the contrary herein notwithstanding, any breach of any of the covenants, restrictions, reservations, conditions and servitudes provided for in this Declaration, or any right of re-entry by reason thereof, shall not defeat or adversely affect the lien of any Mortgage upon any Lot or Recreation Easement, if any, but, except as hereinabove specifically provided, with respect to priority of such lien, any violation of the provisions of this Declaration shall be binding upon and require correction of the violation by any Lot Owner whose title thereto is acquired by foreclosure, trustee's sale, sale, deed in lieu of foreclosure or otherwise, within ninety (90) days of acquisition by such successor Owner.

ARTICLE 7 GENERAL PROVISIONS

7.1 Rule Against Perpetuities. The Rule against perpetuities shall not apply to defeat this Declaration or Association Rules.

7.2 Limitation on Liability. The Association and any Member, partner, Manager, agent, or employee of any of the same shall not be liable to any Person for any action or for any failure to act if the action or failure to act was in good faith and without malice.

7.3 Severability. Each of the provisions of this Declaration shall be deemed independent and severable, and the invalidity or unenforceability of the provisions or any portion hereof shall not affect the validity or enforceability of any other provision.

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IN WITNESS WHEREOF, the Declarant has caused this Declaration to be executed by its duly authorized Managers as of the date first set forth above.

211 EIGHTH, LLC, a Colorado Limited Liability Company

By: *David Hicks*
David Hicks, Manager

By: *Thomas H. Neel*
Thomas H. Neel, Manager

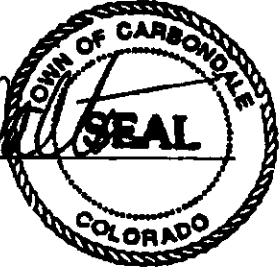
STATE OF COLORADO)
) ss.
COUNTY OF GARFIELD)

The foregoing instrument was acknowledged before me this 21st day of July, 2005, by David Hicks and Thomas H. Neel as Managers of 211 Eighth, LLC, a Colorado Limited Liability Company, the Declarant.

Witness my hand and official seal

My commission expires: May 15, 2008

Diana White
Notary Public



ARTICLE VIII
INDEMNIFICATION

8.01. **Definitions.** For purposes of this Article VIII, the following terms shall have the meanings set forth below:

(a) **Proceeding.** Any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative and whether formal or informal;

(b) **Indemnified Party.** Any person who is or was a party or is threatened to be made a party to any Proceeding by reason of the fact that he is or was a Manager of the Association or, while a Director or Manager of the Association, is or was serving at the request of the Association as a Manager, Officer, partner, trustee, employee or agent of another corporation, partnership, joint venture, trust or other enterprise.

8.02. **Indemnification.** The Association shall indemnify any Indemnified Party in any Proceeding to the fullest extent permitted by law. However, the Association may not indemnify an Indemnified Party in connection with a Proceeding by or on behalf of the Association or its members in which the Indemnified Party was adjudged liable to the Association or its members, or in connection with any Proceeding charging improper personal benefit to the Indemnified Party, whether or not involving action in his official capacity, in which he was adjudged liable on the basis that personal benefit was improperly received by him.

8.03. **Insurance.** By action of the Board, notwithstanding any interest of the Managers in such action, the Association may purchase and maintain insurance, in such amounts as the Board may deem appropriate, on behalf of any Indemnified Party against any liability asserted against him and incurred by him in his capacity of or arising out of his status as an Indemnified Party, whether or not the Association would have the power to indemnify him against such liability under applicable provisions of laws.

8.04. **Right to Impose Conditions to Indemnification.** The Association shall have the right to impose, as conditions to any indemnification provided or permitted in this Article VIII, such reasonable requirements and conditions as to the Board may appear appropriate in each specific case and circumstances including, without limitation, any one or more of the following;

- (a) that any counsel representing the person to be indemnified in connection with the defense or settlement of any Proceeding shall be counsel mutually agreeable to the person to be indemnified and to the Association;
- (b) that the Association shall have the right, at its option, to assume and control the defense or settlement of any claim or proceeding made, initiated or threatened against the person to be indemnified; and
- (c) that the Association shall be subrogated, to the extent of any payments made by way of indemnification, to all of the indemnified person's right of recovery, and that the person to be indemnified shall execute all writings and do everything necessary to assure such rights of subrogation to the Association.

8.05 **Limitation of Liability for Managers, Officers and Declarant.** Neither a Manager, an Officer or the Declarant shall be personally liable to the Members/Owners for any mistake or judgment or for any acts or omissions of any nature whatsoever when acting as a Manager, an Officer or the Declarant, except for any acts or omissions found by a court to constitute gross negligence or fraud.