

**FIRST AMENDMENT TO THE DECLARATION OF COVENANTS,  
CONDITIONS, AND RESTRICTIONS FOR  
CLEVELAND PLACE II SUBDIVISION**

This First Amendment to the Declaration of Covenants, Conditions, and Restrictions for Cleveland Place II Subdivision ("Amended Declaration") is made this \_\_\_\_\_ day of \_\_\_\_\_, 2008, by the Cleveland Place II Homeowners Association (hereafter referred to as the "Association").

**RECITALS**

WHEREAS, a Declaration of Covenants, Conditions, and Restrictions for Cleveland Place II Subdivision, dated July 13, 2007, and recorded as Reception Number 729737 of the records of Garfield County, Colorado (the "Declaration"), provides at Section 3.10 thereof that such Declaration may be amended by Association Action, as such term is defined therein, at any time; and

WHEREAS, at a meeting of the Members of the Association, duly noticed and held for such purpose, inter alia, on \_\_\_\_\_, 2008, all in accordance with the provisions of Section 3.4 of said Declaration, the within and following First Amendment to Declaration of Covenants, Conditions, and Restrictions for Cleveland Place II Subdivision was duly adopted by the Association by Association Action.

NOW, THEREFORE, the Cleveland Place II Homeowners Association, by its execution and recordation hereof, does hereby make, publish and declare the following amendments to the Declaration, to wit:

**AMENDMENTS**

I. The second full paragraph (unnumbered) appearing on page numbered 1 of the Declaration is hereby amended by deletion thereof in its entirety and by the substitution in its place and stead of the following paragraph, to wit:

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

II. ARTICLE 1, DEFINITIONS, Section 1.10 thereof, is hereby amended by the deletion thereof in its entirety and by the substitution in its place and stead of the following provision, to wit:

“1.10 “Lot” means any of the platted Lots numbered 1A, 1B, 2A, 2B, 3A, 3B, 4A, 4B, 5, 6, 7, 8, 9A, 9B, 9C, 10, 11A, 11B, 11C and 12, as shown on the Plat. There shall be three categories of Lots designated on the Plat as follows:

<u>Designation</u>	<u>Lots Nos.</u>
Single-Family Residential (“SFR Lots”)	5, 6, 7, 8, 10 and 12
Duplex Residential (“DR Lots”)	1A, 1B, 2A, 2B, 3A, 3B, 4A, 4B
Triplex Residential (“TR Lots”)	9A, 9B, 9C, 11A, 11B, 11C”

III. ARTICLE 1, DEFINITIONS, Section 1.23 thereof, is hereby amended by the deletion thereof in its entirety and by the substitution in its place and stead of the following provision, to wit:

“1.23 “Plat” shall mean the Final Plat of Cleveland Place II Subdivision, recorded as Reception No. 729736 in the County Records, and the First Amended Plat of Cleveland Place II Subdivision recorded as Reception No. \_\_\_\_\_ of said records.”

IV. ARTICLE 2, RESTRICTIONS ON USE AND OCCUPANCY, Section 2.2 thereof, is hereby amended by the deletion thereof in its entirety and by the substitution in its place and stead of the following provision, to wit:

“2.2 Use of the Property and Residential Use and Buildings. All property within the subdivision, including all Lots, shall be used only in accordance with the PUD Plan approved by the Town and as approved by the DRC. All SFR Lots shall be used only for single-family residential buildings and purposes and appurtenant structures approved by the DRC. All DR Lots shall be used only for two-family duplex residential buildings and purposes and appurtenant structures approved by the DRC. All TR Lots shall be used only for three-family residential buildings and purposes and appurtenant structures approved by the DRC. Further, no residential building, whether located on a SFR Lot, a DR Lot or a TR Lot shall be allowed to contain more than a single Dwelling Unit per Lot.

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

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

In addition, any residential structures constructed on any Lot shall be constructed in general conformity with the conceptual design and elevations shown on Exhibits B-1, B-2, B3, B-4, B-5 and B-6 hereto, the latter Exhibit B-6 as to location of paved parking areas and structural improvement siting on a Lot; and no substantial deviation therefrom shall be permitted without written concurrence of the Town and the DRC as well as in conformance with the PUD Plan."

V. ARTICLE 2, RESTRICTIONS ON USE AND OCCUPANCY, Section 2.21 thereof, is hereby amended by the deletion thereof in its entirety and by the substitution in its place and stead of the following provision, to wit:

"2.21 Duplex Lots and Triplex Lots.

A. i) Party Wall and Easements – Duplex Lots-Triplex Lots. Upon the conveyance by Declarant of any of the above-described DR Lots and TR Lots and construction of a duplex or triplex structure thereon, as the case may be, the wall or structural extension thereof (not exceeding one foot in width) which forms a portion of the division between such Lot and the adjoining Lot or Lots identified by the same DR Lot number or TR Lot number as provided in Section 1.14 above is hereby declared to be a party wall upon the alignment of the common boundary of such Lots as shown on the Plat, to be shared and owned in common by the Owners of such two (2) DR Lots or such three (3) TR Lots, respectively. Each such DR Lot or TR Lot shall be subject to an easement for encroachment created by construction, setting or overhang of the existing party wall(s), and to a reasonable degree, any subsequent improvement, addition or replacement of the same, so long as such encroaching portion stands and exists. In the event the portion of the duplex or triplex building occupying any of said Lots is partially or totally destroyed by fire or otherwise and is rebuilt by the Owner thereof, the Owners of such DR Lots or TR Lots agree that minor encroachment of parts of the adjacent improvements upon the other DR Lot or TR Lot due to such reconstruction shall be permitted and that a valid easement for said encroachment and the maintenance thereof shall and does exist. Each such Owner shall have an easement for horizontal and lateral support for improvements situated on such Owner's DR Lot or TR Lot. Each Owner of such a DR Lot or TR Lot shall have the irrevocable right to have reasonable access to the other DR Lot or TR Lot during reasonable hours as may be necessary for the inspection, maintenance, repair or replacement of the party wall or any utilities located therein or for making emergency repairs necessary to prevent damage to the party wall(s) or the DR Lot or the TR Lot.

ii) Responsibility for Party Wall. Except as is otherwise provided in this Declaration, the cost of reasonable maintenance, repairs and replacement of the party wall shall be the joint

expense of the Owners sharing the party wall. The cost of repairs and maintenance of the finished surface of the party wall(s) located within any such DR Lot or TR Lot shall be the sole expense of the Owner of the DR Lot or TR Lot. An Owner shall have the right to reasonably maintain and repair any utility installation located within the party wall, but in so doing shall restore the party wall to its original condition.

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

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

B. Utility Easements – DR Lots and TR Lots.

At the time of conveyance by Declarant of any of the said DR Lots or TR Lots, this Declaration shall constitute a grant as an appurtenance to each DR Lot or TR Lot conveyed of an easement for utilities serving the DR Lot or the TR Lot conveyed for purposes of the operation, maintenance, repair and replacement thereof as well as an easement for reasonable access to such utilities for the purposes aforesaid. Similarly in any such conveyance, this Declaration shall constitute a reservation, as appropriate, of an easement for utilities serving the DR Lot or TR Lot and an easement for access thereto for purposes of operation, maintenance, repair or replacement of any such utilities. Any damage caused to the DR Lot or the TR Lot burdened by the easement by the owner of the easement granted or reserved in the use of such easement shall be immediately repaired by the Owners of such DR Lot or TR Lot. Any expense of maintenance, repair or replacement of any of the utilities located within the foregoing described easements shall be borne equally by the respective Owners of the DR Lots or TR Lots unless such maintenance, repair or replacement is necessitated by the intentional or negligent act or omission of the Owner of one of the DR Lots or TR Lots, in which case the latter Owner shall be solely responsible for the cost of such maintenance, repair or replacement. Further, neither of the Owners of any such DR Lot or TR Lot shall build nor erect any structure over existing easements and utilities located therein, except for those portions of such easements which are necessarily located under or through buildings and structures erected and installed on the DR Lots or the TR Lots.

The above and foregoing covenants, restrictions and easements shall be covenants running with title to all DR Lots and TR Lots upon which duplex structures or triplex structures are erected, both as to the benefits and burdens thereof, and either Owner of such a DR Lot or TR Lot subject to this Subsection 2.21 may enforce the provisions hereof by any legal or equitable remedy available."



VI. ARTICLE 2, RESTRICTIONS ON USE AND OCCUPANCY, Section 2.23 thereof, is hereby amended by the deletion thereof in its entirety and by the substitution in its place and stead of the following provision, to wit:

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

VII. ARTICLE 3, ASSOCIATION, DECLARANT MEMBER AND MANAGER DUTIES AND POWERS, Section 3.2 thereof, is hereby amended by the deletion thereof in its entirety and by the substitution in its place and stead of the following provision, to wit:

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

VIII. ARTICLE 3, ASSOCIATION, DECLARANT MEMBER AND MANAGER DUTIES AND POWERS, Section 3.8 thereof, is hereby amended by the deletion of the reference therein to the fraction “1/18<sup>th</sup>” and the substitution in its place and stead of the fraction “1/20<sup>th</sup>.”

IX. ARTICLE 3, ASSOCIATION, DECLARANT MEMBER AND MANAGER DUTIES AND POWERS, Section 3.9 thereof, is hereby amended by the deletion thereof in its entirety and by the substitution in its place and stead of the following provision, to wit:

“3.9 Design Review Committee. The membership of the Design Review Committee (“DRC”) shall initially be comprised of the Managers of the Declarant, currently David Hicks and Connie Hicks, and the DRC shall continue to be so composed so long as Declarant shall retain ownership of at least one (1) Lot, and thereafter the members of the DRC shall be three (3) in number and shall be appointed by Association Action.”

X. ARTICLE 3, ASSOCIATION, DECLARANT MEMBER AND MANAGER DUTIES AND POWERS, Section 3.10, thereof, is hereby amended by the deletion thereof in its entirety and by the substitution in its place and stead of the following provision, to wit:

“3.10 Amendment to Declaration. Subject to the limitations set forth above in Section 2.31, this Declaration may be amended from time to time upon the affirmative vote of 51% of all

Lot Owners. Any such amendment shall be recorded in the Garfield County real property records by the Association. However, no such amendment shall be operative or effective retrospectively (*i.e.*, no such amendment shall have the effect of depriving an Owner of any right to continue to use or maintain his Lot in any manner or condition which was in conformance with this Declaration immediately prior to the adoption of any such amendment), no such amendment shall affect the makeup of the DRC as initially established as set forth in Section 3.9 above, and no amendments to Section 2 shall be effective unless approved by the Town in writing.”

With the exception of the foregoing amendments and modifications, all other provisions of the Declaration of Covenants, Conditions, and Restrictions for Cleveland Place II Subdivision shall be and remain in full force and effect.

Executed and effective this \_\_\_\_\_ day of \_\_\_\_\_, 2008, by the following persons comprising greater than 51% of all of the present Lot Owners of Cleveland Place II Homeowners Association.

CLEVELAND PLACE II SUBDIVISION  
HOMEOWNERS ASSOCIATION

211 EIGHTH, LLC, a Colorado Limited  
Liability Company

By: \_\_\_\_\_  
David Hicks, Manager

By: \_\_\_\_\_  
Connie Hicks, Manager

The above and foregoing First Amendment to Declaration of Covenants, Conditions, and Restrictions for Cleveland Place II Subdivision approved this \_\_\_\_\_ day of \_\_\_\_\_, 2008, by the Town of Carbondale, Colorado, under the provision of Section 2.31 of the Declaration.

By: \_\_\_\_\_  
Mayor

Attest: \_\_\_\_\_

[illegible]

The foregoing instrument was acknowledged before me on \_\_\_\_\_, 2008, by David Hicks and Connie Hicks, as Managers of 211 Eighth, LLC, a Colorado limited liability company.

Witness my hand and official seal. My commission expires \_\_\_\_\_.

Notary Public