

32 PAGE DOCUMENT

**FIRST AMENDED DECLARATIONS**

**OF**

**CHIPETA HEIGHTS**

THIS DECLARATION ("Declaration") is made the 20<sup>th</sup> day of May 2008, by LEVEL III DEVELOPMENT, LLC ("Declarant").

**RECITALS**

- A. WHEREAS, Declarant is the owner of the Real Property ("Property") situated in the County of Mesa, State of Colorado, more particularly described in **Exhibit A** attached hereto.
  - B. WHEREAS, Declarant desires to establish under the Colorado Common Interest Ownership Act and by this Declaration a plan for the ownership in fee simple of real property estates consisting of the Property in the building improvements and the co-ownership by the individual and separate owners thereof, as tenants in common, of all of the remaining Property which is hereinafter defined and referred to as the Common Elements:
  - C. NOW, THEREFORE, Declarant does hereby publish and declare that the Property, Buildings, and improvements constructed and located on the land described in **Exhibit A**, are hereby submitted and dedicated to the use and ownership as set forth herein and the following terms, covenants, conditions, easements, and restrictions, uses, limitations, and obligations shall be deemed to run with the land, shall be a burden and benefit to Declarant, its successors and assigns and any person acquiring or owning an interest in the Property and improvements, their grantees, successors, heirs, executors, administrators, devisees, or assigns.
1. Definitions: Unless the context shall expressly provide otherwise, the terms used herein shall have the following meaning:
- A. "Articles" means the Articles of Incorporation of the Association, the provisions of which are applicable to the Project.
  - B. "Architectural Control Committee" ("ACC") means the Committee appointed by the Directors to enforce restrictions as detailed more fully in this Declaration and also as provided in the Bylaws, and as amended. The Architectural Control Committee may also mean the Executive Committee, which may act in lieu of the Architectural Control Committee.
  - C. "Assessment" means the charge for turning on the business of the Corporation as detailed more fully herein and as determined by the Board of Directors. Assessments can

also mean one-time special assessments levied for purposes as detailed by these Declarations and the Bylaws in more detail.

D. "Association of Property Owners" or "Association" means the CHIPETA HEIGHTS HOMEOWNERS ASSOCIATION INC., a Colorado corporation not for profit, its successors and assigns, the Articles and Bylaws of which shall govern the administration of the Project, the members of which shall be all of the Owners, including the Declarant.

E. "Board" or "Architectural Control Committee" means the governing body of the Association with respect to architectural quality standards and the implementation thereof.

F. "Bylaws" means the Bylaws of the Association, the provisions of which are applicable to the Property.

G. "CCIOA" means the Colorado Common Interest Ownership Act presently codified at 38-33.3-101, et seq., as it may subsequently be amended from time to time.

H. "Common Elements" means and includes all the land described as "Common Elements" and all the improvements thereto and located thereon. Common Elements shall be owned, as tenants in common, by the Owners of the separate Property, each Property having an undivided fractional interest in such Common Elements as in hereinafter provided. The Common Elements is for the quiet enjoyment of the Owners and their guests or invitees. Any references to "common elements" appearing on the Plat shall be deemed solely for purposes of general information and shall not be limiting in any way, nor shall any such reference define the common elements in any way.

I. "Common Elements" means that part of the Property reserved for the non-exclusive use of the Owners or are limited to and reserved for the common use of more than one but fewer than all of the Owners as shown on the Map, which shall include by way of illustration and not limitation, greenbelts, streets, sidewalks, office facilities, etc. Common Elements are also defined below.

J. "Common Expenses" means and includes (i) expenses of administration, operation and of management; and maintenance, repair or replacement of the Common Elements; (ii) expenses declared Common Expenses by the Association; (iii) all sums lawfully assessed for the Common Elements by the Architectural Control Committee of the Association.

K. "Conveyance" means a transfer of an interest in the Project.

L. "Declarant" refers to CHIPETA HEIGHTS DEVELOPMENT, INC., which is the developer of the Project.



M. "Declaration" means this document, together with all exhibits attached hereto, which document shall be recorded pursuant to Colorado Revised Statutes, as amended.

N. "Guest" means any agent, employee, tenant, guest, licensee, or invitee of an Owner.

O. "Improved Lot" shall be a Lot upon which improvements have been constructed.

P. "Lot" shall mean and refer to that certain real Property in Mesa County, Colorado, described in Exhibit A and as further shown and described on the Final Plat, together with such additions, if any, as may subsequently be brought within the jurisdiction of the Association by expansion or amendment of this Declaration. "Lot" means an individual Lot which is to be used for residential purposes as shown on the Map to be filed for record, together with all fixtures and improvements therein contained.

Q. "Managing Agent" means the person employed by the Board to perform the management and operational functions of the Property.

R. "Map", " Map" or "Supplemental Map" means and includes the engineering survey of the land depicting and locating thereon all of the improvements including individual air space Property; the floor and elevation plans and any other drawing or diagrammatic plan depicting a part of or all of the improvements and land which are included in this Project. Declarant reserves the right to amend the Map, from time to time, to conform to same according to the actual location of any of the constructed improvements and to establish, vacate or relocate easements, and parking areas, if any, as well as green areas.

S. "Member" means an individual interest-holder in either an individual Lot, who is entitled to both pursuant to the terms of this Declaration and the Bylaws. The member is afforded the rights, privileges, and obligations created by these Declarations as well as the Bylaws.

T. "Mortgage" shall mean any mortgage, deed of trust or other Declaration pledging a Property as security for the payment of a debt or obligation.

U. "Mortgagee" shall mean any person, corporation, partnership, trust, company, association or other legal entity which takes, owns, holds or receives a Mortgage.

V. "Owner" means a person, firm, corporation, partnership, association or other legal entity, or any combination thereof, who owns one or more Property but excluding, however, any such person having an interest therein merely as a Mortgagee (unless such Mortgagee has acquired fee simple title interest therein pursuant to foreclosure or any proceedings in lieu thereof.)

W. "Project" or "The Property" means and includes all of the land, the buildings, all

improvements and structures thereon and all rights, easements and appurtenances belonging thereto submitted by this Declaration.

X. "Property" means fee simple interest in title in and to a Property, together with the individual interest in the Common Elements appurtenant to such Property and all other rights and burdens created by this Declaration.

Y. "Proxy" means a one-time designation of an Owner's voting right which shall be made in writing and which shall describe the grant of authority in particularity. Proxies may be granted for no more than one meeting where Owners are entitled to vote. Proxies may contain a directive as to the Owner's vote which shall be binding upon the proxy-holder.

Z. "Residence" means a residential dwelling constructed on a Lot.

AA. "Subdivision" means the act of dividing the Property into individual lots for sale and the designation of certain parts of the Property as common elements.

BB. "Unimproved Lot" shall be a Lot upon which no improvements have been constructed.

2. Common Elements: Subject to the definition herein, the Common Elements shall be identified on the Map. All of the Owners of the Property shall have a non-exclusive right in common with all of the other Owners to use the sidewalks, recreational facilities, streets and drives located within the entire Project. No Common Elements shall be leased to the Owners or to the Association, nor shall the Common Elements be subject to any other restriction in favor of the Declarant or any affiliate of the Declarant. In addition to rights of use herein described and elsewhere described in this Declaration, the Association, its Architectural Control Committee or its Managing Agent shall have an unrestricted, irrevocable easement to traverse, cross and utilize any portion of the Common Elements which may be necessary in order to maintain, repair or replace any Common Elements. Except as specifically required, no reference thereto (whether such Common Elements are exclusive or non-exclusive), need be made in any instrument of conveyance or other instrument in accordance with any Paragraph of this Declaration.
3. Title to the Common Elements: Prior to any sales of any of the Lots by Declarant, Declarant shall convey reasonable title to the Common Elements to the Association free and clear of all liens and encumbrances. No later than upon conveyance of sixty-seven percent (67%) of the Lots to Owners other than Declarant, Declarant shall convey fee simple title to the Common Elements to the Association free and clear of all liens and encumbrances, except this Declaration, then current Property taxes (prorated to the date of conveyance), and liens and encumbrances and other title exceptions of record on the date of recording of this Declaration.



4. Members' Easements of Enjoyment: Every Member shall have a non-exclusive right and easement in and to the Common Elements, including, but not limited to, an easement for ingress and egress over and through the Common Elements. Each such easement shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:
- A. The Association shall have the right to adopt uniform rules and regulations pertaining to the use and enjoyment of the Common Elements;
  - B. The Association may borrow money and encumber (by mortgage, deed of trust or otherwise) the Common Elements or any part of it for the purpose of improving the Common Elements, provided any such encumbrance shall be expressly subordinate to the rights of the Members, at least sixty-seven percent (67%) of the votes in the Association, including sixty-seven percent (67%) of the votes allocated to units not owned by Declarant, must agree to any encumbrance;
  - C. The right of the Association to suspend a Member's voting rights and Common Elements use for any period during which any Assessment against his Lot remains unpaid and delinquent, and for a period not to exceed thirty (30) days for any single infraction of the rules and regulations of the Association; provided that any suspension of such voting rights, except for failure to pay Assessments, shall be made only by the Association or a duly appointed committee thereof, after notice and hearing given and held in accordance with the Bylaws of the Association; the notice shall be given by the Board who shall also hold any Hearings based upon any objection or answer filed by the member based upon the notice of the assessment;
  - D. The right of the Association to dedicate or transfer all or any part of the Common Elements to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Members. No such dedication or transfer shall be effective unless an instrument in any number of counterparts signed by Members entitled to cast two-thirds of the votes has been recorded, agreeing to such dedication or transfer, and provided written notice of the proposed action is sent to every Member not less than thirty (30) days nor more than (60) days in advance. Any dedication or transfer is subject to the approval of the City of Grand Junction;
  - E. The right of Declarant or its designees to enter upon the Common Elements for purposes of construction and development of the Subdivision and for purposes of making repairs and remedying construction defects; provided such entry shall not interfere with the use of any Improved Lot unless authorized by the Lot Owner; and
  - F. The right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the Common Elements.



5. Non-Partitionability of Common Elements: The Common Elements shall be owned in common by all of the Owners of the Property and shall remain undivided. By the acceptance of a deed or other instrument of conveyance or assignment, each Owner specifically waives his right to institute and/or maintain a partition action or any other action designed to cause a division of the Common Elements and each Owner specifically agrees not to institute any action therefor. Further, each Owner agrees that this Paragraph may be pleaded as a bar to the maintenance of such an action. A violation of this provision shall entitle the Association to personally collect, jointly and severally, from the parties violating the same, the actual attorney's fees, costs and other damages the Association incurs in connection therewith.
6. Ownership, Title: Property may be held and owned by more than one person as joint tenants, or as tenants in common, or in any Property tenancy relationship recognized under the laws of the State of Colorado. Each individual Property estate sold shall be conveyed free and clear of all liens.
7. Separate Assessment and Taxation - Notice to Assessor: Declarant shall give written notice to the Assessor of the County of Mesa, State of Colorado, of the creation of ownership of this property as is provided by law, so that each Property shall be deemed a separate parcel and subject to separate assessment and taxation.
8. Use of Common Elements: Each Owner may use the Common Elements with the other Owners, and in accordance with the purpose for which they were intended. The Association may adopt rules and regulations governing the use of Common Elements, provided such rules and regulations shall be uniform and non-discriminatory. Each Owner, by the acceptance of his deed or other instrument of conveyance or assignment, agrees to be bound by any such rules and regulations. All public safety and fire protection emergency services vehicles of government authorities having jurisdiction over the Property, together with all ambulance services, are hereby authorized to use the private streets in the Property.
9. Use and Occupancy:
  - A. Each Property shall be occupied and used only as and for a single family residential dwelling for the Owner, his family or his guests, or tenants; except that an Owner may have a home office or a home based business with which otherwise comports with these Declarations; provided, however, the Declarant and its employees, representatives, agents and contractors may maintain business and sales offices, construction facilities and yards, properties and other facilities on the Property during the period of sales of any Property of any phase of the Property, not to exceed ten (10) years from the date of recordation of this Declaration. Notwithstanding the above, the Association may use any Lot which it owns or leases as a business office and/or Residence for any on-site residential manager or custodian. No Residence shall be occupied for living or sleeping purposes by more persons than it was designed to accommodate safely. For the purposes of the foregoing sentence each Residence shall be



deemed to have been designed to accommodate safely a maximum of (2) permanent occupants per bedroom.

B. No Owner shall store or keep anywhere on the property any large commercial-type vehicle, unless the same is an emergency vehicle related to the Owner's employment. No Owner shall park, store or keep any inoperable vehicle anywhere on the property, unless specified otherwise in this Declaration. While all streets are public property, the Board reserves the right to take action with respect to any vehicle which is a nuisance. The Board may, but is not required to, give advance, written notice to any owner or member whose vehicle is an apparent offense. Only passenger motor vehicles may be parked in the parking spaces which are a part of each property or on portions of the Common Elements designated for parking by the Association.

10. Easements for Utilities: Each Property and undivided individual interest in the Common Elements is subject to easements for the Association and the public utilities and special districts providing telephone service, electricity, gas, water, sewer and the cable television distributor to lay, construct, renew, operate, and maintain conduits, cables, pipes, wires, transformers, switching apparatus, and other equipment related to their services to the property, into and through the Common Elements and the Property, where reasonably necessary for the purpose of providing utility service to the Property. Said easements are for the benefit of the Property and the Association.
11. Reservation for Access - Maintenance, Repair and Emergencies: The Association shall have the irrevocable right to have access to each Property from time to time during reasonable hours as may be necessary for the maintenance, repairing or replacement of the Common Elements therein, or at any time for making emergency repairs therein necessary to prevent damage to the Common Elements or to another Property. Damage to the interior or any part of a Property resulting from the maintenance, repair, emergency repair or replacement of any of the Common Elements, or as a result of emergency repairs within another Property, at the insistence of the Association, shall be a Common Expense of all of the Owners. No diminution or abatement of Common Expense assessments shall be claimed or allowed for inconvenience or discomfort arising from the making of repairs or improvements or from action taken to comply with any law, ordinance or order of a governmental authority. Restoration of the damaged improvements shall be substantially the same as the condition in which they existed prior to the damage. Notwithstanding the foregoing, if any such damage is the result of the carelessness or negligence of any Owner, then such Owner shall be solely responsible for the costs and expense of repairing such damage.
12. Mechanic's Lien Rights and Indemnifications: No labor performed or materials furnished and incorporated in a Property with the consent of, or at the request of, the Owner thereof or his agent, or his contractor or sub-contractor, shall be the basis for filing a lien against any Property of any other Owner not expressly consenting to or requesting the same. Each Owner shall indemnify and hold harmless each of the Owners from and against all liability arising from the claims of any lien against the Property of



any other Owner for construction performed, or for labor, materials, services or products incorporated in the Owner's Property at such Owner's express or implied request. The provisions herein contained are subject to the rights of the Association as set forth herein.

13. Nuisances: No nuisances shall be allowed or permitted upon the Property or any property in which the Association owns an interest, nor shall any use or practice which is the source of annoyance to residents or which interferes with the peaceful possession and proper use of the Property (or any property in which the Association owns an interest) by the residents thereof be allowed or permitted. 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, or any fire hazard allowed or permitted to exist. No Owner shall make or permit any use of his Property, or make or permit any use of the Common Elements, or any property in which the Association owns an interest, which will increase the cost of insurance on the Property or any Lot.

No immoral, improper, offensive or unlawful use shall be made of the Property in which the Association owns an interest, and all valid laws, zoning and other ordinances and regulations of all governmental bodies having jurisdiction shall be observed.

It shall not be considered a nuisance for Owners to display the American flag or any political signs or any service flags on the Owner's property or Residence. However, the Association may promulgate rules which may limit the number and size of political signs which may be displayed. The Association will not consider any display of the American flag or a service flag on an Owner's property as a nuisance.

14. Administration and Management:

The Board of Directors will initially be selected by the Declarant. During the period of Declarant control, the Declarant will appoint and remove the Officers and Members of the Board. Declarant control will terminate on the sixtieth (60<sup>th</sup>) day after the conveyance of sixty-seven percent (67%) of all Lots that may be created, or, if sixty-seven percent (67%) of the Lots have not been so conveyed, then two (2) years after the last conveyance of a Lot by the Declarant, or two (2) years after any right to add additional Phases or Lots was last exercised. The Declarant may, in its full discretion, relinquish its rights to lien Directors and Officers at any time.

The Administration of this Project shall be governed by this Declaration, the Articles and Bylaws of the CHIPETA HEIGHTS Homeowner's Association, Inc., a Colorado not for profit corporation, hereinafter referred to as the "Association," and any rules for governance promulgated by the Association or the Architectural Control Committee herein referred to as "ACC."

An Owner of a Property shall become a member of the Association upon conveyance of title within the Association and shall remain a member for the period of ownership. As shown and reserved in the Articles of Incorporation and Bylaws for the Association. The



Declarant reserves the right of designation and appointment of the members of the Architectural Control Committee.

The Association is granted all of the powers available to it under State law that are necessary to govern, manage, maintain, repair, administer and regulate the Property and is authorized to perform all of the duties required of it.

Within not later than ninety (90) days after adoption of any proposed budget the Board shall mail, by ordinary first-class mail, or otherwise deliver a summary of the budget to all the Owners and shall set a date for a meeting of the Owners to consider ratification of the budget within a reasonable amount of time. The Board shall give notice to all Owners of the meeting as provided for in the Bylaws. The budget proposed by the Board will not require approval from the Owners and it will be deemed approved by the Owners in the absence of a veto at the noticed meeting by a majority of all Owners. If the budget as proposed is vetoed, the periodic budget last proposed by the Board and not vetoed by the Owners will continue until such time as a subsequent budget is proposed by the Board and is not vetoed by the Owners. At any meeting held for the ratification of the proposed budget a quorum is unnecessary.

The books and records of the Association, shall be subject to an audit using generally accepted auditing standards, or a review, using statements on standards for accounting and review services, at least once every two (2) years by a person selected by the Board. The selectee need not be a Certified Public Accountant, except in the case of an audit. An audit shall be required only if the Association annual revenues or expenditures equal or exceed Two Hundred Fifty Thousand Dollars (\$250,000) and an audit is requested by at least one-third (1/3) of the Owners. Copies of any audit or review will be made available upon request to any Owner thirty (30) days after its completion.

15. Maintenance and Service Responsibility:

A. Owner:

1. An Owner shall maintain and keep in repair the exterior Property, including the fixtures, doors, windows and utilities located therein to the extent current repair shall be necessary in order to maintain the appearance of the Property and to avoid damaging other Owner's property. All fixtures, equipment and utilities installed within the property commencing at a point where the fixtures, equipment and utilities enter the property shall be maintained and kept in repair by the Owner thereof. An Owner shall always keep the front stoop, balcony and patio area adjoining and appurtenant to his property, and any other Common Elements, appurtenant thereto, in a clean, orderly and sanitary condition, free of all snow, debris and other obstructions.

2. Every Owner must perform promptly all maintenance and repair work within such Owner's Lot, which if omitted would affect the Property in its

entirety or adversely affecting the other Owners, being expressly responsible for the damages and liabilities that his failure to do so may engender.

**B. Association:**

1. The Association shall have the duty of maintaining and repairing all of the Common Elements within the Association, and the cost of maintenance and repair shall be a Common Expense of all of the Owners. The Association shall not need the prior approval of its members to cause such maintenance or repairs to be accomplished, notwithstanding the cost thereof; provided, however, there shall be no additions, alterations or improvements of or to the Common Elements requiring an expenditure in excess of Five Thousand Dollars (\$5,000.00) per expenditure nor in excess of Fifteen Thousand Dollars (\$15,000.00) in the aggregate in any one calendar year without the prior approval of Owners representing sixty-seven percent (67%) of the Property. Such limitation shall not be applicable to the replacement, repair, maintenance or obsolescence of any Common Elements.
2. The Association shall provide to the Owners the following services which shall be paid out of the Common Expense assessment, to-wit:
  - i. administration and management of the Property, including, without limit in the generality of the foregoing, the following:
    - a. enforcement of this Declaration, Articles of Incorporation, covenants, conditions and restrictions set forth in the Declaration, Articles, Bylaws, and Association Rules and Regulations, together with enforcement of all obligations owed to the Association by the Owners, including specifically, enforcement of the Architectural Control Committee ("ACC"),
    - b. acting as attorney-in-fact in the event of damage or destruction as provided herein,
    - c. performing all other acts required by this Declaration, or the Articles and Bylaws of the Association, and
    - d. maintenance of the property damage, fire and liability insurance and the bonds required in these Declarations;
  - ii. inspection, maintenance, and repair of private streets and parking areas, private walkways, private street and walkway lighting, lawns, fences and shrubbery;
  - iii. irrigation and potable water; and education services to be provided once



annually in a manner and method selected by the Board of Directors.

3. Notwithstanding the above, the Association reserves the right to hire one or more persons or entities, including a Managing Agent, contractors and employees to perform such services. The Association may negotiate the exact terms of any management contract, including the duration of the management contract, the duties delegated (which may be some or all), and the compensation to be paid.

16. Compliance with Provisions of Declaration, Articles, Bylaws and Regulatory Agreement:

Each Owner, by acquiring an interest in a Lot or within the Property, agrees to comply strictly with the provisions of this Declaration, the Articles, and Bylaws, and the decisions, resolutions, rules and regulations of the Association adopted pursuant thereto as the same may be lawfully amended from time to time. Each Owner agrees that failure to comply with any of the same shall be grounds for an action to recover sums due for damages or injunctive relief, or both, and for reimbursement of all attorney's fees and costs incurred in connection therewith, which action shall be maintainable by the Association's Board of Directors in the name of the Association on behalf of the Owners, or, in a proper case, by an aggrieved Owner. Without limiting the generality of the foregoing, each Owner assumes a personal obligation to pay all assessments properly levied against such Property, as set forth herein.

17. Owner Revocation or Amendment to Declaration:

A. Subject to the provisions of C.R.S., Subsection 38-33.3-217(1), (5), (6), and (7) this Declaration shall not be amended or revoked unless sixty-seven percent (67%) of members of the Association who are authorized to vote in person or by proxy consent and agree to such amendment or revocation by instrument duly recorded in every county in which any portion of the common interest community is located. The undivided interest in the Common Elements appurtenant to each Property, as expressed in the Declaration and all supplements thereto and in any redetermination of such interests duly recorded, shall not be decreased without the consent of two-thirds (2/3) of the Property Owners [sixty-seven percent (67%).] In determining whether the appropriate percentage of approval is obtained when so required by the terms of this Declaration, each Owner shall have one (1) vote for each Property owned.

B. At least thirty (30) days prior to the effective date of any amendment to this Declaration, the Association shall notify the holders of all recorded first Mortgages of such amendment. The notice provided herein shall be written, dated, contain a copy of any proposed amendments to the Declaration, and sent by the Association by certified mail to each first mortgagee to that address which is most recently provided as shown on the recorded deed of trust or any recorded assignment. Additionally, the Association will publish the dated notice, together with a description for how to obtain a copy of the proposed amendment, at least on two separate occasions and published at least one week



apart in a newspaper of general circulation.

C. Additionally, the Association, acting by and through its Board of Directors, may amend this Declaration as provided by C.R.S., Section 38-33.3-217 (7), and as that provision may be amended, if the Association has twice sent notice of the proposed amendment to the Declaration to all members, owners, or others entitled to notice by regular mail, with the topic of the proposed amendment placed upon the agenda of at least one meeting of the Association, and if the Owners or members entitled to vote at that time equal more than 50 percent, then the Association may proceed with a amendment.

D. The Declarant herein reserves the right to amend this Declaration, any plats or any maps recorded to correct clerical errors, typographical errors, or technical errors as provided by C.R.S. Section 38-33.3-206 (4) and as may be amended.

E. The Declarant herein may amend this Declaration to comply with requirements or guidelines recognized in secondary mortgage market, the Department of Housing and Urban Development, the Federal Housing Administration, the Veteran's Administration, the Federal Home Loan Mortgage Corporation, the Government National Mortgage Association, or the Federal National Mortgage Association, as provided by C.R.S. Section 38-33.3-206 (5).

F. Common Elements may be subsequently determined to be limited Common Elements in accordance with C.R.S. Section 38-33.3-205 (1)(g), and as that statute may be amended.

G. The Declarant may also amend this Declaration for the exercise of any development rights which were appropriately reserved. The Declarant will provide all notices, make any publications, and make any recordings required by law. The Declarant in the exercise of these ownership rights will provide notice as prescribed herein to all members of the Association, Owners, or interest-holders regarding the Property as provided by C.R.S. Section 38-33.3-210 and that may be amended.

H. In the event that there is a foreclosure or enforcement of a lien or encumbrance or claim of any kind against the Common Elements, then the Association, acting through its Board of Directors, will reallocate interest in the Property as if any foreclosed section were taken by eminent domain. The Association acting through its Board of Directors shall prepare an appropriate amendment to the Declaration to be executed and recorded as provided by C.R.S. Section 38-33.3-219(11), (12).

18. Insurance:

A. The Board of Directors of the Association shall obtain and maintain at all times, to the extent obtainable, policies involving standard premium rates established by the Colorado Insurance Commission, and written with companies licensed to do business in



Colorado and having a Best's Insurance Report rating of Class VI or better, covering the risks set forth below. The Board of Directors of the Association shall not obtain any policy where: (i) under the terms of the insurance company's charter, Bylaws, or policy, contributions of assessments may be made against the Mortgagor, Mortgagee or Mortgagee's designee; or (ii) by the terms of carrier's charter, Bylaws or policy, lost payments are contingent upon action by the company's Board of Directors, policyholders or members; or (iii) the policy includes any limiting clauses (other than insurance conditions) which would prevent Mortgagees or the Mortgagor from collecting insurance proceeds unless the assessment is approved by the Association as detailed more fully herein. All owners shall have the nonexclusive use of the Common Elements.

B. The types of coverage to be obtained and risks to be covered are as follows, to-wit:

i. Comprehensive public liability and property damage insurance in such limits as the Board of Directors of the Association may from time to time determine. Coverage shall include, without limitation, liability for personal injuries, operation of automobiles on behalf of the Association, and activities in connection with the ownership, operation, maintenance and other use of the Property. Said policy shall also contain a "severability of interest endorsement."

ii. The Association may obtain insurance against such other risks including worker's compensation, employer liability insurance of any kind, director's and officer's insurance, errors and omission's insurance, fidelity insurance to insure against the dishonesty of employees or officers, insurance related to any fires, etc., of a similar or dissimilar nature, as it shall deem appropriate with respect to the Property, including insurance, and insurance against loss to any personal property of the Association located on the Property.

C. All policies of insurance to the extent obtainable shall contain waivers of subrogation and waivers of any defense based on invalidity arising from any acts of a Property Owner and shall provide that such policies may not be canceled or modified without at least thirty (30) days' prior written notice to all of the insured, including Mortgagees. Duplicate originals of all policies and renewals thereof, together with proof of payments of premiums, shall be delivered to all first Mortgagees at least ten (10) days prior to expiration of the then current policies. The insurance shall be carried in blanket form naming the Association as the insured, as attorney-in-fact and trustee for all of the Property Owners, which policy or policies shall identify the interest of each Property Owner (Owner's name and Property number designation) and first Mortgagee.

D. Insurance coverage on personal or other property belonging to an Owner, and public liability coverage within each Property, shall be the sole and direct responsibility of the Property Owner thereof, and the Board of Directors, the Association and/or the Managing Agent shall have no responsibility therefore.



19. Assessment for Common Expenses:

A. 1. All Owners shall be obligated to pay the estimated assessment by the Association to meet the Common Expenses attributable to the Property included in this Declaration. The assessment shall be made equally to each Property. The Common Elements shall be maintained as Common Elements and Owners having non-exclusive use thereof shall not be subject to any special charges or assessments (except, however, this provision shall not impose upon the Association the obligation to clean or sweep, or remove snow from any of the Common Elements). There shall be no division of the assessment charge between Common Elements. Assessments for the estimated Common Expenses, including, at the option of the Association, insurance, shall be due and payable monthly in advance on the first day of each month. Assessments shall be delinquent and interest thereon at twenty-one percent (21%) per annum shall commence effective the day after the due date. The Association shall prepare and deliver to each Owner periodic statements for the estimated expenses, which notice shall be delivered not less frequently than annually as provided by C.R.S. Section 38-33.3-315(1) and as amended.

2. Assessments shall commence on the conveyance of the first Property to an Owner by Declarant, and all Property in the Phase shall be assessed, including those owned by Declarant.

B. If the ownership of a Property commences on a day other than the first day of a month, monthly assessments with respect to such Property shall commence on the first day of the next month following the date such ownership commences.

C. The assessments made for the Common Expenses shall be based upon the estimated cash requirements deemed to be the aggregate sums the Association shall from time to time determine is to be paid by all of the Owners including Declarant, to provide for payment of all estimated expenses growing out of or connected with maintenance and operation of the Common Elements which sum may include, among other things, expenses of management; taxes and special assessments until separately assessed, if assessed by the Association; landscaping and care of Common Elements; lighting for Common Elements; repairs and renovations; wages; water charges; legal and accounting fees; management fees; expenses and liabilities incurred by the Association under or by reason of this Declaration; the payment of any deficit remaining from a previous period; the creation of reasonable contingency or other reserve, sinking or surplus funds; as well as other costs and expenses relating to the Common Elements.

D. The omission or failure to fix the assessment or deliver or mail a statement for any period shall not be deemed a waiver, modification or a release of the Owners from their obligations to pay the same.

E. The Association shall be obligated to establish a reserve fund for the maintenance, repair and replacement of those Common Elements that must be replaced periodically and such reserve fund shall be funded through the monthly payments of the Common



Expenses and not by extraordinary special assessments.

F. The portion of Common Expense assessments allocated to the payment of the Association blanket insurance policies shall be set aside in a special escrow account to be used solely for payment of such insurance policy premiums.

G. Until January 1<sup>st</sup> of the year immediately following the conveyance of the first Property to an Owner, the maximum annual assessment shall be One Thousand Dollars (\$1,000.00) per Property:

From and after January 1, of the year immediately following the conveyance of the first Property to an Owner, the maximum annual assessment may be increased effective January 1 of each year only with notice and a vote of the Owners or members entitled to vote. The maximum annual assessment may be increased above that established as set forth herein by votes of sixty-seven percent (67%) of the Owners and Members who are eligible to vote at a meeting duly noticed and called for this purpose. Either (i) in conformance with the rise, if any, of the All Items category of the Denver Consumer Price Index (published by the Department of Labor, Washington, D.C.) for the preceding month of July, or (ii) not more than five percent (5%) above the maximum annual assessment for the previous year, whichever is greater.

H. Special Assessments. In addition to the regular assessments authorized by this paragraph, the Association may levy, in any assessment year, a special assessment, payable over such a period as the Association may determine, for the purpose of defraying, in whole or in part, the costs of any construction or reconstruction, unexpected repair or replacement of the capital improvements or any part thereof, or for any other expense incurred or to be incurred as provided in this Declaration, provided that any such special assessment shall have the assent of sixty-seven percent (67%) of all eligible votes of Owners or Members who are voting in person or by proxy at a meeting duly called for this purpose. This section shall not be construed as an independent source of authority for the Association to incur expenses, but shall be construed to prescribe the manner of assessing for expenses authorized by other sections hereof. Any amounts assessed pursuant hereto shall be assessed equally to each Property. Notice in writing of the amount of such special assessments and the time for payment thereof shall be given promptly to the Owners, and no payment shall be due less than thirty (30) days after such notices shall have been given. A special assessment, and any installment thereof, shall bear interest at the rate of twenty-one percent (21%) per annum from the date it becomes due and payable if not paid within thirty (30) days after such date, unless other written arrangements are made.

I. Common Expense Allocation. Except as otherwise stated in this Section, or as otherwise provided by CCIOA or other applicable law, each Lot shall be allocated a fraction of the Common Expenses of the Association in which the numerator is one and the denominator is the number of Lots. If permitted by CCIOA or other applicable law, any Common Expense or portion of any Common Expense benefiting or caused by fewer



than all Lots shall be assessed exclusively against the Lots benefited by or causing the Common Expense or other cost or expense.

20. Owner's Obligation for Payment of Assessment: The amount of the expenses assessed by the Association against each Property shall be the personal and individual debt of the Owner thereof at the time the assessment is made. Suit to recover a money judgment for unpaid Common Expenses shall be maintainable without foreclosing or waiving the lien securing the same. No Owner may exempt himself from liability for his contribution toward the Common Expenses by a waiver of the use of enjoyment of any of the Common Elements or by abandonment of his Property.
21. Lien for Non-Payment of Assessments – Creation of the Lien and Personal Obligation to Pay Assessments: The undersigned Declarant, for each Lot within the Property, covenants (and each Owner of any Lot by acceptance of a deed for that Lot, whether or not it shall be so expressed in that deed is deemed to covenant and agree) to pay to the Association: (a) all Assessments and charges levied against that Lot; (b) all fees, charges, late charges, attorney's fees, fines, collection costs, interest and other sums charged pursuant to this Declaration or as allowed by Section 38-33.3-316(1), C.R.S. or any other provision of CCIOA (as it may be subsequently amended) or by any other applicable law.

All items set forth in this paragraph regarding liens for non-payment of assessments, from the time such items become due, shall be a charge on and covenant running with the land and shall be a continuing lien on the Lot against which each such item is assessed. If an Assessment is payable in installments, each installment is a lien from the time it becomes due, including the due date set by any valid Association acceleration of installment obligations. A valid acceleration of installment Assessment obligations may be made by the Board at any time any Assessment installment is at least thirty (30) days overdue.

Each such item, together with interest, costs, and reasonable attorney's fees, shall also be the joint and several personal obligation of each person and entity who was the Owner of the Lot at the time when the item became due; provided that, this personal obligation shall not pass to an Owner's successors in title unless expressly assumed by them. No Owner may be exempt from liability for Assessments by waiver of use or enjoyment of the Common Elements, Association Water, or other assets or benefits of the Association, or by abandonment of any Lot.

The Association's lien on a Lot for Assessments shall be superior to any homestead exemption now or hereafter provided by the laws of the State of Colorado or any exemption now or hereafter provided by the laws of the United States. The acceptance of a deed to a Lot subject to this Declaration shall constitute a waiver of the homestead and any other such exemption as against such Assessment lien.

All sums assessed by the Association but unpaid by the Owner of any Property, including interest thereon at twenty-one percent (21%) per annum commencing the first



day after the due date, shall constitute a lien on such Property superior (prior) to all other liens and encumbrances, except only for all sums unpaid on a first Mortgage of record, including all unpaid obligatory sums as may be provided by such encumbrance, and including additional advances made thereon prior to the arising of such lien, and except for tax and special assessment liens in favor of a governmental assessing entity.

To evidence such lien for unpaid assessments, the Association may prepare a written notice setting forth the amount, the name of the Owner of the Property and a description of the Property. If such notice is prepared, it shall be signed on behalf of the Association and by an officer of the Association and shall be recorded in the Office of the Clerk and Recorder of Mesa County. Such lien shall attach from the date of the failure of payment of the assessment. Such lien may be enforced by foreclosure by the Association of the defaulting Owner's Property in like manner as Mortgages on Property; however, a lawsuit to recover a money judgment for unpaid assessment shall be maintainable without foreclosing or waiving this lien. The lien provided herein shall be in favor of the Association. In any such foreclosure, the Owner shall be required to pay the costs and expenses of such proceeding, the costs, expenses and attorney's fees for filing the Notice or claim of lien, and all reasonable attorney's fees in connection with such foreclosure. The Owner shall also be required to pay to the Association the monthly assessment for the Property during the period of foreclosure and the Association shall be entitled to a receiver to collect the same. The Association, on behalf of the Property Owners, shall have the power to bid the Property at foreclosure sale and to acquire and hold, lease, mortgage and convey same.

Declarant states that it is possible that liens, other than mechanic's liens, assessment liens and tax liens, may be obtained against the Common Elements, including judgment liens and mortgage liens.

22. Liability for Common Expenses Upon Transfer of Property:

A. Upon payment of a reasonable fee not to exceed Thirty Dollars (\$30.00), or in such other amount as is determined by the Board, and upon the written request of any Owner, prospective Owner, any Mortgagee or any prospective Mortgagee of a Property, the Association shall issue a written statement setting forth the amount of the unpaid expenses, if any, assessed to such Property, the amount of the current monthly assessment and the date that such assessment becomes due, credit for advanced payments or for prepaid items, including but not limited to insurance premiums, which statement shall be conclusive upon the Association in favor of all persons who rely thereon in good faith. Unless such request for a statement of indebtedness shall be complied with within ten (10) days, all unpaid Common Expenses which become due prior to the date of making such request shall be subordinate to the lien of the person requesting such statement.

B. The grantee of a Property, including a first Mortgagee, who comes into possession of a Property pursuant to the remedies provided in its Mortgage or becomes an Owner of a Property pursuant to foreclosure or its Mortgage or by the taking of a deed in lieu



thereof, or any purchaser at a foreclosure sale, shall be jointly and severally liable with the grantor for unpaid assessments against the latter for the grantor's proportionate share of expenses up to the time of the grant or conveyance of a Property, unless the grantee expressly assumes such liability. Any such express assumption shall be without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefore. Notwithstanding the terms and provisions set forth above, no first Mortgagee shall be liable for any unpaid Common Expense or special assessment accruing prior to the time such Mortgagee becomes the Owner of any Property whether by way of foreclosure or any proceedings in lieu thereof, but will be liable for those thereafter.

23. Mortgaging a Property - Priority: Any Owner shall have the right from time to time to Mortgage or encumber his interest in a Property by deed of trust, Mortgage or other security instrument. A first Mortgage shall be one which has first and paramount priority under applicable law.
24. Association - Attorney-in-Fact:

This Declaration does hereby make mandatory the irrevocable appointment of an attorney-in-fact to deal with the property upon its damage, destruction or obsolescence. Title to any Property is declared and expressly made subject to the terms and conditions hereof, and acceptance by any grantee of a deed from the Declarant or from any Owner shall constitute appointment of the attorney-in-fact herein provided. All of the Owners irrevocably constitute and appoint the Association their true and lawful attorney in their name, place and stead for the purpose of dealing with their property upon its damage, destruction or obsolescence as is hereafter provided. As attorney-in-fact, the Association shall have full and complete authorization, right and power to make, execute and deliver any contract, deed or any other instrument with respect to the interest of a Property Owner which may be necessary and appropriate to exercise the powers herein granted. Repair and reconstruction of the improvements as used in the succeeding subparagraph means restoring the improvements to substantially the same condition in which they existed prior to the damage, with each Property and the Common Elements having the same vertical and horizontal boundaries as before. The proceeds of any insurance collected shall be available to the Association for the purpose of repair, restoration or replacement as is provided hereinafter.

A. In the event of damage or destruction due to fire or other disaster, the insurance proceeds, if sufficient to reconstruct the improvements, shall be applied by the Association, as attorney-in-fact, to such reconstruction, and the improvements shall be promptly repaired and reconstructed. The Association shall have full authority, right and power, as attorney-in-fact, to cause the repair and restoration of the improvements.

B. The Owners representing an aggregate ownership of sixty-seven percent (67%) of the Property in this Project may agree that the Common Elements are obsolete and adopt a plan for the renewal and reconstruction. If a plan for the renewal or reconstruction is



adopted, notice of such plans shall be recorded, and the expense of renewal and reconstruction shall be payable by all of the Owners as a Common Expense whether or not they have previously consented to the plan of renewal or reconstruction. The Association as attorney-in-fact, shall have the absolute right and power pursuant to a judicial foreclosure to sell the Property of any Owner refusing or failing to pay such assessment within the time provided, and if not so paid, the Association shall cause to be recorded a notice that the Property of the delinquent Owner shall be sold by the Association. The delinquent Owner shall be required to pay to the Association the costs and expenses for filing the notices, interest at the rate of twenty-one percent (21%) per annum, and all reasonable attorney's fees. The proceeds derived from the sale of such Property shall be used and disbursed by the Association, as attorney-in-fact.

C. The Owners representing an aggregate ownership of sixty-seven percent (67%) of the Property may agree that the Property is obsolete and that the same should be sold. Such plan or agreement must have the approval of Mortgagees as set forth herein. In such instance, the Association shall forthwith record a notice setting forth such facts and upon the recording of such notice by the Association's President and Secretary or Assistant Secretary, the Property shall be sold by the Association, as attorney-in-fact, for all of the Owners, free and clear of the provisions contained in this Declaration, the Map, the Articles, and Bylaws. The sale proceeds shall be apportioned among the Owners, subject to the provisions set forth herein concerning annexations, on the basis of one (1) share for each Property, and such apportioned proceeds shall be paid into separate accounts, each such account representing one Property. Each such account shall be in the name of the Association and shall be further identified by the Property designation and the name of the Owners. From each separate account, the Association, as attorney-in-fact, shall use and disburse the total amount of each of such accounts, without contribution from one account to another, for the same purposes and in the same order as is provided herein. Notwithstanding the foregoing, the Owners may not sell or seek to convey the Association's irrigation system and/or any associated water rights without the written consent of the City of Grand Junction. In addition, any areas designated as public park land on the plat and dedicated and accepted by the City of Grand Junction may not be sold without the City of Grand Junction's consent.

D. The Association shall be under a fiduciary duty to use all funds available to it for repair and restoration of all or any portion of the Property which has suffered damage for the joint benefit of the Owners and first Mortgagees having an interest in such damaged Property. Prior to commencement of and throughout the period of repairs or restoration work (except in the event of emergency repairs), the Association shall make available at the Property and the Association's offices, for inspection and copying during normal business hours the plans, specifications, drawings, bid documents and other such information as the Association may have pertaining to the repair or restoration.

25. Condemnation:

If at any time or times during the continuance of the ownership pursuant to this Declaration, all or any part of the Project shall be taken or condemned by any public



authority or sold or otherwise disposed of in lieu of or in avoidance thereof, the following provisions of this Paragraph shall apply:

A. Proceeds. All compensation, damages or other proceeds therefrom, the sum of which is hereafter called the "Condemnation Award" shall be payable to the Association.

B. Complete Taking: In the event that the entire Project is taken or condemned, or sold or otherwise disposed of in lieu of or in avoidance thereof, the ownership pursuant hereto shall terminate. The Condemnation Award shall be apportioned among the Owners on the same basis of each Property Owner's interest in the Common Elements, provided however, that if a standard different from the value of the Property as a whole is employed as the measure of the Condemnation Award in the negotiation, judicial decree or otherwise, then in determining such shares the same standard shall be employed to the extent it is relevant and applicable.

On the basis of the principle set forth herein, the Association shall as soon as practicable determine the share of the Condemnation Award to which each Owner is entitled. Such shares shall be paid into separate accounts and disbursed as soon as practicable in the same manner provided herein.

C. Partial Taking: In the event that less than the entire Project is taken or condemned, sold or otherwise disposed of in lieu of or in avoidance thereof, the ownership hereunder shall not terminate. Each Owner shall be entitled to a share of the Condemnation Award to be determined in the following manner. As soon as practicable the Association shall reasonably and in good faith, allocate the Condemnation Award between compensation, damages or other proceeds and shall apportion the amounts so allocated among the Owners as follows: (i) the total amount allocated to taking of or injury to the Common Elements, shall be apportioned among the Owners on the basis of each Owner's interest respectively in the Common Elements; (ii) the total amount allocated to severance damages shall be equitably apportioned to those which were not taken or condemned; (iii) the respective amounts allocated to the taking of or injury to a particular Property and to the improvements an Owner has made within his own Property shall be apportioned to the particular Property involved; and (iv) the total amount allocated to consequential damages and any other takings or injuries shall be apportioned as the Association determined to be equitable in the circumstances. If the allocation of the Condemnation Award is already established in negotiations, judicial decree or otherwise, then in allocating the Condemnation Award the Association shall employ such allocation to the extent it is relevant and applicable. Distribution of apportioned proceeds shall be disbursed as soon as practicable in the same manner as provided herein. In the event a partial taking results in the taking of a complete Property, the Owner thereof automatically shall cease to be a member of the Association, shall cease to hold any right, title or interest in the remaining Common Elements and shall execute any and all documents necessary to accomplish the same. Thereafter, the Association shall reallocate the ownership, voting rights and assessment ratio equally among the remaining Property and shall submit such reallocation to the Owners and to first Mortgagees of remaining



Property for amendment of this Declaration as provided herein.

26. Additional Property for Common Use. The Association may acquire and hold for the benefit of the Owners, Property, and tangible and intangible personal property, and may dispose of the same, by sale or otherwise, and the beneficial interest in any such property shall be owned by the Owners in the same proportion as their respective interests in the Common Elements and shall not be transferable except with a transfer of a Property. A transfer of a Property shall transfer to the transferee ownership of the transferor's beneficial interest in such real or personal property without any reference to inclusion of a Bill of Sale. Each Owner may use such real and personal property in accordance with the purpose for which it is intended, without hindering or encroaching upon the lawful rights of the other Owners. Sale of a Property under foreclosure shall thereby entitle the purchaser thereof to the beneficial interest in the real and personal property associated with the foreclosed Property. The Owners of each Property shall have a perpetual non-exclusive easement in common with all other Property Owners in this Project giving them the right to beneficial use and enjoyment of any recreational facilities which the Association acquires and holds, either by purchase or by gift, and for walkways, vehicular access and parking and any other Common Element as set forth on the Map and in this Declaration, subject, however, to reasonable regulations adopted and amended by the Association.
27. Registration by Owner and Association of Mailing Address. Notice to Owners: Each Owner shall register his/her mailing address with the Association, and except for monthly statements and other routine notices, all other notices or demands intended to be served upon an Owner shall be given by personal delivery to each Property or sent by either registered or certified mail, postage prepaid and addressed in the name of the Owner of such registered mailing address. All notices, demands or other notices intended to be served upon the Association shall be sent by certified mail, postage prepaid, to the attention of Drew Moore, 300 Main Street, Suite 103, Grand Junction, Colorado, until such address is changed by a legal notice of address change duly recorded in the Office of the Clerk and Recorder, County of Mesa, State of Colorado.
28. Restrictive Covenants:
- A. Each Lot is hereby restricted to residential dwellings for residential use and uses related to the convenience and enjoyment of such residential use. No structures of a temporary character, trailers, boats, campers, camper shells, inoperative motor vehicles, tents, shacks, garages, barns or other out-buildings shall be used or permitted to be kept or stored on any portion of the premises at any time, except with respect to recreational vehicles and other vehicles which may be stored and kept either in the Owner's garage or behind a privacy fence so as not to be visible from the street or other public place.
- B. Notwithstanding any provision herein contained to the contrary, it shall be expressly permissible for the Declarant, his agents, employees and contractors, to



maintain during the period of sale of the Property, upon such portion of the Property as Declarant may choose, such facilities as in the sole opinion of the Declarant may be reasonably required, convenient or incidental to the sale of Property and interests, including, but without limitation, a business office, storage area, signs, model Property, sales office, parking areas and lighting during any construction and marketing period.

C. No animal, livestock, reptile or poultry of any kind shall be raised, bred or kept on the Property, except that pet birds and not more than two (2) domesticated pet dogs or cats may be kept on any Lot, subject to all County of Mesa, Colorado animal ordinances, ordinances of the City of Grand Junction, Colorado, and subject to rules and regulations from time to time adopted and amended by the Association; provided, however, that such pets are not kept for commercial purposes. An Owner is responsible for all damage caused by his animal(s). Persistent barking of any animal will be a violation of the quiet enjoyment of all other owners and the Board of Directors may take appropriate action, including referral to law enforcement.

D. No advertising signs (except one not more than one square foot "For Rent" or one 2 ½ by 2 ½ square foot "For Sale" sign per Property), billboards, unsightly object, or nuisances shall be erected, placed or permitted to remain on the premises of a Property or the Common Elements, nor shall the premises be used in any way or for any purpose which may endanger the health or unreasonably disturb the Owner of any Property or any resident thereof. This provision is not intended to prohibit Owners from displaying political signs, service flags, or the American flag. These displays are permitted pursuant to C.R.S. Section 38-33.3-106.5, as amended. Further, no public business activities of any kind shall be conducted in a Residence or in any portion of the Property, which is retail in nature. Provided further, however, the foregoing covenants shall not apply to the business activities, signs and billboards or the maintenance and improvements of any Lot, if any, of the Declarant, its agents, contractors, and assigns during the marketing period, and of the Association, its successors and assigns, in furtherance of its powers and purposes as hereinafter set forth. Further, the Declarant may use signs which exceed the limitations as set forth above and may in fact conduct any and all business activities related to the sale of the lots.

E. All garbage cans, wood piles, or similar items shall be kept screened so as to conceal them from view of neighboring Property and streets. All rubbish, trash or garbage shall be regularly removed from the property by the Owner to the designated trash bins, and shall not be allowed to be accumulated thereon.

F. Any screen door or storm door installed over the front door of a Property must have the same color as the Property's front door. No window air conditioning unit, or visible antenna, shall be installed in or on any Property.

G. No Property may be leased for an initial term of less than thirty (30) days, and all leases shall be subject to the terms and conditions of the Declaration(s) and the Association Articles and Bylaws.



H. Fencing: Owners may construct, after review and approval by the Architectural Control Committee, privacy fences. The privacy fences must be of a kind of material which is approved, currently vinyl, railing, stucco, and wood, and must comply with the City of Grand Junction ordinances and regulations regarding the placement of fencing and the limitation on height of fencing. Under no circumstances will chain link, barbed wire fencing, nor electrical fencing be approved. Chain link fencing, barbed wire fencing, and electrical fencing are in fact prohibited.

I. Housing Compliance: The smallest size of a Residence located in the CHIPETA HEIGHTS shall be no smaller than 1,600 square. All siding materials must be of a kind of material which is currently approved, stucco, rock and brick. No vinyl, wood or aluminum siding is permitted. Masonry accents may be used with prior Architectural Control Committee approval. Owners must submit proposals in writing and receive such approval. Stucco homes will in most instances receive immediate approval and are suggested. The roof pitch must comply with a minimum of 5:12 pitch and prairie roof lines may be accepted with prior Architectural Control Committee approval. Roofing material shall be a minimum 30 year architectural asphalt composite shingle or equal. No 3 tab or metal roofs allowed. All trees must meet the Homeowner's Association landscape and Architectural Control Committee standards. All setbacks must comply with the normal City requirements. All Residences are to be one (1) or two (2) story only. If the Owner builds a two (2) story home, then the ground floor must have not less than 1,400 square feet(excluding the garage) and the second story cannot exceed two thirds (2/3) of the ground floors total square footage. Either the Association or the Architectural Control Committee may enforce this provision or any restrictive covenant contained herein. Owners may build no bigger than a three (3) car garage on the premises. In the event that an Owner chooses to build a three (3) car garage, there must be an off-set occurring on the third bay so as to break the line of sight.

J. Owners who choose to have grass will be responsible for the maintenance of such grass and will be surcharged, at their expense, for the Association's or the Architectural Control Committee's replacement of such grass, provided that the Owner's grass has been dead for not less than thirty (30) days and the Owner has received a written notification in compliance with CCIOA providing the Owner with time as prescribed within CCIOA to cure. Owners must have their landscaping accomplished within six (6) months of the date of ownership. In calculating this six (6) month timeframe, the months of November, December, January, and February will not be counted in determining compliance. A greater time frame for the completion of landscaping may be granted in the discretion of the Architectural Control Committee. Extensions may be granted for good cause shown. All landscaping plans must be submitted to the Architectural Control Committee for prior approval. In addition to the landscape plan, Owners are required to submit a drainage plan to the Architectural Control Committee which must also be approved.

K. All foundations must be approved by the Architectural Control Committee. As a



general rule, engineered foundations will be approved. Upon the approval of the Architectural Control Committee, slab foundations will also be approved.

L. Drainage: The Owners of the Lots nine (9) and eleven (11) of Block three (3) and the Owners of Lots two (2); three (3); and four (4) of Block six (6) cannot impede the area inlets and drainage. These Lots have special drainage which serves the entire Home Owners Community. The drainage inlets cannot be used for any purpose by the Owners of the herein referenced Lots, including, without limitation, any disposal purposes. Further, the inlets cannot be covered or changed in any manner which would interfere with the drainage.

M. Recreational Vehicle Parking: Owners may park one recreational vehicle on their lot. The Recreational Vehicle must be fully hidden from sight. Owners choosing to accommodate a recreational vehicle must build a twelve (12) foot entry behind a six (6) foot fence. All fencing must comply with the Grand Junction City Municipal Code and must be approved by the Architectural Control Committee.

N. Exception for Lot two (2) Block two (2): The foregoing will not apply to Lot two (2), Block two (2), Chipeta Heights Subdivision with the following legal description: Lot 2, Block 2, Chipeta Heights Subdivision as recorded in Book 4462 at Page 931-932, Reception #2389152, of the Official Records of Mesa County, Colorado. This property was preexisting and shall be accepted from the requirements contained within paragraph twenty-eight (28) of these Amended Covenants, Conditions and Restrictions so long as the Owners do not seek to make any changes or modifications to the property or the structure as it currently exists. In the Owner of Lot two (2) and Block two (2) in Chipeta Heights Subdivision does wish to make changes to the structure or the property then such Owner must apply to the Architectural Control Committee for authorization for any such change. In its reasonable exercise of its discretion, the Architectural Control Committee may require updates so as to make the property more compliant with this paragraph twenty-eight (28).

29. Architectural Control Committee:

A. Composition of the Committee: The Committee shall consist of three (3) or more persons appointed by the Board of Directors of the Association; provided. The power of the Declarant to "appoint," as provided herein, shall include without limitation the power to: initially constitute the membership of the Committee, appoint member(s) to the Committee upon the occurrence of any vacancy, and for whatever reason to remove any member of the Committee, with or without cause, at any time, and appoint a successor; and each such appointment may be made for such terms of office, subject to the aforesaid power of removal, as may be set from time to time in the discretion of the Declarant All improvements within the Property constructed by Declarant during the period in which it appoints the Committee shall be deemed approved by the Committee without the issuance of any writing evidencing such approval. The Board of Directors and/or the Executive Committee to the Board of Directors may exercise the authority delegated to



the Architectural Control Committee during such times as the committee is inactive for any reason or lack of the requisite number of committee members.

i. **Tenor:** The initial term on the Architectural Control Committee for a Board Member shall be two (2) years. The initial members appointed may have a term of up to six (6) years so as to provide for the staggering of vacancies which will occur. Therefore, of the first Architectural Control Committee, one member may serve up to six (6) years, and another member may serve up to four (4) years. After the expiration of these initial memberships, however, a member may serve only a two year term. However, any member of the association who wishes to serve on the Architectural Control Committee may serve consecutive terms.

ii. **Appeal Procedure:** During such time that the Architectural Control Committee does have sufficient membership, then it's actions will be determinative in all respects unless such action is expressly overruled by the Board of Directors. Any dissatisfied Owner may appeal the decision of the Architectural Control Committee to the Board of Directors by written notice prior to any regularly scheduled board meeting.

B. **No Liability:** Neither Declarant or the Association nor the Committee or its members, shall be liable in damages to anyone submitting plans or specifications to them for approval, or to any Owner of property affected by these restrictions by reason of a mistake in judgment, negligence or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or disapprove any such plans or specifications. Notwithstanding the foregoing, the Board of Directors and its officers, if appointed by the Declarant, will exercise the care required of fiduciaries to the Owners. Any board member or officer or member of the Architectural Control Committee not appointed by the Declarant shall have no liability for any actions taken or omissions made in the performance of duties except for those acts or omissions which are wanton and willful and not performed pursuant to reasonable standards established by the Board or the ACC.

C. **Review of Plans:** No building, fence, wall, canopy, awning, structure or improvement shall be commenced, erected, altered, moved, removed or maintained upon the Property or any portion thereof, nor shall any exterior addition to, or change or alteration thereof be made until the plans and specifications showing the nature, kind, shape, height, materials, location and approximate cost of the same shall have been submitted to and approved in writing by the Architectural Control Committee as to harmony of external design and location in relation to surrounding structures and topography.

D. **Procedures:** The Architectural Control Committee shall approve or disapprove all plans and requests within thirty (30) days after submission. In the event the Architectural Control Committee fails to take any action within thirty (30) days after requests have been submitted, approval will not be required and as set forth herein will be deemed to have been fully complied with.



E. Majority Vote: A majority vote of the Architectural Control Committee is required for approval or disapproval of proposed architectural amendments.

F. Written Records: The Architectural Control Committee shall maintain records of all applications submitted to it and of all actions it may have taken. Such records shall be available to members for inspection at reasonable times and places, pursuant to CCIOA requirements.

G. No Liability: Each Owner hereby agrees that the Architectural Control Committee shall not be liable for damages to any person for submitted requests for approval or to any Owner with the Properties by reason of any action, failure to act, approval, disapproval, or failure to approve or disapprove with regard to such requests, so long as all decisions made by the members of the Architectural Control Committee are in compliance with this Declaration or comport with duly adopted rules and regulations for the Bylaws of the Association and such decisions of the members or the Architectural Control Committee are not made arbitrarily or capriciously in accordance with C.R.S. §38-33.3-302(2)(b).

H. Reservation of Rights to Exercise by Declarant: Notwithstanding any other provision expressly or impliedly to the contrary contained in this Declaration, the Articles, the Bylaws, the Rules and Regulations, Declarant reserves the right to exercise the rights, duties and functions of the Board of Directors until such time as Owner-elected Directors are a majority of the Board of Directors.

I. Limitation on Association's Authority to Prohibit Xeriscaping: The Association will not promulgate any rules or governs which would tend to deter or limit the use of an Owner's landscaping which involved xeriscaping. Xeriscaping will not be prohibited and in fact will be encouraged by the Association and by the individual members of the Architectural Control Committee responsible for reviewing landscaping applications hereunder.

J. Variances: Where circumstances (such as topography, location of property lines, location of trees, or other matters) require, the Committee, by the vote or written consent of a majority of the Members thereof, may allow reasonable variances evidenced in writing as to any of the covenants, conditions or restrictions contained in the Declaration under the jurisdiction of the Committee, on such terms and conditions as it shall require. The granting of a variance shall not operate to waive on any other occasion any of the terms and provisions hereof covered by the variance and shall not necessarily serve as a basis for subsequent variances with respect to any other request. The granting of any variance shall not affect in any way the Association's or Owner's obligation to comply with the ordinances of the City of Grand Junction and other applicable governmental laws or regulations.

K. Signage in CHIPETA HEIGHTS : In general, the display of signs of any sort



advertising a business or trade is prohibited in the subdivision. No advertising signs (except one not more than one square foot "For Rent" or one 2 ½ by 2 ½ square foot "For Sale" sign per Property), billboards, unsightly object, or nuisances shall be erected, placed or permitted to remain on the premises of a Property or the Common Elements, nor shall the premises be used in any way or for any purpose which may endanger the health or unreasonably disturb the Owner of any Property or any resident thereof. This provision is not intended to prohibit Owners from displaying political signs, service flags, or the American flag. These displays are permitted pursuant to C.R.S. Section 38-33.3-106.5, as amended. Further, no public business activities of any kind shall be conducted in a Residence or in any portion of the Property, which is retail in nature. Provided further, however, the foregoing covenants shall not apply to the business activities, signs and billboards or the maintenance and improvements of any Lot, if any, of the Declarant, its agents, contractors, and assigns during the marketing period, and of the Association, its successors and assigns, in furtherance of its powers and purposes as hereinafter set forth. Individual homeowners shall not display more than one (1) sign per political race supported, e.g., one (1) sign for gubernatorial race, one (1) sign for Senatorial, one (1) sign for State Representative.

L. Landscaping Time Line: Landscaping for a property must be completed within six (6) months of the purchase of an individual lot following the issuance of the Certificate of Occupancy as provided by the Grand Junction Land Use Code Subsection 17.15.090.

M. Abandoned Vehicles and Automobile Storage: Vehicles without valid license plates and/or registration parked on a public thoroughfare within the Subdivision longer than three (3) days will be treated as an abandoned vehicle and reported to the appropriate authority for ticketing and removal. Owners may repair their vehicles within a seventy-two (72) hour period as described more fully below. Vehicles obviously immobilized on a homeowner's property must be either enclosed behind a six (6) foot fence adjacent to the property or within the garage. It is not allowed for a vehicle to be immobilized in a driveway in such an obvious way such as wheels removed or portions of the vehicle removed for more than seven (7) consecutive days. Vehicles not used regularly for transportation, that is, in general not utilized or removed from the property at least three times in a fourteen (14) day period must be stored in a fenced area adjacent to the property. Exceptions will be made in the case of two (2) fourteen (14) consecutive day periods per year to accommodate vacation plans. Motor homes, boats, and Recreational Vehicle Parking: Owners may park one recreational vehicle on their lot. The Recreational Vehicle must be fully hidden from sight. Owners choosing to accommodate a recreational vehicle must build a twelve (12) foot entry behind a six (6) foot fence. All fencing must comply with the Grand Junction City Municipal Code and must be approved by the Architectural Control Committee.

N. Home Based Business: No Owner or Lessee of the Subdivision may have a home based business, whether licensed or not by any governmental entity, that would require the regular arrival and departure of customers of any sort at the home or regular or



excessive deliveries of items to the home. Regular delivery would be any more than a single visit by a delivery vehicle to the Residence each day within a seven day period.

O. Home Color Selection: All colors selected for the exterior of Residences within the Subdivision shall conform with generally accepted definitions of earth tones. No excessively bright or metallic paints may be used on the exterior of Residences in the Subdivision. Colors must be pre-approved along with other architectural guidelines prior to the building of any structure within the Subdivision by the Architectural Control Committee as created elsewhere within these covenants. All siding materials must be of a kind of material which is currently approved, stucco, rock and brick. No vinyl, wood, or aluminum siding is permitted. Masonry accents may be used with prior Architectural Control Committee approval. Owners must submit proposals in writing and receive such approval. Stucco homes will in most instances receive immediate approval and are suggested.

P. Garage Sizes: Owners may build no bigger than a three (3) car garage on the premises. In the event that an Owner chooses to build a three (3) car garage, there must be an off-set occurring on the third bay so as to break the line of sight and/or shall not contain square footage more than fifty percent (50%) of the square footage of the Residence for which they are attached. The roof height of the highest garage portion as measured at the fascia shall not exceed by more than one foot (1') the fascia height of the highest point of the Residence. The roof pitch must comply with a minimum of 5:12 pitch and prairie roof lines may be accepted with prior Architectural Control Committee approval.

Q. Insurance: The CHIPETA HEIGHTS Homeowner's Association, Inc., will obtain and keep current Directors and Errors and omissions and liability insurance consistent with generally accepted insurance levels for said type, size and features of such Subdivision within the City of Grand Junction.

R. Yard Ornamentation: All ornamentation in yards, such as figurines, plastic flowers, colored lights, windmills, bird baths or feeders, shall either be screened from public view or approved by the Architectural Control Committee. This Section shall not apply to seasonal holiday decorations, which are promptly removed after the holiday or to the display of the flag of the United States of America.

No clotheslines, dog runs, drying yards, service yards, wood piles or storage areas shall be so located on any Lot as to be visible from a street. Any accessory building shall be a maximum of eight feet (8') in height and shall be subject to the review and approval of the Architectural Control of Committee.

S. Vehicular Parking, Storage and Repairs: Any horse trailer, camping trailer, boat trailer, hauling trailer, running gear, boat, or accesses thereto, motor-driven cycle, truck [larger than one (1) ton], self contained motorized recreational vehicle, or other type of recreational vehicle or equipment, may be parked or stored on or within the Property only



if such parking or storage is done wholly within a twelve (12) foot entry behind a six (6) foot fence. All fencing must comply with the Grand Junction City Municipal Code and must be approved by the Architectural Control Committee. Any such vehicle not parked within the enclosed garage or screened by a solid fence six feet (6') in height may be parked as a temporary expedience for loading, delivery, or emergency. This restriction, however, shall not restrict trucks or other commercial vehicles within the Property, which are necessary for construction or for the maintenance of the Common Elements, Lots, or any improvements located thereon.

No activity such as, but not limited to, maintenance, repair, rebuilding, dismantling, repainting, or servicing of any kind of vehicles, trailers or boats taking place in excess of seventy-two (72) hours may be performed or conducted on the Property, unless it is done within a completely enclosed structure(s) which screen the sight and sound of the activity from the street, from adjoining Lots and other property, and the Common Elements. The foregoing restrictions shall not be deemed to prevent washing and polishing or any motor vehicle, boat, trailer, or motor-driven cycle, together with those activities normally incident and necessary to such washing and polishing.

Each Residence shall have a minimum of two (2) car garage and a maximum of three (3) car garage.

T. Exception for Lot two (2) Block two (2): The foregoing will not apply to Lot two (2), Block two (2), Chipeta Heights Subdivision with the following legal description: Lot 2, Block 2, Chipeta Heights Subdivision as recorded in Book 4462 at Page 931-932, Reception #2389152, of the Official Records of Mesa County, Colorado. This property was preexisting and shall be accepted from the requirements contained within paragraph twenty-nine (29) of these Amended Covenants, Conditions and Restrictions so long as the Owners do not seek to make any changes or modifications to the property or the structure as it currently exists. In the Owner of Lot two (2) and Block two (2) in Chipeta Heights Subdivision does wish to make changes to the structure or the property then such Owner must apply to the Architectural Control Committee for authorization for any such change. In its reasonable exercise of its discretion, the Architectural Control Committee may require updates so as to make the property more compliant with this paragraph twenty-nine (29).

30. Acceptance of Provisions of All Documents: The conveyance or encumbrance of a Property shall be deemed to include the acceptance of all of the provisions of this Declaration, the Articles, the Bylaws, Rules and Regulations and Management Agreement and shall be binding upon each grantee without the necessity or inclusion of such express provision in the instrument of conveyance or encumbrance.

31. Reservation to Supplement Project:

A. Standards of Common Use. Any supplements to this Declaration may provide for a division of any annexed Property and improvements into Property and/or Common



Elements similar to method and form to the division made of the Property and improvements in this Declaration. Any further division will require the approval of the City of Grand Junction.

B. Voting Rights. The Owners of each Lot, when no improvement has been made, now or hereafter declared, shall be entitled to collectively cast one (1) vote at any election or meeting of the Association members in accordance with the Articles and the Bylaws of the Association. The Owners of a Property shall determine among themselves how such vote shall be cast. Fractional votes may not be cast by Owners.

C. Determination of Interests in Common Elements. The Declarant acknowledges that the initial allocation of an interest in the Common Elements appurtenant to each Lot is based upon the Common Elements within the area described on the attached final plat, **Exhibit A**, and within each phase, and upon the expectation that all phases of the Property will be completed. As such, until all Properties have been declared, one hundred percent (100%) of the interests in the Common Elements will not have been allocated until all of such Property have been declared. Therefore, until declaration of all Property or a redetermination of such interests as provided below, if and when it is necessary to allocate insurance, sales or condemnation proceeds (or for any other purpose) among the Property and their Mortgagees according to their interests in the Common Elements, such allocation shall be determined on the basis of one (1) share per Property counting only those presently declared under this Declaration and all supplements of record as of the time of the occurrence of the event giving rise to such an allocation.

D. General Terms: Except as may be otherwise specifically provided by the provisions of such supplement(s) to this Declaration, all of the provisions contained in this Declaration shall be applicable to such additional Filings.

E. CCIOA Controls. Any provision of this Declaration in conflict with the provisions of CCIOA shall be void and of no effect. Further the provisions of this Declaration shall be informed by the CCIOA with respect to the interpretation to be given to the various provisions contained herein. Where a matter is unaddressed by these Declarations yet is mandatory under the terms of the CCIOA, then the provisions of the CCIOA will be implied herein.

Each Owner shall have the non-exclusive right, together with all other Owners, to use all Common Elements, open spaces, recreational facilities, grass and landscaping areas, sidewalks, pathways, private streets, and all other areas in the Property, and any supplements or additions thereto, owned by the Association, subject to the reasonable rules and regulations that the Association may enact pursuant to its lawful powers.

32. Statutory Matters Not Set Forth Elsewhere.



A. CHIPETA HEIGHTS is a Common Interest Community as defined in the Colorado Common Interest Act, Article 33.3 of Title 38.

B. The descriptions of all Common Elements and the boundaries of each Property is described in the Plat of CHIPETA HEIGHTS is located in the City of Grand Junction, Mesa County, Colorado recorded in the records of the Mesa County Clerk and Recorder Plat Book No. 4462 at Page 933 on the 3rd day of July, 2008. 2007.

C. The recording data for recorded easements and licenses appurtenant thereto the common interest is or may be subject to under reservations set forth above are contained in the Plat of the Property, recorded in Plat Book 1, at Page 26.

D. Declarant hereby gives notice of Declarant's intent to utilize the easement through the Common Elements defined in C.R.S., §38-33.3-216, as it exists on the date hereof.

E. CHIPETA HEIGHTS Consists of one filing consisting of fifty-two (52) lots.

IN WITNESS WHEREOF, Declarant has executed this Declaration  
this 20<sup>th</sup> day of May, 2008.

LEVEL III DEVELOPMENT, LLC

By: William R. Ogle

William Ogle, Manager/Member

By: Rick D. Wagner

Rick D. Wagner, Manager/Member

STATE OF COLORADO     )  
                                      ) ss.  
COUNTY OF MESA        )

The foregoing Declaration of Covenants, Conditions, and Restrictions of CHIPETA HEIGHTS, was subscribed and sworn to before me this 20<sup>th</sup> day of May, 2008, by Manager/Member and Rick D. Wagner, Manager/Member of LEVEL III DEVELOPMENT, LLC., declarant.

WITNESS my hand and official seal.

My commission expires: 12/11/2010

Heather Kiefer  
Notary Public

